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**AMENDED AND RESTATED DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS OF
CAPITOLA KNOLLS HOMEOWNERS ASSOCIATION**

NOTICE

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CAPITOLA KNOLLS
HOMEOWNERS ASSOCIATION

AMENDED AND RESTATED
DECLARATION

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**AMENDED AND RESTATED DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS OF
CAPITOLA KNOLLS HOMEOWNERS ASSOCIATION**

This Amended and Restated Declaration of Covenants, Conditions and Restrictions is made on the date set forth at the end of this document by CAPITOLA KNOLLS HOMEOWNERS ASSOCIATION, a California nonprofit mutual benefit corporation (referred to in this document as the "Association").

RECITALS OF BACKGROUND FACTS; DECLARATIONS

- A. This Amended and Restated Declaration is made with reference to that certain RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF CAPITOLA KNOLLS HOMEOWNERS ASSOCIATION dated April 16, 2001 and recorded on June 27, 2001, as Instrument No. 2001-0039249, in the Official Records of Santa Cruz County, State of California (the "2001 Declaration").
- B. The 2001 Declaration establishes certain limitations, easements, covenants, restrictions, conditions, liens, and charges which run with, and are binding upon all parties having or acquiring any right, title, or interest in, that certain real property located in the County of Santa Cruz, State of California, and more particularly described as follows:
- Parcel A, Parcel B, Parcel C and Parcel D, and the improvements thereon consisting of Units 1 through 164 located within Buildings 1 through 41, inclusive, as such real property is shown on that certain map of "Parcel Map being a Resubdivision of Tract No. 604 Capitola Knolls (Vol. 58, Pg. 12) and Lying within the City of Capitola California," filed on June 9th, 1975, in Book 18 of Maps, Page 56, et seq., Official Records of Santa Cruz County, State of California.
- C. THE MEMBERS, constituting at least a Majority of the Members of the Association, desire to amend, modify, and otherwise change the 2001 Declaration pursuant to ARTICLE XVI (a) thereof, and DO HEREBY DECLARE that the 2001 Declaration shall be, and it is hereby, AMENDED AND RESTATED IN ITS ENTIRETY as set forth in the within Amended and Restated Declaration of Covenants, Conditions and Restrictions of CAPITOLA KNOLLS.

- D. IT IS FURTHER HEREBY DECLARED that all of the real property described in Recital Paragraph B, above, constitutes a condominium project within the meaning of Section 4125 of the California *Civil Code*.
- E. IT IS FURTHER HEREBY DECLARED that all of the real property described in Recital Paragraph B, above, is and shall be held, owned, operated, managed, conveyed, hypothecated, encumbered, leased, used, occupied, and improved subject to the following covenants, conditions, and restrictions set forth herein, all of which are declared and agreed to be in furtherance of a plan and purpose of protecting, preserving, and enhancing the value, desirability, and attractiveness of the said real property and every part thereof, and of fostering the development, management, improvement, enjoyment, and sale of the said real property and any part thereof.
- F. IT IS FURTHER HEREBY DECLARED that all of the covenants, conditions, and restrictions set forth herein shall constitute enforceable equitable servitudes as provided in *Civil Code* section 5975, shall constitute covenants that shall run with the said real property, and shall be binding upon and inure to the benefit of each Owner of any portion of the said real property or the owner or holder of any interest or estate therein and their heirs, successors, and assigns.

ARTICLE 1 DEFINITIONS

- 1.1 Additional Charges. “Additional Charges” shall mean all costs, fees, charges, and expenditures including, but not limited to, interest, late charges, attorneys’ fees, recording and filing fees, and all other costs actually incurred by the Association in collecting and/or enforcing payment of Assessments.
- 1.2 Architectural Committee. “Architectural Committee” shall mean the Committee, if any, appointed pursuant to Article 7 (“Architectural Approval”).
- 1.3 Articles. “Articles” shall mean the Amended and Restated Articles of Incorporation of Capitola Knolls Homeowners Association, as they may be amended from time to time, and as filed with the Office of the Secretary of State of California.
- 1.4 Assessments. “Assessments” shall mean any or all of the following: Regular Assessments, Special Assessments, Reimbursement Assessments, and Enforcement Assessments.
- 1.5 Association. “Association” shall mean Capitola Knolls Homeowners Association, a California nonprofit mutual benefit corporation, its successors and assigns.
- 1.6 Balcony. See Section 1.22 (“Exclusive Use Common Area”).

- 1.7 Board of Directors. "Board of Directors" or "Board" shall mean the governing body of the Association.
- 1.8 Bylaws. "Bylaws" shall mean the Amended and Restated Bylaws of the Association as they shall be duly adopted by the Board of Directors and the Members and any duly-adopted amendments thereof.
- 1.9 Carport. "Carport" shall mean the covered space located within each Unit established and designed for the parking of motor vehicles.
- 1.10 City. "City" shall mean the City of Capitola.
- 1.11 Civil Code. "*Civil Code*" shall mean the California *Civil Code* as amended from time to time.
- 1.12 Common Area. "Common Area" shall mean all of the property comprising the Project including, without limitation, and the real property and improvements thereon. The Common Area is divided into the following:
- 1.12.1 Building Common Area. Consisting of Buildings 1 through 41, as shown on the Condominium Plan, including exterior stairs; storage areas; exterior walls; decks and patios; bearing walls, columns, girders, subfloors, unfinished floors, roofs, and foundations; central heating, reservoirs, tanks, pumps, motors, ducts, flues and chutes and other central services; conduits, pipes, waste, water and gas pipes, plumbing, wires and other utility installations (except the outlets thereof when located within the Unit) required to provide power, light, water, sewerage, drainage, and elevator service; sprinkler pipes and sprinkler heads which protrude into the airspace of the Unit; each of which is owned in common as to an undivided 1/4th interest by the Owners of the Units within the respective Buildings. Some portions of the Building Common Area constitute "Exclusive Use Common Area" as defined in Section 1.22 ("Exclusive Use Common Area").
- 1.12.2 Common Area Parcels A, B, and D. Consisting of land and improvements located therein (except the Buildings and Units) which includes private streets and driveways, mailboxes, lighting, parking areas and carports, sidewalks, walkways and pavements, fences, landscaping including trees, bushes, lawns and irrigation systems, and open space, which is owned in common (as to an undivided percentage interest) by the Owners of Units located within each of the Parcels as more fully set forth in Exhibit A attached hereto and made a part hereof. Some portions of Parcels A, B, and D constitute "Exclusive Use Common Area" as defined in Section 1.22 ("Exclusive Use Common Area"); and

- 1.12.3 Recreational Common Area Parcel C Consisting of land and recreational facilities, including a swimming pool, spa, cabana, play area, fences and gates, and other community facilities, which are owned by the Association for the common use and enjoyment of the Owners and Residents of the Project.
- 1.13 Condominium. “Condominium” shall mean an estate in real property as defined in *Civil Code* sections 783 and 4125, consisting of an undivided interest in all or any portion of the Common Area together with a separate fee interest in a Unit and any easements or other interests in the Project or any portion thereof appurtenant to the Unit, as are described in the Declaration, in the Condominium Plan, or in the deed conveying a Condominium.
- 1.14 Condominium Plan. “Condominium Plan” or “Plan” shall mean a plan recorded pursuant to California *Civil Code* sections 4285, 4290, 4295 with respect to the Project and any amendments thereto which identifies the Common Areas and each separate interest in the Project, which Plans are listed in Exhibit B.
- 1.15 Contract Purchaser / Contract Seller. “Contract Purchaser” and “Contract Seller” shall mean the purchaser and the seller, respectively, under an installment land contract in which title to the property is transferred after the final installment payment is made.
- 1.16 Corporations Code. “*Corporations Code*” shall mean the California *Corporations Code* as amended from time to time.
- 1.17 County. “County” shall mean the County of Santa Cruz.
- 1.18 Deck. See Section 1.22 (“Exclusive Use Common Area”).
- 1.19 Declaration. “Declaration” shall mean this Amended and Restated Declaration of Covenants, Conditions and Restrictions of Capitola Knolls Homeowners Association, recorded in the Office of the County Recorder of Santa Cruz County, California, and any duly recorded amendments thereof.
- 1.20 Eligible Holder. See Section 12.3 (“Eligible Holder Defined”).
- 1.21 Enforcement Assessment. “Enforcement Assessment” shall have the meaning set forth in Section 8.11.
- 1.22 Exclusive Use Common Area. “Exclusive Use Common Area” shall mean any portion of the Common Area the exclusive use of which is set aside, allocated, assigned, and restricted to the exclusive use or possession of the Owners and Residents of one (1) or more but less than all of the Units and which is appurtenant to a Unit or Units. An exclusive easement to such Exclusive Use Common Area may be specifically granted in each individual grant deed

conveying a Unit or may be granted by this Declaration. The Exclusive Use Common Area appurtenant to each Unit consists of the following and no other portions of the Project constitute Exclusive Use Common Area:

- 1.22.1 Balcony. "Balcony" shall mean each space designated on the Plan by the letter "BA-" followed by the number of the Unit to which it is appurtenant. The perimeter and vertical boundaries of each Balcony space are to the interior finished surface of the railing, the exterior finished surface of the building, the finished surface of the floor, and a plane in space at the height of the ceiling of the adjacent Unit. The approximate dimensions of each Balcony as they were originally constructed are shown on the Plan. Some of the Balconies at the Project have been expanded. Each Balcony comprises the airspace encompassed within its boundaries and does not include the physical components enclosing that space.
- 1.22.2 Carport. "Carport" shall mean each space designated on the Plan by the letter "GC-" or the word "Carport" or "Parking" followed by the number of the Unit to which it is appurtenant. The perimeter and boundaries of each Carport space are to the interior surfaces of the floor, and ceiling. The vertical boundaries are identified by the markings on the pavement, if any. The approximate dimensions of each Carport are shown on the Plan. Each Carport comprises the airspace encompassed within its boundaries and does not include the physical components enclosing that space.
- 1.22.3 Deck. "Deck" shall mean each space designated on the Plan by the letter "D-" followed by the number of the Unit to which it is appurtenant and an approved Deck space added as an appurtenance to a Unit after the original construction of the Project. The perimeter and vertical boundaries of each Deck space are to the interior finished surface of the railing, the exterior finished surface of the building, the finished surface of the floor, and a plane in space at the height of the ceiling of the adjacent Unit. Each Deck comprises the airspace encompassed within its boundaries and does not include the physical components enclosing that space.
- 1.22.4 Garage. "Garage" shall mean each space designated on the Plan by the letter "GC-" or the word "Garage" or "Parking" followed by the number of the Unit to which it is appurtenant. The perimeter and vertical boundaries of each Garage space are to the interior surfaces of the walls, floor, and ceiling. The approximate dimensions of each Garage are shown on the Plan. Each Garage comprises the airspace encompassed within its boundaries and the automatic garage door opening system, if any, and does not include the physical components enclosing that space.

- 1.22.5 Patio. "Patio" shall mean each enclosed space designated on the Plan by the letter "P-" followed by the number of the Unit to which it is appurtenant. The perimeter boundaries of each Patio space are to the interior unfinished surfaces of the fences and/or railings and to the exterior finished surfaces of any Common Area walls enclosing the Patio. The vertical boundaries of each Patio are to the surface of the ground and to a horizontal plane extended from the ceiling of the Unit that adjoins the Patio. Each Patio comprises the airspace encompassed by its boundaries and so much of the area beneath the surface of the earth as is necessary for the cultivating, landscaping, and drainage of the Patio and does not include the physical components enclosing that space.
- 1.22.6 Storage Space. "Storage Space" shall mean each space designated on the Plan by the letter "S-" followed by the number of the Unit to which it is appurtenant and located within the Carport or Garage Space appurtenant to a Unit. The perimeter and vertical boundaries of each Storage Space are to the interior unfinished surfaces of the doors, walls, floor, and ceiling. The approximate dimensions of each Storage Space are shown on the Plan. Each Storage Space comprises the airspace encompassed by its boundaries and does not include the physical components enclosing that space other than the finishes on the surface thereof.
- 1.22.7 Other Exclusive Use Common Area. The following items or components designed to serve a single Unit constitute Exclusive Use Common Area appurtenant to the Unit:
- (i) exterior doors, door frames and hardware, including locks and keys;
 - (ii) exterior windows including frame, glass, hardware, and window screens, and skylights serving a Unit;
 - (iii) internal and external telephone wiring;
 - (iv) water heater;
 - (v) washers and dryers, dryer vent and ducts even if located partially or entirely outside the Unit;
 - (vi) air-conditioning units located within and serving a single Unit;
 - (vii) approved private gardens; and

(viii) for Units with fireplaces, the firebox and the flue damper.

- 1.23 First Mortgage / First Mortgagee. "First Mortgage" shall mean a Mortgage that has first priority over all other Mortgages. "First Mortgagee" shall mean the beneficiary under a First Mortgage.
- 1.24 Garage. See Section 1.22 ("Exclusive Use Common Area").
- 1.25 Governing Documents. "Governing Documents" shall mean the Articles, Bylaws, Declaration, and Rules.
- 1.26 Individual Delivery / Individual Notice. "Individual Delivery" or "Individual Notice" shall mean delivery to a Member or Members by one (1) of the following methods, as provided in *Civil Code* section 4040:
- (a) By first-class mail with postage prepaid, registered or certified mail, express mail, or overnight delivery by an express service carrier, addressed to the recipient at such recipient's address last shown on the books of the Association, or
 - (b) By email, facsimile, or other electronic means if the recipient has consented in writing to that method of delivery. The consent may be revoked, in writing, by the recipient. Delivery by electronic transmission must also comply with *Corporations Code* sections 20 and 21. Among other things, Section 20 of the *Corporations Code* requires the Association to obtain consent from the person to whom the document is transmitted to receive it by means of electronic transmission as well as other technical requirements.
- 1.27 Institutional Mortgagee. See Section 12.2 ("Institutional Mortgagee Defined").
- 1.28 Map. "Map" or "Maps" shall mean either or both of that certain subdivision map titled "Tract No. 604 Capitola Knolls," recorded April 4, 1973, in Book 58 of Maps, Page 12 and 13, Official Records of Santa Cruz County, State of California and that certain parcel map titled "Parcel Map being a Resubdivision of Tract No. 604 Capitola Knolls (Vol. 58, Pg. 12) and Lying within the City of Capitola California," filed on June 9th, 1975, in Book 18 of Maps, Page 56, et seq., Official Records of Santa Cruz County, State of California.
- 1.29 Maintenance. "Maintenance" or to "maintain" (whether the term is capitalized or not) shall mean the act of caring for property and keeping it in its existing state, preserving it from failure or deterioration, including painting, caulking, cleaning, and minor, non-structural upkeep. In the case of landscaping, "maintenance" or to "maintain" shall mean regular fertilizing, irrigation, pruning, and other garden management practices necessary to promote healthy plant growth free of weeds or dead or dying plants.

- 1.30 Majority of a Quorum. "Majority of a Quorum" shall mean a majority of the votes cast in any lawful vote or election by the Members in which the number of ballots cast equals or exceeds the number required to establish a quorum.
- 1.31 Member. "Member" shall mean an Owner.
- 1.32 Member in Good Standing. "Member in Good Standing" shall mean a Member of the Association who is current in the payment of all Assessments and Additional Charges imposed in accordance with the Governing Documents, and who is in compliance with all of the provisions of the Governing Documents. A Member shall be deemed to be in Good Standing unless, after notice and an opportunity for hearing, pursuant to Article 13 ("Enforcement; Notice; Hearings"), the Board has found the Member to be not in Good Standing and has so notified the Member in accordance with *Civil Code* section 5855.
- 1.33 Mortgage / Mortgagee. "Mortgage" shall mean a duly recorded deed of trust or mortgage in the conventional sense encumbering a Condominium. "Mortgagee" shall mean a beneficiary under a Mortgage and shall also include an insurer or governmental guarantor of a Mortgage including, without limitation, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation and the Department of Veterans Affairs.
- 1.34 Owner. "Owner" shall mean the record owner, whether one (1) or more persons or entities, of the fee simple title to any Condominium, including Contract Sellers but excluding Contract Purchasers, and excluding those persons having such interest merely as security for the performance of an obligation.
- 1.35 Patio. See Section 1.22 ("Exclusive Use Common Area").
- 1.36 Prohibited Vehicle. See Section 5.18.2 ("Prohibited Vehicles").
- 1.37 Project. "Project" shall mean all of the real property described in this Declaration as comprising the Capitola Knolls condominium project, including all structures and other improvements located at any time upon said real property, and such additional real property as may hereafter be brought within the jurisdiction of the Association.
- 1.38 Regular Assessment. "Regular Assessment" shall have the meaning set forth in Section 8.7.
- 1.39 Reimbursement Assessment. "Reimbursement Assessment" shall have the meaning set forth in Section 8.10.

- 1.40 Repair. "Repair" (whether the term is capitalized or not) shall mean the minor restoration of property that is torn, broken, or otherwise damaged, or has sustained wear, tear, or deterioration such that minor restoration is necessary.
- 1.41 Replacement. "Replacement" or to "replace" (whether the term is capitalized or not) shall mean substantial reconstruction, restoration, or substitution of the whole or a substantial part of property that has deteriorated or has been damaged or destroyed through usage or through hazard or catastrophe such that it is no longer useable or serviceable in its current condition. In the case of landscaping, "replacement" or to "replace" shall mean the removal and replanting of trees, shrubs, lawns, and other plants that are dead or dying or otherwise not serviceable or the substitution of plants for hardscape or substitution of hardscape for plants.
- 1.42 Resident. "Resident" shall mean any person who resides in a Unit within the Project whether or not such person is an Owner.
- 1.43 Restricted Vehicle. See Section 5.18.3 ("Restricted Vehicles").
- 1.44 Rules. "Rules" shall mean the policies, rules, and regulations governing the administration, management, operation, use, and occupancy of the Project, including the use of the Common Area and facilities, the personal conduct of Owners and Residents, members of their household, pets, tenants, invitees, and guests within the Project, enforcement of the Governing Documents, and any other matter that is within the jurisdiction of the Association, as adopted, published, or amended by the Board from time to time and subject to applicable law including *Civil Code* section 4340 and following.
- 1.45 Special Assessment. "Special Assessment" shall have the meaning set forth in Section 8.8.
- 1.46 Storage Space. See Section 1.22 ("Exclusive Use Common Area").
- 1.47 Total Voting Power. "Total Voting Power" shall mean the total number of votes of all Members entitled to vote at a particular time, calculated on the basis of one (1) vote for each Unit, excluding any Units as to which an Owner is not then a Member in Good Standing.
- 1.48 Unit. "Unit" shall mean the elements of a Condominium that are not owned in common with the Owners of other Condominiums within the Project, which Units are shown as separately designated and numbered areas on the Condominium Plan. There are one hundred sixty-four (164) Units in the Project.
- 1.48.1 Boundaries of Unit. The boundaries of each Unit are as follows: (i) the interior *unfinished surfaces* (exclusive of floor coverings, paint, paper, wax, tile, enamel, or other finishing) of the floors and ceilings of the

living space at their respective elevations as shown on the Condominium Plan, and (ii) the interior *unfinished surfaces* (exclusive of paint, paper, wax, tile, enamel, or other finishing) of its perimeter walls, bearing walls, interior stairs, fireplaces, windows and window frames, and exterior doors, door frames and trim.

- 1.48.2 Included in Unit. Without limiting the generality of Section 1.48.1, above, the Unit *includes* (i) the finishes or coverings on the interior surfaces of the floors, stairs, walls, and ceilings; (ii) the partition (non-bearing) walls within the boundaries of the Unit; (iii) all interior doors within the boundaries of the Unit and hardware of interior doors; exterior doors, door frames, and hardware; exterior windows, window frames, and hardware; (iv) appliances, cabinetry, and equipment and fixtures, lighting, water heater, gas and electrical heating, space heaters, air-conditioning units, if any, located within the Units (iv) utility outlets (only) located within the boundaries of the Unit.
- 1.48.3 Excluded from Unit. Without limiting the generality of Section 1.48.1, above, the Unit *does not include* the following: (i) bearing walls and soffits, except the finished surfaces thereof inside a Unit; (ii) for Units with fireplaces, the fireplace flue or chimney liner, and the chimney cap or spark arrestor, (iii) central heating, and all the things defined as Common Area in Section 1.12 all of the foregoing constituting Common Area.
- 1.48.4 Existing Physical Boundaries Control. In interpreting deeds, the Declaration, and the Condominium Plan, it shall be conclusively presumed that the then existing physical boundaries of a Unit, whether as originally constructed or as reconstructed in accordance with the Governing Documents, are its boundaries, rather than the metes and bounds or other description expressed in the deed, the Declaration, or the Condominium Plan, regardless of any settling or lateral movement of buildings and regardless of minor variance between the boundaries shown on the deed, in the Declaration, or in the Condominium Plan and the actual existing physical boundaries.

ARTICLE 2 HOMEOWNERS ASSOCIATION

- 2.1 Management and Operation; Bylaws. The Association is an "association" as defined in *Civil Code* section 4080 and as such shall have the power and the authority to manage and operate the Project in accordance with the Governing Documents and the provisions of applicable law. The Association shall have all of the powers set forth in the Governing Documents together with general power to do any and all things that a nonprofit mutual benefit corporation may lawfully do under the laws of the State of California, subject only to the limitations upon

the exercise of such powers as are expressly set forth in the Governing Documents. Provisions concerning the operation of the Association as a nonprofit mutual benefit corporation are set forth in the Bylaws.

2.2 Legal Standing. To the fullest extent permitted by law, including *Civil Code* section 5980, the Association shall have standing to institute, defend, settle, or intervene in litigation, arbitration, mediation, or administrative proceedings in its own name as a real party in interest, and without joining with it the Owners, in matters pertaining to the following:

- (a) Enforcement of the Governing Documents,
- (b) Damage to the Common Area,
- (c) Damage to the separate interests that the Association is obligated to maintain, repair, or replace,
- (d) Damage to a separate interest that arises out of, or is integrally related to, damage to the Common Area or separate interests that the Association is obligated to maintain, repair, or replace.

2.3 Membership. Every Owner of a Condominium shall be a Member of the Association and shall remain a Member thereof until such time as his or her ownership of such Condominium ceases for any reason. Fee ownership of a Unit shall be the sole qualification for membership in the Association. Membership shall be appurtenant to and may not be separated from ownership of a Condominium and shall not be transferred, encumbered, pledged, alienated, or otherwise hypothecated in any way, except in connection with the sale or encumbrance of the Condominium to which it is appurtenant.

2.4 Voting. Only Members in Good Standing shall be entitled to vote and, only one (1) vote shall be cast for each Condominium, as more particularly set forth in the Bylaws.

2.5 Association Rules. Subject to applicable law including *Civil Code* section 4340 and following, regarding notice and procedures, the Board shall have the power and the authority to establish, promulgate, amend, repeal, and enforce Rules.

ARTICLE 3 PROPERTY SUBJECT TO THIS DECLARATION

3.1 Legal Description. The property subject to this Declaration and to the jurisdiction of the Association is described in Recital Paragraph B, above.

- 3.2 Classification of Property. The property subject to this Declaration is a condominium project. All of the property subject to the Declaration is divided into the following categories:
- (a) Building Common Area,
 - (b) Common Area Parcels A, B and D,
 - (c) Recreational Common Area Parcel C,
 - (d) Exclusive Use Common Area, and
 - (e) Units.
- 3.3 Ownership of Condominium. Ownership of each Condominium within the Project shall include: (i) a designated Unit; (ii) the respective undivided percentage interest as a tenant in common in the Common Area Parcel in which the Unit is located as set forth in Exhibit A; (iii) an undivided one-fourth percentage (¼%) interest as a tenant in common in the Building Common Area of the Building in which the Unit is located; (iv) a Membership in the Association; and (v) any exclusive easements or easements appurtenant to such Unit upon the Exclusive Use Common Area and such other easements as are applicable, all as described in the Declaration, in the deed to the Unit, or in the Condominium Plan.
- 3.4 Undivided Interests Cannot Be Changed. The undivided interests in the Common Area established in the Declaration cannot be changed except with the approval of one hundred percent (100%) of the Owners or as provided in Section 11.9 ("Repair or Rebuilding After Condemnation") following condemnation of a portion of the Project.
- 3.5 No Separate Conveyance of Undivided Interests. The undivided interests in the Common Area shall not be severed or conveyed separately from the respective Units to which they are appurtenant and each such undivided interest shall in all cases be deemed to be conveyed or encumbered along with the respective Unit even though the description in the instrument of conveyance or encumbrance may refer only to the Unit. Any purported severance or separate conveyance of an undivided interest in the Common Area apart from a conveyance of the respective Unit shall, for all purposes, be null, void, and unenforceable.
- 3.6 Limitation on Partition; Power of Attorney. Except in the case of substantial damage to or destruction or obsolescence of the Project as provided in *Civil Code* section 4610 [or as provided in Section 11.6 ("Sale of Entire Project")], there shall be no judicial partition of the Project or any part thereof, nor shall any Owner or any person acquiring any interest in the Project or any part of the Project seek any judicial partition thereof; *provided, however*, that if any Unit shall be owned by two (2) or more co-tenants as tenants in common or as joint

tenants, nothing contained in this Declaration shall be deemed to prevent a judicial partition by sale as between such co-tenants. In the event of a judicial partition of the Project pursuant to *Civil Code* section 4610 or this Declaration, each Owner, for himself or herself and his or her successors and assigns, hereby grants to the Association an irrevocable power of attorney to sell the entire Project for the benefit of all the Owners. The power of sale shall be exercised only after recordation by the Association of a certificate which provides that the Association has the right to exercise the powers provided in this Section 3.6 and in *Civil Code* section 4610.

- 3.7 New Capital Improvements. The Board of Directors shall have the power and authority to provide for the construction, installation, or acquisition of new capital improvements upon the Common Area (as distinguished from expenditures for the reconstruction or replacement of an existing capital improvement), provided that in any fiscal year expenditures for such new capital improvements shall not exceed ten percent (10%) of the budgeted gross expenses of the Association for that fiscal year without the approval of a majority of the Total Voting Power of the Association.
- 3.8 Acquisition or Sale of Association Property. The Board of Directors shall not in any fiscal year sell, transfer, property owned by the Association having a value in excess of five percent (5%) of the budgeted gross expenses of the Association for that fiscal year without approval of a majority of the Total Voting Power of the Association; *provided, however,* that such approval shall not be required in the case of the sale by the Association of a Unit acquired by the Association as the result of foreclosure of the Association's lien.
- 3.9 Mortgage Association Property. Upon approval of a majority of the Total Voting Power of the Association, the Board of Directors shall have the power to borrow money on behalf of the Association and to mortgage, pledge, lien with a deed of trust, or hypothecate any or any of the real or personal property of the Association.

ARTICLE 4 TAXES; MECHANIC'S LIENS; EASEMENTS

- 4.1 Unallocated Taxes. In the event that any taxes are assessed against the Common Area or against the personal property of the Association rather than against the Units, said taxes shall be included in the Regular Assessments, and if necessary a Special Assessment may be levied against the Units in an amount equal to said taxes, to be paid in two (2) installments each due not less than thirty (30) days prior to each tax installment.
- 4.2 Mechanic's Lien Against Common Area. In the event there shall be filed against the Common Area a notice of mechanic's lien for, or purporting to be for, labor or materials alleged to have been furnished or delivered for any Owner within the

Project or his or her Unit, such Owner shall forthwith cause such lien to be discharged by payment, bond, or otherwise. If the Owner fails to cause the lien to be discharged, the Board may send written notice to the Owner specifying that unless the Owner causes the lien to be discharged within five (5) days from the date of such notice, the Board may cause the lien to be discharged. Within such five (5) day period, and notwithstanding any other provisions of the Governing Documents concerning notice or hearing, the Owner shall be permitted a hearing before the Board regarding the validity of such lien and any offsets or defenses thereto. At that time, the Board shall determine whether the lien adversely and improperly affects and encumbers the rights and interests of the Association or the other Owners. If the Board of Directors determines that the lien does adversely and improperly affect and encumber such rights and interests and that adequate protection of such rights and interests has not been provided, the Board may cause the lien to be discharged by payment, bond, or otherwise. The Board shall have the right to levy a Reimbursement Assessment against the Owner responsible for causing the lien to be discharged in an amount equal to all amounts paid by the Association together with interest thereon at the legal rate and all costs and expenses paid or incurred in connection therewith, including reasonable attorneys' fees.

- 4.3 Easements in General. In addition to all easements reserved and granted on the Subdivision Map(s) or the Condominium Plan, there are hereby specifically reserved and granted for the benefit of the Units and the Owners in common and for each Unit and each Owner severally, and for the Association, as their respective interests shall obtain, the easements, reciprocal negative easements, secondary easements, and rights of way as particularly identified in this Article 4.
- 4.4 Exclusive Use Common Area Easements. The "Exclusive Use Common Areas" are enumerated in Section 1.22. "Exclusive Use Common Areas" are subject, as the servient tenements, to exclusive easements in favor of the Units to which they are attached or assigned, as the dominant tenements, and such exclusive easements shall be appurtenant to those designated Units. An exclusive easement to such Exclusive Use Common Area may be specifically granted in each individual grant deed conveying a Unit; however, the failure of any such deed to set forth such grant of easement shall not invalidate the exclusive easement granted in this Declaration.
- 4.5 Owners' Non-exclusive Easements of Enjoyment. Every Owner of a Condominium shall have a non-exclusive easement of use of and enjoyment in, to, and throughout the Common Area of the Project; *provided, however,* such non-exclusive easements shall be subordinate to, and shall not interfere in any way with, the exclusive easements, if any, appurtenant to Units over Exclusive Use Common Area. Each such non-exclusive easement shall be appurtenant to and pass with the title to every Unit, subject to the following rights and restrictions:

- (a) The right of the Board to establish and enforce Rules governing the use of the Common Area and facilities thereon;
- (b) The right of the Board to charge reasonable admission and other fees for the use of any facilities situated upon the Common Area;
- (c) The right of the Board to suspend an Owner's right to use the recreational facilities as provided in Section 13.8 ("Imposing Sanctions");
- (d) The right of the Board, as set forth in Section 3.8 ("Acquisition or Sale of Association Property"), to sell, or transfer the Common Area and facilities thereon;
- (e) The right of the Board, as set forth in Section 3.9 ("Mortgage Association Property") to borrow money or to mortgage, lien, or otherwise hypothecate the Common Area and facilities thereon;
- (f) The right of the Board, as set forth in Section 4.9 ("Association's Utility Easements"), to grant and transfer utility easements and rights of way in, on, over, or under the Common Area subject to such conditions as may be agreed to by the Board;
- (g) The right of the Board, as set forth in Section 4.11 ("Board Power to Grant Easements and Licenses"), to grant easements, licenses, and rights of way upon the Common Area; and
- (h) The right of the Association or its authorized agents, as provided in this Declaration, to perform its obligations under this Declaration, including obligations with respect to construction, maintenance, repair, or replacement for the benefit of the Common Area or the Owners in common.

4.6 Owners' Easements for Maintenance of Utilities. Whenever sanitary sewer, drainage, water, electricity, gas, television receiving, telephone lines or connections, heating or air-conditioning conduits, ducts, or flues are installed within the Project, which connections or any portion thereof lie in or upon Units or Common Area owned by other than the Owner of a Unit served by said connections, the Owner of any Unit served by said connections shall have the right, and are hereby granted an easement to the full extent necessary therefor, to enter upon the Units or Common Area or to have the utility companies enter upon the Units or Common Area in or upon which said connections, or any portion thereof, lie, to repair, replace and generally maintain said connections as and when necessary.

4.7 Owners' Right to Full Use of Shared Services. Whenever sanitary sewer, drainage, water, electricity, gas, television receiving or telephone lines or

connections, heating or air-conditioning conduits, ducts, or flues are installed within the Project which connections serve more than one (1) Unit, the Owner of each Unit served by said connection shall be entitled to the full use and enjoyment of such portions of said connections as service his or her Unit. In the event of a dispute between Owners with respect to maintenance, repair or replacement of said shared utility facilities, or with respect to the sharing of costs thereof, upon written request of an Owner addressed to the other Owner, the matter shall be submitted to alternative dispute resolution as provided for in Section 13.17 ("Alternative Dispute Resolution Before Initiating Lawsuit").

- 4.8 Easements of Encroachment. There shall be reciprocal appurtenant easements of encroachment as between each Unit and such portion or portions of the Common Area adjacent thereto and/or as between adjacent Units due to the placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon in accordance with the terms of the Declaration; *provided, however,* that in no event shall an easement for encroachment exist in favor of an Owner, Resident or the Association if such encroachment occurred due to willful unauthorized conduct on the part of such person. In the event that any Unit is partially or totally destroyed and then repaired or rebuilt in accordance with the provisions of the Declaration, the Owners of each Unit agree that minor encroachments over adjoining Units and/or Common Area shall be permitted and there shall be easements for the maintenance of said encroachments so long as they shall exist.
- 4.9 Association's Utility Easements. There are reserved and there shall exist easements over and under the Project or any portion thereof for the purpose of constructing, erecting, operating, or maintaining thereon, therein, or thereunder overhead or underground lines, cables, wires, conduits, or other devices for electricity, cable television, 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, and for any other purposes deemed by the Board to be appropriate and not inconsistent with the purposes and interests of the Association, together with the right to grant and transfer the same and each purchaser, in accepting a deed to a Unit, expressly consents thereto; *provided, however,* that no such easement or right of way may be granted or transferred if it would unreasonably interfere with the use, occupancy, or enjoyment by an Owner or Resident of any Unit and any existing exclusive easements over Common Area appurtenant thereto, if any, without the consent of the Owner(s) affected.
- 4.10 Maintenance Easements. There are reserved and there shall exist easements on behalf of the Association, its officers, agents, employees and manager to enter in, or to cross over the Common Area, including Exclusive Use Common Area, and Any Unit to perform the duties of maintenance and repair of the Common Area as provided for in this Declaration.

- 4.11 Board Power to Grant Easements and Licenses. Notwithstanding any other provisions of the Governing Documents, the Board shall have the power in its discretion without approval vote of the Members to grant and convey licenses for use, rights of way, and *nonexclusive* easements in, over, or under the Common Area or any portion thereof, for such purposes as the Board deems to be appropriate and not inconsistent with the purposes and interests of the Association; *provided, however*, that approval of a two-thirds (2/3) of the Total Voting Power of the Association shall be required to grant an *exclusive* easement over Common Area, other than any grant or conveyance to a Member described in *Civil Code* section 4600(b).

ARTICLE 5 USE RESTRICTIONS

- 5.1 Use of Common Area Generally. All use of Common Area is subject to the Governing Documents. Subject to the provisions of the Governing Documents, the Common Area shall be held, maintained, and used to meet the common interests of the Owners and the Residents, members of their household, tenants, and guests.
- 5.2 No Public Rights. There shall be no entitlement to public use of, access to, or other public rights in, the Project property. The Association reserves the rights to prohibit entry on the Project property by any person whose presence is not authorized by the Governing Documents.
- 5.3 No Alteration of Common Area. Except as may be authorized by the Board, no person or entity other than the Association or its duly-authorized agents shall (i) construct, reconstruct, refinish, alter, or maintain any improvement upon the Common Area, (ii) make or create any excavation or fill upon the Common Area, (iii) change the natural or existing drainage of the Common Area, or (iv) plant, remove, or destroy any seed, plant material, tree, shrub, or other vegetation upon the Common Area (other than permitted vegetation upon or within Exclusive Use Common Area).
- 5.4 No Obstruction of Common Area. The Common Area shall be kept free of rubbish, debris, and other unsightly or unsanitary materials. There shall be no obstruction of any part of the Common Area nor shall anything impair access to the Common Area. Each Owner shall avoid causing any damage to the Common Area.
- 5.5 No Storage in the Common Area. No Owner shall store, place, keep, operate or maintain any furniture (except customary outdoor furniture), equipment, appliances, or other materials within the Common Area, including Exclusive Use Common Area balconies, patios, or decks.

- 5.6 Delegation of Use. Any Owner may delegate his or her rights of use and enjoyment, including easements, in the Project to the members of his or her household, tenants, Contract Purchasers, and guests, subject to the terms of the Governing Documents. It is the express purpose and intent of this Section 5.6 to limit the right of use and enjoyment of the Common Area amenities to Residents of the Project and their accompanied guests. Upon the leasing or renting of a Unit, or upon occupancy of a Unit by a Contract Purchaser, the Owner shall be deemed to have delegated and assigned all such rights exclusively to the tenants or Contract Purchasers of such Unit. Any rights of enjoyment that have been delegated by an Owner are subject to suspension to the same extent that rights of Owners are subject to suspension as provided in the Governing Documents.
- 5.7 Residential Use. Except to the extent permitted in Section 5.8 (“Restriction on Businesses”), Units shall be occupied and used only for single family residential purposes in conformity with the requirements of applicable zoning laws or other state or local rules or regulations.
- 5.8 Restriction on Businesses.
- 5.8.1 Types of Businesses Allowed. No business of any kind shall be established, maintained, operated, permitted, or conducted within the Project except: (i) professional, administrative, or clerical activity as may be permitted by applicable governmental ordinances without the requirement of a conditional use permit but only if such activity does not entail the presence of employees, patrons, clients, or vendors except on an infrequent basis; does not require storage of large amounts of bulky goods or inventory; does not cause a significant increase in water usage; there is no external evidence of such activity including but not limited to a significant increase in traffic within the Project; the activity complies with all applicable governmental ordinances; and the activity is merely incidental to the use of the Unit for residential purposes and (ii) certain care facilities that, by law, cannot be prohibited by the Declaration.
- 5.8.2 Indemnification Regarding Business Activity. To the fullest extent permitted by law, every Owner or Resident who conducts or engages in any business, commercial endeavor, or profession within the Project, or whose tenant does so, agrees to and shall indemnify and defend the Association, its officers, directors, employees, and agents and shall hold them harmless from and against any cost, loss, claim, or damages of any kind, arising out of the conduct or presence of such activity, including but not limited to attorneys’ fees, any claims for consequential damages, and any claims arising or alleged to arise out of the enforcement or non-enforcement by the Association of the Governing Documents, including but not limited to the restriction on

business contained in this Section 5.8. Any amounts owed pursuant to this Section 5.8.2 may be assessed as a Reimbursement Assessment.

- 5.9 Compliance with Laws. Each Owner and Resident shall comply with all requirements of all federal, state, and local governmental authorities and all laws, ordinances, rules and regulations applicable to his or her Unit and the Common Area.
- 5.10 Unlawful Conduct, Nuisances, Noise. No unlawful, noxious, harmful, or offensive activities shall be conducted upon or within any part of the Project, nor shall anything be done within the Project that may be or become a nuisance, or cause unreasonable embarrassment, disturbance, or annoyance to any Resident of the Project, or which shall in any way interfere with Residents' use of the Common Area and facilities thereon or the use and enjoyment of their Units. Without limiting any of the foregoing, no Resident shall permit excessive noise, including but not limited to the barking of dogs, the operation of air conditioners, stereo amplifier systems, television systems, motor vehicles, or power tools to emanate from the Resident's Unit that would unreasonably disturb another Resident's enjoyment of his or her Unit or of the Common Area. Excessive noise levels may be determined according to the ordinances of the City of Capitola or other applicable governmental regulation dealing with such matters.

The Association shall not be obligated to enforce this Section 5.10 when a dispute under the Declaration is solely between neighbors, does not involve Common Area, or is not an emergency. In any violation or dispute involving neighbors, Residents must first work with each other to try to resolve their differences before reporting a violation or dispute to the Association. Resident's complaints to the Association about neighbors must: (a) be in writing; (b) give as much detail as possible concerning the dispute; (c) provide specific information about what informal efforts to resolve the matter were undertaken by the complaining Resident(s); and (d) provide the name, address, phone numbers, and email address of the complaining Resident(s).

- 5.11 Conditions Affecting Insurance. Nothing shall be done, placed, or kept within the Project that will increase the rate of insurance or result in the cancellation of insurance under any insurance policy maintained by the Association, or which will be in violation of any governmental statute, ordinance, rule, or regulation. If any Owner or Resident, member of their household, tenant, invitee, or guest shall violate this Section 5.11, the Unit Owner shall be liable to the Association for any resulting increase in insurance premiums and any other damages, which may be assessed against the responsible Owner as a Reimbursement Assessment.
- 5.12 Requirement of Architectural Approval. As addressed in Article 7 ("Architectural Approval"), construction, installation, modification, or alteration of buildings, outdoor structures, landscaping, and outdoor lighting are subject to prior architectural approval.

5.13 Animals.

- 5.13.1 No Commercial Purposes. No animals shall be kept, bred, or maintained within the Project for any commercial purpose.
- 5.13.2 Number of Pets. Not more than a total of two (2) dogs, cats, or birds (for example, two dogs, or a dog and a cat, or a dog and a bird, or two birds) and a reasonable number of other small caged common domestic household pets or animals in an aquarium may be kept in each Unit. No other animals, livestock, or poultry of any kind shall be kept, bred or raised within the Project.
- 5.13.3 Control of Pets. While in Common Areas including Exclusive Use Common Areas each dog must be restrained on a leash held by a responsible person capable of controlling the dog. Any Owner or Resident may cause any unleashed dog within the Common Area to be removed to a pound or animal shelter under the jurisdiction of the City of Capitola or the County of Santa Cruz.
- 5.13.4 No Outside Structures for Animals. No animal cages, dog crates, or other devices or structures for the care, housing, or confinement of any animal shall be permitted anywhere in the Common Area, including any Exclusive Use Common Area.
- 5.13.5 No Feeding of Non-domestic Animals; No Outside Feeding of Animals. There shall be no feeding of ducks, geese, deer, or any other non-domesticated animals within the Project. In order to control feral cats, raccoons, vermin, and other stray animals within the Project, no animal food shall be kept or placed outside anywhere within the Project, except for approved bird feeders. Pet feeding stations may not be kept in a garage if the garage door is left open permitting animals to access the feeding station.
- 5.13.6 Responsibility for Pets. The owner of each pet shall be responsible for immediately removing and disposing of any waste introduced to any portion of the Project by such pet. Owners, their tenants, and guests shall prevent their pets from soiling any portion of the Common Area and shall immediately clean up any mess left by their pet.
- 5.13.7 Indemnification Regarding Pets. Each Owner, Resident, and any person bringing or keeping an animal within the Project shall be absolutely liable to the Association and all other persons for any injury or damage to persons or property caused by the animal brought upon or kept upon the Project by such person or by members of his or her household, tenants, invitees, or guests. To the fullest extent permitted

by law, each Owner agrees to and shall indemnify and defend the Association, its officers, directors, employees, and agents and shall hold them harmless from and against any cost, loss, claim, or damages of any kind, arising out of or resulting from the presence or conduct of any animal brought upon or kept within the Project by the Owner, members of his or her household, tenants, invitees, or guests including but not limited to attorneys' fees, any claims for consequential damages, and any claims arising or alleged to arise out of the enforcement or non-enforcement by the Association of the Governing Documents, including but not limited to the restrictions on animals contained in this Section 5.13. Any amounts owed pursuant to this Section 5.13.7 may be assessed as a Reimbursement Assessment.

- 5.13.8 Removal of Nuisance Pets. The Association shall have the right to prohibit the keeping of any animal which, after the responsible Owner or Resident has an opportunity for a hearing called by the Board pursuant to Section 13.12 ("Hearing Called by the Board; Executive Session; Open Meeting"), is found by the Board to be a nuisance.
- 5.13.9 Pet Rules. The Board may adopt and enforce pet Rules, including Rules pertaining to the size and breed type of pets permitted within the Project, in addition to the provisions of this Section 5.13.
- 5.14 Trash Disposal. Trash, garbage, accumulated waste plant material, other waste and refuse, and recyclable waste shall be deposited only in containers provided for that purpose by the garbage collection service. Such containers shall be located in an appropriate area designated areas in the Common Area. No Owner or Resident shall permit or cause any garbage, trash, or other waste or refuse to be kept upon any portion of any Unit or elsewhere in the Project, except in such containers. Furniture, appliances, water heaters, construction or remodeling debris, Christmas trees, and other bulky items must be properly disposed of off-site by the Owner or Resident at his or her sole expense and shall not be placed in Association waste containers or discarded in the dumpster areas.
- 5.15 Toxic or Hazardous Materials. No toxic or hazardous materials shall be stored or kept within the Project. Toxic or hazardous material must be properly disposed of off-site by the Owner or Resident at his or her sole expense in accordance with all applicable statutes, ordinances and regulations and shall not be placed in Association waste containers or discarded in the Common Area.
- 5.16 Machinery and Equipment. Except as approved by the Board, no machinery or equipment of any kind shall be placed, maintained or operated within the Project except as is customary and necessary in connection with use or maintenance of

a Unit or appurtenant structure or approved construction. No appliances, machinery or equipment may be maintained, stored or used outside a Unit.

5.17 Signs, Banners, Flags. Only the following types of signs, posters, banners, or flags shall be displayed to the public view from any portion of the Project:

- (a) Signs required by legal proceedings;
- (b) A noncommercial sign or poster no larger than nine (9) square feet in size or a noncommercial flag or banner no larger than fifteen (15) square feet in size, displayed upon a Unit, and limited to the fullest extent permitted by *Civil Code* section 4710.
- (c) A single sign of customary and reasonable dimension and design, complying with the Architectural Rules, if any, advertising a Unit for sale or rent;
- (d) Other signs which by law cannot be prohibited;
- (e) A flag of the United States, subject to any city or county restrictions as to size and as to time, place, and manner of display, as provided in *Civil Code* section 4705;
- (f) A single identification sign which has been approved by the Board or the Architectural Committee (if any) located on a Unit identifying the number or address of the Unit and/or the names of the occupants;
- (g) Signs approved by the Board as required for traffic control and regulation of streets or open areas within the Project; and
- (h) Signs on the Common Area as approved by the Board for a purpose reasonably related to the affairs of the Association, including signs located at or near any entrance to the Project identifying the Project.

5.18 Vehicles and Parking.

5.18.1 Limit on Number of Vehicles. Due to space constraints within the Project, no more than three (3) vehicles for each Unit are permitted to be parked within the Project. Vehicle must be parked within the Garage or Carport assigned to the Condominium or wholly within the boundaries of a designated Resident parking space. Upon requests of the Board, each Resident shall provide a description of the vehicles and the vehicle license plate for each vehicle that will be parked within the Project.

- 5.18.2 Prohibited Vehicles. Prohibited Vehicles may not be brought into the Project. The following types of vehicles are Prohibited Vehicles: (i) unregistered, dilapidated or inoperable vehicles; (ii) unreasonably noisy vehicles, vehicles that emit foul-smelling or offensive exhaust fumes; (iii) mobile homes; (iv) trailers; (v) boats; (vi) any vehicle that is too large to be parked entirely within a garage or carport or entirely within a designated parking space (“oversized vehicle”).
- 5.18.3 Restricted Vehicles. Restricted Vehicles shall not be kept or parked anywhere within the Project except inside a garage or carport, except that they may be parked temporarily in the driveway or a designated parking space for up to twenty-four (24) hours for purposes of loading or unloading provided such vehicle does not interfere with the safe ingress and egress of pedestrians and vehicular traffic within the Project. The following types of vehicles are Restricted Vehicles: campers, recreational vehicles, motor homes; Section 5.18.4 limousines; and (i) commercial vehicles. The term “commercial vehicle” shall not include any two-axle passenger vehicle or pickup no larger than one-ton capacity that is used by a Resident both for business and for daily personal transportation, provided that any signs or markings of a commercial nature on such vehicle shall be unobtrusive and inoffensive as determined by the Board and provided, further, that such vehicle is not an oversized vehicle as described in clause (vi) of Section 5.18.2, above. Vendors such as contractors, delivery persons, or movers may park commercial vehicles in appropriate parking spaces within the Development temporarily as necessary while performing work, but shall not leave commercial vehicles overnight in the Project.
- 5.18.4 Definition of Commercial Vehicle. Commercial Vehicle shall mean (i) any vehicle that is classified as Class 3 and above by the United States Department of Transportation Vehicle Inventory and Use Survey, meaning any vehicle with a Gross Vehicle Weight Rating (GVWR) of more than ten thousand pounds (10,000 lb.), (ii) any vehicle (including vehicles with a GVWR of 10,000 pounds or less) displaying signs or markings of a commercial nature, unless such signs or markings are small and unobtrusive as determined by the Board (for example and not by way of limitation, commercial information on a license plate holder or a dealership decal or nameplate on a vehicle would be considered “unobtrusive”), (iii) any vehicle that is equipped to carry more than ten (10) people, (iv) any vehicle equipped with a rack that is loaded with any construction materials, merchandise, supplies, or tools, and (v) any pickup truck containing construction materials, merchandise, supplies, or tools that are visible.

- 5.18.5 Parking Generally. The primary parking facility for Residents is the garage and carport designated for the Unit. Each garage and carport shall be used for parking the vehicles of the Residents of the Unit and shall not be used for any other purpose that interferes with the ability to park the number of vehicles the garage and carport was designed to accommodate unless the number of vehicles of all Residents of the Unit is less than the number the garage was designed to accommodate. Vehicles shall not be parked anywhere within the Project except wholly within a garage or in a carport or in a designated parking area. Parking is not allowed at any time in designated fire lanes. No vehicle shall be parked continuously in a Common Area parking space for longer than seventy-two (72) hours. Parking by Residents in Common Area parking spaces shall be subject to the Rules of the Association.
- 5.18.6 Vehicle Repairs. No motor vehicles or boats shall be constructed, reconstructed, repaired, or serviced within the Project (other than minor emergency repairs to the extent necessary to move the vehicle to a repair facility).
- 5.18.7 Parking Enforcement and Towing. The provisions of this Section 5.18 apply to all vehicles within the Project, including vehicles of guests and invitees. In addition to the provisions of this Section 5.18, the Board shall have the power and authority to adopt, promulgate, and enforce Parking Rules and shall have the power to impose fines and other sanctions for violations of provisions of the Governing Documents relating to vehicles and parking. Subject to the provisions of applicable law, including Vehicle Code section 22658, the Board shall have the power and authority to cause the towing, at the vehicle owner's expense, of vehicles that are parked within the Project in violation of any of the provisions of the Governing Documents. Costs incurred by the Association relating to the towing and/or storage of any vehicle parked in violation of any provision of the Governing Documents shall be assessed as a Reimbursement Assessment against the Owner responsible or whose household member, Contract Purchaser, tenant, invitee, or guest is responsible for the presence of such vehicle.
- 5.18.8 Enforcement by City. The Project is expressly made subject to the California Vehicle Code and all City vehicle and parking codes to the extent applicable to public streets within the City. The City shall have the power to enforce those codes in the same manner as they are enforced on public streets within the City. There shall be no "joyriding" or racing on the private streets within the Project. All operators of motor vehicles within the Project must possess a valid driver's license.

- 5.19 Sidewalks. There shall be no skateboarding, rollerblading, skating, or bicycle riding on the sidewalks in the Project.
- 5.20 Garages and Garage Doors. Garages are to serve as the primary parking facility for residents. No part of any garage shall be converted to other use that would prevent the parking of the number of vehicles the garage was designed to accommodate. Each garage door shall remain closed except during ingress or egress or when necessary to provide ventilation for individuals working in the garage area. For purposes of this Section 5.20, a garage door shall be deemed closed so long as it is open no more than twenty-four inches (24”).
- 5.21 Barbecues; Open Fires. Use of charcoal or wood-burning open flame barbecues or other devices and the use of propane tanks are allowed on ground level Decks and in enclosed Patios. The use of charcoal or wood-burning open flame barbecues or other open flame devices of any kind on upper balconies shall be subject to Rules adopted by the Association.
- 5.22 Diseases and Insects. No Owner shall permit any thing or condition to exist in the Owner’s Unit, including Exclusive Use Common Area, which shall induce, breed or harbor infectious plant diseases or noxious insects.

ARTICLE 6 RENTING OR LEASING

6.1 Requirements for Renting.

- 6.1.1 Written Lease. An Owner renting his or her Unit shall do so pursuant to a written lease or rental agreement. The lease or rental agreement shall expressly provide:
- (i) for an initial term of at least six (6) months;
 - (ii) that its terms are subject to all of the provisions of the Governing Documents;
 - (iii) that failure of the tenant, members of the tenant’s household, invitees, or guests to comply with applicable provisions of the Governing Documents shall constitute a default under the terms of such lease or rental agreement; and
 - (iv) that in the event of any such default, the Association shall be entitled to maintain an eviction action against the tenant to the same extent as the Owner of the Unit, the Association being deemed to be a third party beneficiary under such lease or rental agreement as provided in Section 6.7 (“Association as Third Party Beneficiary”).

- 6.1.2 No Subletting. No subletting shall be permitted.
- 6.1.3 Copy of Lease. An Owner renting his or her Unit shall file a copy of the signed lease or rental agreement with the Board.
- 6.1.4 Renter's Insurance. An Owner renting his or her Unit shall require the tenant to carry renter's insurance, as provided in Section 10.7 ("HO4 Renter's Policy").
- 6.1.5 Provide Governing Documents to Tenants. An Owner renting his or her Unit shall provide the tenant(s) with a copy of the Governing Documents, and any subsequent changes thereto.
- 6.1.6 Affidavit of Tenants. Upon request by the Association, the Owner shall cause all tenants and occupants to execute and submit to the Association an affidavit or certificate in a form prescribed by the Association, which includes the following and such other matters as are reasonably required by the Association: (i) that he/she/they have received copies of the Governing Documents, (ii) that he/she/they understand that the lease is expressly subject to all the provisions of the Governing Documents, and (iii) that he/she/they understand that the breach of any provision of the Governing Documents shall constitute a default under the lease.
- 6.1.7 "House Sitters". The provisions of Section 6.1.5 ("Provide Governing Documents to Tenants") and Section 6.1.6 ("Affidavit of Tenants") shall apply with respect to any person occupying a Unit as a guest of the Owner, as a paid or unpaid house sitter, or in a similar capacity when no Owner is in residence.
- 6.1.8 Owner's Contact Information. An Owner renting his or her Unit shall provide the Association with contact information for the Owner or a representative of the Owner with authority to act on behalf of the Owner with respect to the Unit and the tenants, including telephone number, email address, mailing address, and such other contact information as the Association may require.
- 6.2 Notice of Non-Owner Occupants. Without limiting the generality of the provisions contained in Section 6.1 ("Requirements for Renting"), each Owner shall notify the Board and the Association's manager of the names of (i) any tenants or any Contract Purchasers occupying such Owner's Unit, and (ii) any guest, house sitter, or other person occupying the Unit when no Owner is in residence (whether or not such person is paying rent or is being compensated by the Owner) and (iii) any person renting the Parking Space or Storage Unit appurtenant to his or her Unit. If requested by the Board, each Owner, tenant, or

Contract Purchaser shall also notify the Board or the Association's manager of the names of all members of his or her household to whom such Owner, tenant, or Contract Purchaser has delegated any rights of enjoyment in the Project as provided herein, including telephone number, email address, mailing address, and such other contact information as the Association may require, the relationship each such person bears to such Owner, tenant, or Contract Purchaser, and a description of the vehicles and the vehicle license plate for each vehicle that will be parked within the Project.

- 6.3 No Transient Rentals. Other than a Mortgagee in possession of a Unit after foreclosure, no Owner shall be permitted to lease, rent, or otherwise operate his or her Unit for transient or hotel purposes, which shall include, but is not limited to, rental for any period less than thirty (30) days or any rental (even if the term is longer than thirty days) where the occupant of a Unit is provided customary hotel services such as room service for food and beverage, maid service, periodic furnishing of clean bed linen and towels, laundry service, or bellboy services. This Section 6.3 shall not be deemed to permit an initial lease or rental term shorter than six (6) months as provided in Section 6.1.1(i) ("Written Lease").
- 6.4 Rental of Entire Condominium. No Owner shall rent or lease less than the entire Condominium. The preceding sentence is intended to prohibit the operation of a rooming house or similar operation within the Project. No part of the Exclusive Use Common Area appurtenant to the Unit shall be rented, leased, or hired to anyone who does not have the right of possession of the entirety of the Condominium. This section is not intended to prohibit a resident Owner from sharing his or her Condominium with a roommate or other person(s) with whom the Owner maintains a common household.
- 6.5 No Time Share Arrangements. No Unit or Units 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," "travel club," "extended vacation," any other membership or time interval ownership arrangement, or any time-share estate or time-share use as defined in Section 11212 of the *Business and Professions Code*. 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 any Unit or Units 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. This Section 6.5 shall not be construed to limit the personal use of any Unit or any portion thereof by its Owner and such Owner's social or familial guests.
- 6.6 Implementation. Upon request from the Board, each Owner then renting or leasing a Unit shall provide to the Board such information as the Board may reasonably require in order to implement the provisions of this Article 6, including

but not limited to the names of the tenants and the members of the tenants' household and the duration of the lease and/or a copy of the signed lease.

- 6.7 Association as Third Party Beneficiary. Notwithstanding the failure of an Owner to comply with the requirements of Section 6.1 ("Requirements for Renting") and, whether or not it is so stated in a written contract or other agreement between such Owner and such tenant, the Owner and the tenant of any Unit subject to this Declaration shall be conclusively deemed to have agreed that the Association is an intended third party beneficiary to the contract between the Owner and the tenant; that failure of the tenant, members of the tenant's household, tenant's invitees, or guests to comply with applicable provisions of the Governing Documents shall constitute a breach of the terms of the contract between the Owner and the tenant; and that the Association shall have the right but not the obligation to enforce the contract and to pursue every remedy available under the contract, under this Declaration including but not limited to the rights granted pursuant to Section 8.18 ("Assignment of Rents as Security for Payment"), or under the law. The power of the Association as provided in this Section 6.7 shall be exercised in good faith, in a reasonable and nondiscriminatory manner, and only after notice and opportunity for a hearing as provided in Article 13 ("Enforcement; Notice, Hearings").
- 6.8 Indemnification Regarding Tenant's Actions. Each Owner leasing or renting a Unit shall be strictly responsible and liable to the Association for the actions of such Owner's tenant(s) in or about all Units and Common Area and for each tenant's compliance with the provisions of the Governing Documents. No provision of any lease or rental agreement shall relieve the Unit Owner of his or her obligations pursuant to the Governing Documents. To the fullest extent permitted by law, every Owner of a Unit that is occupied by persons other than the Owner pursuant to a rental agreement or lease or otherwise, agrees to and shall indemnify and defend the Association, its officers, directors, employees, and agents and shall hold them harmless from and against any cost, loss, claim, or damages of any kind, arising out of the conduct or presence of the occupants of the Unit upon the Project, including but not limited to attorneys' fees (including attorneys' fees incurred to enforce the provisions of this Article 6 against the Owner of the Unit or any guest, tenant or other occupant of the Unit), any claims for consequential damages, and any claims arising or alleged to arise out of the enforcement or non-enforcement by the Association of the Governing Documents with respect to such occupants. Any amounts owed pursuant to this Section 6.8 may be assessed as a Reimbursement Assessment against the responsible Owner and his or her Unit.

ARTICLE 7 ARCHITECTURAL APPROVAL

7.1 Prior Architectural Approval Required for Exterior and Interior Changes. Prior architectural approval in accordance with this Article 7 must be obtained before making any exterior addition or change or alteration of any kind within the Project or before removing or moving any wall, floor, or ceiling of a Unit or creating an opening in any wall, floor, or ceiling of a Unit. The foregoing includes but is not necessarily limited to:

- (a) installing any screen, skylight, patio cover, tent, awning, screen door, exterior lighting, mast, pole, tower, antenna, receiver, or transmitter to the extent restricted by Section 7.2.15 (“Satellite Dishes and Antennas”), or attaching any of the foregoing to the exterior of any building or fence;
- (b) replacing any window, front door, patio door, or garage door;
- (c) exterior painting;
- (d) installing, moving, or removing landscaping.

No alteration or addition that requires architectural approval pursuant to this Article 7 shall be commenced or permitted to remain within the Project until the plans and specifications showing the nature, kind, shape, color, height, size, materials, and location of the same have been submitted to and approved in writing by the Board. The requirement of architectural approval shall not apply to alterations, additions, or improvements made or constructed by or on behalf of the Association.

7.2 Some Common Architectural Concerns. This Section 7.2 enumerates some common areas of architectural concern. These are examples only and do not represent an exhaustive list of changes that require prior architectural approval. Nothing in this Section 7.2 shall be deemed to limit the generality of Section 7.1 (“Prior Architectural Approval Required for Exterior and Interior Changes”).

7.2.1 Changes in Code Requirements. Proposed work that may require the Association to upgrade Common Area components or systems is subject to Section 7.13 (“Code Upgrades to Common Area”).

7.2.2 Disproportionate Burden on Common Utility Service; Separate Metering. If an Owner- or tenant-installed alteration or addition will increase the electrical, water, or other utility usage for the Owner’s Unit, the Board may require that separate metering facilities be installed at the Unit Owner’s sole cost and expense or, if that is not feasible, the Board may allocate such utility costs in a manner the

Board determines is reasonable and equitable as provided in Section 8.7.2 ("Allocation of Regular Assessment").

- 7.2.3 Sports Apparatus. No basketball standards (including so-called portable basketball standards) or fixed sports apparatus shall be placed upon or attached to any portion of the Project without prior written approval of the Board.
- 7.2.4 Outside Drying and Laundering. No outside clothesline or other outside clothes washing, drying, or airing facilities shall be maintained in the Project which is visible from a neighboring Unit or the Common Areas.
- 7.2.5 Balconies and Patios. No construction of any item or fixture is allowed on any Balcony, Deck or Patio without prior architectural approval. Only furniture and accessories designed for outdoor use shall be placed or kept on any Balcony, Deck or in any Patio. Nothing whatsoever shall be placed on the Balcony railing.
- 7.2.6 Installation of Skylights. No skylight shall be installed without prior architectural approval and such approval shall be subject to such conditions as the Board may determine, including but not limited to insurance requirements, release of the Association from liability and indemnification of the Association by the Owner concerning damage to property or injury to persons in connection with the installation or presence of the skylight, and obligation of the Unit Owner to pay for incremental costs of maintenance, repair, or replacement of the roof on account of the installation or presence of the skylight.
- 7.2.7 No Installations on Roof. Absolutely no installation of any kind, including but not limited to skylights, antennas, or air-conditioning equipment, shall be placed or installed upon any roof without obtaining prior architectural approval.
- 7.2.8 Air Conditioner Units. Prior architectural approval is required for any exterior installation of an air conditioner, including installation in a window or door.
- 7.2.9 No Attics. Openings in the ceilings of the Units may impair the firewall protection within the buildings. No development shall be made of the airspace above any Unit without prior architectural approval.
- 7.2.10 Window Coverings; No Awnings. Drapes, window shades, and other window coverings installed in the windows of any Unit that are visible from the exterior of the Unit must comply with any applicable Architectural Rules, including rules concerning color. Unless otherwise

approved in writing, all such window coverings must be white, off-white, or light beige in color. In no event shall aluminum foil, newspaper, or similar materials be placed in windows. No exterior awning, ornamental screens, or sunshades of any kind shall be installed or placed without prior architectural approval.

- 7.2.11 Floor Coverings. Prior architectural approval is required to replace carpet and padding with any other type of flooring in any Unit. Except for kitchens and bathrooms, and the immediate entry way, the floors of all the Units were covered with carpet and separate padding as part of the original construction. There shall be no alteration of the floor coverings in any Unit that will result in an increase in sound transmission into any other Units. Within upper Units, only carpet and padding or other flooring materials with an Impact Insulation Class Rating (IIC) of seventy (70) or higher (determined in accordance with ASTM E1007-13(b) standards "Standard Test Method for Field Measurement of Tapping Machine Impact Sound Transmission Through Floor-Ceiling Assemblies and Associated Support Structures") or equivalent may be installed, except in the kitchen, bathrooms, and the immediate entry way where linoleum or an equivalent product may be installed to replace existing linoleum or other hard flooring. In the event floor covering other than carpet and padding has been installed in an upper Unit without obtaining prior architectural approval, then upon receipt of noise complaints from Residents of the lower Unit and subject to notice and hearing pursuant to Article 13 ("Enforcement; Notice; Hearings"), the upper Unit Owner may be required to remove the unauthorized floor covering and replace it with carpet and padding or other floor covering having an IIC rating of 70 or higher.
- 7.2.12 Floors, Walls, Ceilings, or Utility Systems. Prior architectural approval shall be required for (i) any change that may affect the structural integrity of the building in which a Unit is located, including but not limited to removing, moving, changing, or creating any opening in a wall, floor, or ceiling within a Unit or (ii) any change in the plumbing, electrical wiring, heating and ventilating ducts, or any other system that is part of the Common Area.
- 7.2.13 Interior Decoration of Unit. Except as provided in Section 7.2.10 ("Window Coverings; No Awnings"), Section 7.2.11 ("Floor Coverings"), and Section 7.2.12 ("Floors, Walls, Ceilings, or Utility Systems"), each Owner shall have the exclusive right to decorate or redecorate the interior of his or her Unit.
- 7.2.14 Electric Vehicle Charging Station. No electric vehicle charging station ("EVCS") may be constructed, installed, or maintained at the Project except (i) those erected, constructed, or maintained by the Association,

and (ii) those expressly approved by the Board. For purposes of this Section 7.2.14 the term “electric vehicle charging station” means a station that is designed in compliance with the California Building Standards Code and delivers electricity from a source outside an electric vehicle into one (1) or more electric vehicles. This includes wall-mounted and free standing electric vehicle charging stations, as well as existing National Electrical Manufacturers Association standard alternating current power plugs, which are common wall sockets (“wall socket”). It is the intention of this Section 7.2.14 to restrict electric vehicle charging stations and power plugs in the Project to the fullest extent permitted by law and to authorize the Board to adopt and implement Rules regarding the same.

7.2.15 Satellite Dishes and Antennas. No outside radio or television aerial, antenna, dish, wire, or other receiving or transmitting device shall be erected, constructed, or maintained on the Common Area including upon the exterior of any building, except (i) those erected, constructed, or maintained by the Association, (ii) those expressly approved by the Board, (iii) an antenna free standing within a Balcony or Patio which does not extend outside the airspace encompassed within the Balcony or Patio, or (iv) those that by law cannot be prohibited. It is the intention of this Section 7.2.15 to restrict radio or television aerials, antennas, dishes, wires, and other receiving or transmitting devices in the Project to the fullest extent permitted by law and to authorize the Board to adopt and implement Rules regarding the same.

7.2.16 Masts, Poles, Towers, Other Projections. No outside mast, pole, tower, or projection of any type shall be placed or permitted to remain above the roof of any building with the exception of chimneys and vent stacks unless approved by the Board.

7.2.17 Solar Energy Systems. Solar energy systems as defined in *Civil Code* section 801.5(a)(1) and (2) are subject to prior architectural approval pursuant to this Article 7. Nothing in this Declaration shall be deemed to authorize or permit any Owner to install any solar energy system upon any portion of the Common Area.

7.3 Connecting Units. Contiguous Units located on the same floor may be architecturally connected for use as a single residence, and previously connected Units may be reconstructed as independent Units, with the Board’s prior written approval in each instance. Units on different floors may not be connected. All Units to be connected must be owned by the identical Owner.

7.3.1 Approval Required. Any request for architectural approval of any such connection or reconstruction as separate Units shall include the

following items, in addition to any other information or assurances the Board, in its discretion, may require:

- (i) Architectural plans;
- (ii) 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;
- (iii) 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 or reconstruction and the time within which the work will be completed;
- (iv) a bond naming the Board as an obligee (or other security acceptable to the Board) to assure the prompt completion of the work in a workmanlike manner free of mechanics' liens;
- (v) all building and other governmental permits required for the construction;
- (vi) certificates by electrical and plumbing contractors licensed in the State of California setting forth in detail the effect of the proposed combination or reconstruction on any Common Area plumbing and wiring.

7.3.2 Effect of Combining Units. The combining of two (2) or more Units into a single residence shall not alter the legal status of each constituent Unit as a "Unit," the voting rights appurtenant to each constituent Unit, or the obligation of the Owner to pay Assessments for each of the constituent Units.

7.3.3 Sale or Lease of Combined Units. If Units have been combined, none of the combined Units shall thereafter be separately conveyed, leased, or transferred unless and until approved reconstruction has been accomplished to separate the Unit to be sold, leased, or transferred from the other Unit or Units previously combined, all at the sole cost and expense of the Unit Owner.

7.4 Architectural Rules.

7.4.1 In General. Subject to the requirements of *Civil Code* section 4340 and following, the Board may from time to time adopt, amend, and repeal rules and regulations to be known as "Architectural Rules." Architectural Rules shall set forth the standards for architectural review

and guidelines for architectural design, placement of buildings and other structures, outdoor lighting, and landscaping, color schemes, exterior finishes and materials, and similar features which are recommended for use in the Project and may include restrictions on satellite dishes and solar energy systems consistent with applicable law; *provided, however*, that Architectural Rules shall not be in derogation of any minimum standards required by this Declaration.

- 7.4.2 Solar Energy Systems. Pursuant to *Civil Code* sections 714 and 714.1, reasonable restrictions on solar energy systems are permitted provided they do not significantly increase the cost of the system or significantly decrease the efficiency or specified performance, and they allow for an alternative system of comparable cost, efficiency, and energy conservation benefits. Such Rules may restrict installation in Common Areas and may require that the Association be indemnified for loss or damage caused by installation, maintenance, or use of solar energy systems. Nothing in this Declaration shall be deemed to authorize or permit any Owner to install any solar energy system upon any portion of the Common Area.
- 7.4.3 Storage Units, Temporary Structures. No shed, tent, temporary structure, cargo container, temporary storage container ("PODS") shall be erected, maintained, kept, or used anywhere within the Development without the prior architectural approval pursuant to this Article 7.
- 7.4.4 Electric Vehicle Charging Station. Pursuant to *Civil Code* section 4745, reasonable restrictions on electric vehicle charging stations ("EVCS") are permitted provided they do not significantly increase the cost of the station or significantly decrease the efficiency or specified performance. Such Rules may restrict installation in Common Areas and may require that the Association be indemnified for loss or damage caused by installation, maintenance, or use of EVCS. Any Owner whose application for the installation of an EVCS has been approved, must (i) comply with the Association's architectural standards for the installation of the charging station, (ii) engage a licensed and insured contractor to install the charging station, (iii) meet all applicable health and safety standards, building codes and other requirements imposed by state and local authorities, as well as all other applicable zoning, land use or other ordinances, or land use permits, (iv) where required as provided for in *Civil Code* section 4745(3) and *Civil Code* section 4745(4), within fourteen (14) days provide a certificate of insurance that names the Association as an additional insured under the Owner's insurance policy in the amount of One Million Dollars (\$1,000,000), and (v) pay for the electricity usage associated with the charging station.

- 7.4.5 Rights of Disabled. Any modifications to a Unit to facilitate access or alter conditions that may be hazardous to persons who are blind, visually handicapped, deaf, or physically disabled must comply with applicable requirements of *Civil Code* section 4760.
- 7.5 Advisory Architectural Committee. The Board may (but is not required to) appoint an Architectural Committee consisting of three (3) Members of the Association at least one (1) of whom may be a director. If an Architectural Committee is appointed, it shall review all requests for approval and requests for preliminary consultation submitted in accordance with this Article 7 and provide recommendations to the Board concerning the same. The Board has the authority to accept, modify, or reject the Committee's recommendations and shall make the final decision on all requests for approval. The Committee shall also have such other duties and responsibilities as may be assigned by the Board. The Committee members shall serve at the pleasure of the Board. In the absence of a duly-constituted Architectural Committee, the Board shall perform the functions of the Committee.
- 7.6 Preliminary Consultation Prior to Submitting Application. Any Owner considering performing any work requiring prior approval may apply to the Board, or to the Architectural Committee if one is appointed, for preliminary consultation by submitting preliminary plans or drawings of the contemplated work in accordance with the Architectural Rules. The purpose of the preliminary consultation procedure is to allow an Owner considering making substantial improvements an opportunity to obtain guidance concerning design considerations before expending substantial sums for plans and other exhibits required to apply for actual approval. Within forty-five (45) days after receiving a request for a preliminary consultation, the Board shall consider the preliminary information submitted and shall respond in writing to the Owner. The Board's response shall give the requesting Owner such direction concerning the form and substance of an approval application for the contemplated work as the Board deems proper or desirable for the guidance of the Owner. The issuance of a preliminary consultation response by the Board shall not under any circumstances be deemed approval of any contemplated work; nor, once an Owner submits a request for approval, shall it preclude the Committee requesting additional information about the proposed work based on the actual application.
- 7.7 Written Request for Board Approval. Any Owner proposing to perform any work that requires prior approval pursuant to this Article 7, shall submit to the Board (or the Committee if one is appointed) a written request setting forth the nature of the proposed work and furnishing such information and documentation as the Board may require depending on the nature and size of the proposed work. Such information and documentation may include but is not limited to: (i) floor plans, (ii) color samples of exterior materials, (iii) specifications, (iv) building plans, (v) wall sections, (vi) exterior elevations, (vii) roof plans, (viii) landscaping

plans, (ix) graphics and exterior furnishings, and (x) the Owner's proposed construction schedule.

- 7.8 Fees; Professional Consultants. The Board may charge a reasonable fee or fees for review of architectural or landscaping applications, drawings, plans, and specifications which may include the cost of retaining outside consultants including but not limited to architects, engineers, soils experts, or contractors.
- 7.9 Meetings. To the extent required by *Civil Code* section 4765 and as provided in *Civil Code* section 4900, an Owner's request for approval shall be considered by the Board in an open Board meeting. The Owner and, in the Board's discretion, other interested persons, may present information relevant to the requested approval.
- 7.10 Basis for Decisions; Good Faith. The Board's decisions shall be made in good faith and shall not be unreasonable, arbitrary, or capricious. It is recognized and intended that the Board will employ subjective criteria and judgments in its review of and determination concerning plans and proposals submitted to it. The Board shall make its decisions from the perspective of the interest of the Project as a whole in the fostering of the coherence, value, attractiveness and aesthetic compatibility of all architectural designs and features in the Project, after consideration of such factors the Board reasonably determines to be relevant and after reasonable investigation consistent with the scope and circumstances of the proposal submitted to the Board. The Board shall grant the requested approval only if:
- (a) The Owner has submitted a complete application;
 - (b) The Board finds that the plans and specifications conform to this Declaration and to the Architectural Rules in effect at the time such plans were submitted to the Board;
 - (c) The Board finds that the proposed work will, if approved, be consistent and compatible with the architectural and aesthetic standards prevailing within the Project and will be in harmony with the external design and appearance of other existing structures and improvements within the Project; and as to location with respect to topography and finished grade elevations; and
 - (d) The Board determines that the proposed work would be consistent with the standards of the Project and the purposes of this Declaration as to quality of workmanship and materials.
- 7.11 Decisions in Writing; Timely Decision; Reasonable Conditions. All approvals and rejections of requests for approval shall be in writing and shall be issued by the Board within sixty (60) days from the date of submission of a complete

application to the Board. Any approval may include such reasonable conditions as the Board may determine. If a request is rejected, the decision shall include an explanation of the Board's decision.

- 7.12 Variances. The Board, but not the Architectural Committee, may, but is not obligated to, grant variances or adjustments in its discretion if necessary to overcome practical difficulties due to topography or other conditions unique to a particular Unit, avoid unnecessary expense, or prevent unnecessary hardship in the application of the provisions of the Declaration; *provided, however*, that such variance or adjustment does not violate the purpose or purposes intended to be served by the standard or criteria being waived in each instance and is in conformity with the intent and purposes of the Declaration and *provided, further*, that no such variance shall constitute a waiver of such provision with respect to any future application whether for the same Unit or any other Unit. Any variance granted by the Board shall be noted in the written approval of the proposed work and may be required by the Board to be recorded in the County records.
- 7.13 Code Upgrades to Common Area. If an Owner's requested change to the exterior or interior of the Project would result in the need for the Association to upgrade any Common Area component or system for which the Association is ordinarily otherwise responsible (such upgrade being necessary to comply with changes in code requirements in order for appropriate governmental permits to be issued to the Owner for Owner's proposed work and where such code upgrade would not be required but for the work proposed by Owner), the Board may condition approval upon the agreement of the Owner to pay for or contribute to the cost of the Common Area upgrade. In making a determination, the Board may consider such factors as it deems appropriate under the circumstances including, but not limited to, whether Owner's requested work is discretionary or is required as the result of a casualty, the failure of a component in the Common Area or within a Unit; the age, condition, and remaining useful life of the component or system that would require upgrading; the cost of upgrade; whether or not the Association has reserved for the replacement or upgrade of the system; and whether a feasible alternative to the Owner's proposed work is available that would not necessitate the Common Area code upgrade. Under no circumstances shall the Association be obligated to pay for such code upgrades if the Owner has not applied for and obtained prior architectural approval pursuant to this Article 7.
- 7.14 Failure of Board to Make Timely Decision. If the Board shall fail to act on a request for approval within the time specified in Section 7.11 ("Decisions in Writing; Timely Decision; Reasonable Conditions"), the Owner shall be entitled to invoke internal dispute resolution pursuant to *Civil Code* section 5910, discussed in Section 13.16 ("Internal Dispute Resolution"); *except that* in the case of an application for installation or use of a solar energy system subject to *Civil Code* section 714, or the application for installation of an electric vehicle charging station subject to *Civil Code* section 4745, any application that is not denied by

the Board within sixty (60) days from receipt of a complete application shall be deemed approved; nevertheless, as provided in Section 7.2.17 ("Solar Energy Systems") and Section 7.2.14 ("Electric Vehicle Charging Station"), nothing in this Declaration shall be deemed to authorize or permit any Owner to install any solar energy system upon any portion of the Common Area or Exclusive Use Common Area.

- 7.15 Failure to Obtain Required Approval. If any work that requires prior approval pursuant to this Article 7 is performed without such approval having been obtained, the Board shall be entitled to proceed in accordance with the provisions of Section 7.20 ("Notice of Non-conformity") and Section 7.21 ("Failure to Remedy Non-conformity") as though the Board had given written Notice of Non-conformity with approved plans.
- 7.16 Commencement of Approved Work. Upon receipt of written approval, the Owner shall, as soon as practicable, satisfy all conditions of the approval and diligently proceed with the commencement and completion of all approved work. Commencement of the approved work shall occur, in all cases, within ninety (90) days from the date of such approval. If the Owner fails to comply with this paragraph, any approval previously given shall be deemed revoked unless the Board, upon written request of the Owner made prior to the expiration of the time for commencement of the approved work, extends the time for such commencement. The Board shall not grant an extension of time for commencement of the work if the Board finds that there has been a material change in the circumstances upon which the original approval was granted.
- 7.17 Notice to Association Before Commencement of Work; Bond. The Board, in its discretion, may require an Owner to give the Association and any other Owner whose Unit will be affected by the work up to thirty (30) days' prior written notice before commencing approved work so that the Association or other Owner may record a notice of non-responsibility or take other appropriate action. The Board may require from the Owner performing work a bond or other assurance (such as disbursement through a voucher system of payments directly to materialmen, contractors, and subcontractors) to protect against mechanics' or materialmen's liens arising against the Common Area or other Condominiums.
- 7.18 Completion; Extension of Deadline. The Owner shall complete all approved work within one (1) year after commencement thereof; except that in the case of reconstruction after substantially total destruction of a Unit, the construction or reconstruction shall be completed within eighteen (18) months after commencement thereof. The date for completion may be extended as long as such completion is rendered impossible or would result in great hardship to the Owner due to strikes, fires, national emergencies, natural calamities, or other supervening forces beyond the control of the Owner or his or her agents, provided the Owner notifies the Board of such occurrence within a reasonable time after becoming aware of it. If an Owner fails to comply with this Section

7.18, the Board shall be entitled to proceed in accordance with the provisions of Section 7.20 ("Notice of Non-conformity") as though the Board has given written Notice of Non-conformity with approved plans.

- 7.19 Notice of Completion; Inspection of Completed Work. Upon the completion of any work for which approval is required under this Article 7, the Owner shall give written Notice of Completion to the Board. The written notice shall include copies of all applicable permits, job cards, and building permit inspections. Within sixty (60) days after receiving Notice of Completion from the Owner, the Board or its duly authorized representative may inspect such work to determine if it substantially complies with the granted approval and Owner shall cooperate with the Board to conduct such inspection. If the Board fails to notify the Owner of any non-conformity within such sixty (60) day period, the work shall be deemed to be in accordance with the granted approval. If the Owner fails to give Notice of Completion, the Board shall be entitled to proceed in accordance with the provisions of Section 7.20 ("Notice of Non-conformity"), as though the Board has given written Notice of Non-conformity with approved plans.
- 7.20 Notice of Non-conformity. If the Board finds that the work was not done in substantial conformity with the granted approval, it shall notify the Owner in writing before the end of such sixty (60) day period set forth in Section 7.19 ("Notice of Completion; Inspection of Completed Work") specifying particulars of non-conformity and requiring the Owner to remedy the same within thirty (30) days from the date of the notice from the Board, or such longer time as the Board may designate in the notice.
- 7.21 Failure to Remedy Non-conformity. If the Owner fails to remedy such non-conformity within the time specified in the Notice of Non-conformity, the Board shall then, pursuant to the procedures set forth in Section 13.12 ("Hearing Called by the Board; Executive Session; Open Meeting"), set a date on which a hearing before the Board shall be held regarding the alleged non-conformity. If the Board finds at such hearing that a substantial non-conformity exists, the Board may, in addition to any other remedy available under the Governing Documents or applicable law, order the Owner to remedy or remove such non-conformity. If the Owner thereafter fails to do so within the time specified by the Board, the Board may, in addition to any other remedy available under the Governing Documents or applicable law, remove or remedy the non-conformity and, in that event, all expenses incurred by the Association in connection therewith shall be assessed against the Owner as a Reimbursement Assessment.
- 7.22 Non-waiver. The approval by the Board of any plans, drawings, or specifications for any work done or proposed, or for any other matter requiring approval under this Article 7, shall not be deemed to constitute a waiver of the right to withhold approval of any similar plan, drawing, specification, or matter subsequently submitted for approval with respect to the same Unit or any other Unit.

- 7.23 Disclaimer of Liability. Neither the Board, nor any Committee, nor any member thereof shall be liable to the Association, to any Owner, or to any person deriving an interest through an Owner for any damage, loss, or prejudice suffered or claimed on account of: (i) the approval or disapproval of any plans, drawings, and specifications, whether or not defective; (ii) the construction or performance of any work, whether or not pursuant to approved plans, drawings, and specifications; *provided, however,* that the Board, the Committee, or such member has acted in good faith on the basis of such information as may be possessed by it or him or her. Without limiting the generality of the foregoing, the Board or any Committee may, but is not required to, consult with or hear the views of the Association or any Owner with respect to any plans, drawings, specifications, or any other proposal submitted for approval pursuant to this Article 7. Every purchaser, by acquiring title to a Unit or portion thereof agrees not to bring any action or suit against the Board, the Committee, or its or their members seeking to recover any such damages.
- 7.24 Compliance with Governmental Requirements. The Owner of the Unit is required to obtain all permits and governmental authorizations, if any, required for any work done within such Owner's Unit and such Owner must comply with all applicable zoning and building codes as well as other applicable laws and ordinances. The Owner of each Unit is solely responsible for complying with any applicable building permit process or other governmental requirements with respect to any work done upon the Owner's Unit. Submission of a request for approval by the Board and the review and approval of any proposals, plans, or other submittals shall in no way be deemed to be satisfaction of or compliance with any building permit process or any other governmental requirements, nor shall it constitute the assumption of any responsibility by or impose any liability on the Association, the Board, the Committee, or its or their members as to the accuracy, efficacy, or sufficiency thereof. When Architectural approval standards of the Association are more stringent than applicable governmental standards, the more stringent standards of the Association shall apply, notwithstanding the fact that governmental approval may have been obtained based on governmental standards that are less stringent than those of the Association.

ARTICLE 8 ASSESSMENTS AND LIENS

- 8.1 Covenant of Owner. Each Owner of a Unit within the Project, by acceptance of a deed or other conveyance thereof, whether or not it shall be so expressed in such deed or conveyance, shall be deemed to have covenanted and agreed to pay to the Association all: (i) Regular Assessments, (ii) Special Assessments, (iii) Reimbursement Assessments, and (iv) Enforcement Assessments levied by the Association as hereinafter provided, together with all Additional Charges.

- 8.1.1 Association's Power to Collect. Such deed or conveyance shall be deemed to vest in the Association the right and power to initiate all

actions and procedures as the Board shall deem necessary or appropriate for the collection of such Assessments and Additional Charges and for the enforcement of the liens hereinafter provided for.

- 8.1.2 Assessments Are a Personal Obligation. Assessments levied by the Association pursuant to this Declaration, together with all Additional Charges, shall be a personal debt and obligation of the Owner against whom they are assessed, and shall bind his or her heirs, devisees, personal representatives, successors, and assigns.
- 8.1.3 Obligation Runs with the Land. The obligation to pay Assessments and Additional Charges and the right and power of the Association to initiate all actions and procedures for collection shall run with the land, so that each successive Owner or Owners of any Unit shall, in turn, become liable to pay all such Assessments and Additional Charges assessed that become due and payable during the time he or she is Owner of such Unit.
- 8.1.4 Owner's Liability After Transfer. After an Owner transfers of record his or her interest in any Unit, he or she shall not be liable for any Assessments levied thereafter with respect to such Unit. Such Owner shall remain personally liable, however, for all unpaid amounts due and owing at the time of transfer, together with Additional Charges accruing until time of collection. No assumption of personal liability by a successor Owner shall relieve any Owner from personal liability for delinquent Assessments. A Contract Seller of any Unit shall continue to be liable for all Assessments and Additional Charges until a conveyance by deed of such Unit is recorded in the Office of the County Recorder.
- 8.2 Creation of Lien. Each Assessment levied by the Association pursuant to this Declaration, together with all Additional Charges, shall be a charge upon the land and upon levy shall be secured by a continuing lien upon the property against which such Assessment is levied. The Association shall have a separate lien and a separate lien is hereby created upon each Unit to secure the payment of any such Assessments and Additional Charges as may be levied under this Declaration.
- 8.2.1 Lien Is Continuing. The lien provided for herein shall continue to secure all Assessments and Additional Charges levied upon any Unit notwithstanding the transfer of record title to such Unit, and any such transfer shall be subject to the Association's lien, provided that, prior to such transfer, a notice of delinquent assessment has been recorded as provided in the Declaration and by law.

- 8.2.2 Priority of Association's Assessment Liens. The priority of all such liens on each Unit shall be in inverse order so that upon the foreclosure of the lien for any particular charge on any Unit, any sale of such Unit pursuant to foreclosure of the lien will be made subject to all liens securing Assessments and Additional Charges on such Unit that become due and payable subsequent to the lien being foreclosed upon.
- 8.3 Purpose of Assessments. The Assessments levied by the Board shall be used exclusively to pay for the costs of management and operation of the Project, of conducting the business and affairs of the Association, to promote the recreation, health, safety, welfare, benefit, and interests of the Owners and Residents in the Project, and for the improvement and maintenance, repair, and replacement of the Common Area and, to the extent provided for in the Governing Documents or by law, of the Units situated within the Project or which, in the opinion of the Board, shall be deemed to be necessary or proper for the management of the Project or of the affairs of the Association, or the benefit of the Owners, or for the enforcement of the Governing Documents.
- 8.4 Funds to be Held in Association's Name. Unless otherwise determined by the Board, the Association shall maintain at least two (2) separate accounts in one (1) or more banks or other depositories selected by the Board, which accounts shall be clearly designated Capitola Knolls Homeowners Association Operating Account and Capitola Knolls Homeowners Association Reserve Account. The Assessments collected by the Association shall be properly deposited into such accounts. Withdrawal of funds from Association accounts shall be subject to the requirements of Section 10.4 of the Bylaws ("Checks, Drafts, and Evidences of Indebtedness").
- 8.5 Funds Held in Trust for Owners. The Assessments collected by the Association shall be held in trust by the Association for and on behalf of each Owner. Upon sale or transfer of any Condominium by any Owner, the Owner's interest in the funds held in trust by the Association shall terminate and shall be deemed automatically transferred to the successor-transferee of such Owner.
- 8.6 Authority of the Board to Levy Assessments. The Board shall have the power and the duty to levy Regular Assessments and Special Assessments sufficient to meet the Association's obligations under the Governing Documents and applicable law.
- 8.7 Regular Assessment.
- 8.7.1 Calculation of Estimated Requirement. Prior to the beginning of each fiscal year, the Board shall estimate the net funds required by the Association for such fiscal year to manage, administer, operate, and maintain the Project; to conduct the affairs of the Association; and to

perform all of the Association's duties in accordance with the Governing Documents, including a reasonable amount allocated to contingencies and to a reserve fund for restoration, repair, and/or replacement of those components for which the Association is responsible and which must be repaired or replaced on a periodic basis. The amount of estimated required funds shall constitute the Regular Assessment.

- 8.7.2 Allocation of Regular Assessment. The Board shall allocate and assess the Regular Assessment equally among the Condominiums by dividing the amount by the number of Condominiums within the Project. Notwithstanding the foregoing, if the Regular Assessment includes charges for commonly metered utilities supplied to the Units and any Owner-installed or tenant-installed alteration to a Unit or any business use conducted within a Unit results in disproportionate electrical, water, or other utility usage for that Unit, the Board may allocate such commonly metered utility costs as the Board determines is reasonable and equitable. Owners of multiple Units that have been connected architecturally to create a single residence shall be responsible for payment of Regular Assessments on each of the original Units on the same basis as if the Units were not connected.
- 8.7.3 Payment of Regular Assessment. Unless the Board shall designate otherwise, Regular Assessments shall be levied on an annual basis and shall be paid in twelve (12) equal monthly installments during the fiscal year, and each installment shall be due and payable on the first day of each month.
- 8.7.4 Notice of Regular Assessment. Not less than thirty (30) days and not more than ninety (90) days prior to the beginning of each fiscal year, the Board shall send to each Owner a notice of the amount of the Regular Assessment allocated to his or her Condominium, except that if there is an increase in the Regular Assessment over the previous year, in compliance with *Civil Code* section 5615 the notice shall be provided in accordance with *Civil Code* section 4040 to the Owner not less than thirty (30) days and not more than sixty (60) days before the due date of the increased Regular Assessment.
- 8.7.5 Permitted Increase in Regular Assessment. Pursuant to *Civil Code* section 5605(b), except as otherwise provided by law, the Board shall not increase the Regular Assessment for any fiscal year above the amount of the Regular Assessment for the preceding fiscal year by more than twenty percent (20%) (or such other limitation on the increase as may be imposed by law), except upon the affirmative vote of a majority of Members voting on any such increase in the Regular Assessment, provided that a quorum is established. For purposes of

the preceding sentence and to the extent required pursuant to *Civil Code* section 5605(c), a quorum shall mean more than fifty percent (50%) of the Members of the Association, notwithstanding any lower quorum requirement which may be set forth in the Bylaws.

8.7.6 Revised Regular Assessment. Subject to the provisions of Section 8.7.5 ("Permitted Increase in Regular Assessment") or as otherwise permitted by law, if at any time during the course of any year, the Board determines the amount of the Regular Assessment to be inadequate, by reason of a revision of its estimate of either expenses or income or otherwise, the Board shall have the right, at a regular or special meeting of the Board, to revise the Regular Assessment for the balance of the fiscal year. To the extent required by *Civil Code* section 5615, notice of any such increase shall be given to the Members by Individual Delivery and such revised Regular Assessment shall become effective on the first day of the next month that is at least thirty (30) days and not more than sixty (60) days after the date of such notice.

8.7.7 Failure to Fix Regular Assessment. The failure or omission by the Board to fix or levy any Regular Assessment before the expiration of any fiscal year, for that fiscal year or the next fiscal year, shall not be deemed either a waiver or a modification in any respect of the provisions of this Declaration, or a release of any Owner from the obligation to pay Assessments or any installment thereof for that or any subsequent year, but the amount of the Regular Assessment fixed for the preceding fiscal year shall be the amount of the Regular Assessment for the ensuing fiscal year until a new Regular Assessment is levied.

8.8 Special Assessments.

8.8.1 Purpose of Special Assessments. If at any time during any fiscal year the Regular Assessment proves inadequate for any reason, including nonpayment of any Owner's share thereof or the unexpected repair, replacement, or reconstruction of improvements located in the Project, or if funds are otherwise required for any authorized activity of the Association, the Board may levy a Special Assessment in the amount of such actual or estimated inadequacy or cost.

8.8.2 Permitted Amount of Special Assessments. Except in the case of an emergency situation as defined in *Civil Code* section 5610, in any fiscal year the Board may not levy Special Assessments which, in the aggregate, exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year (or such other limitation on the amount as may be imposed by law), except upon the affirmative vote

of a majority of the Members voting on any such Special Assessment, provided that a quorum is established. For purposes of the preceding sentence and to the extent required pursuant to *Civil Code* section 5605(c), a quorum shall mean more than fifty percent (50%) of the Members of the Association, notwithstanding any lower quorum requirement which may be set forth in the Bylaws.

- 8.8.3 Allocation of Special Assessments. Special Assessments shall be allocated and assessed among the Condominiums.
- 8.8.4 Notice of Special Assessment. Upon the imposition of a Special Assessment or an increase in a Special Assessment, in compliance with *Civil Code* section 5615 notice thereof shall be given to each Owner by Individual Delivery not less than thirty (30) days and not more than sixty (60) days prior to the due date of the Special Assessment.
- 8.8.5 Payment of Special Assessments; Cost of Payment Plans. Special Assessments shall be payable in a lump sum or in installments as may be determined by the Board with regard to each Special Assessment when it is imposed. If the Association incurs additional expenses because of a payment method selected by an Owner (for example, but not limited to, paying a Special Assessment in installments instead of in a lump sum), the Association may charge such expense to the Owner as an Additional Charge or as a Reimbursement Assessment. Nothing in this Section 8.8.5 shall be deemed to obligate the Association to offer or permit alternate payment plans.
- 8.9 Application of Surplus Funds (IRS Resolution). If, as of the end of any fiscal year, there is an excess of membership income over membership expenses as defined in Internal Revenue Code section 277 for the year ended, the Board shall determine, without the need for a Member vote, whether such excess shall be applied to reserves and deposited in the Association's Reserve Account or shall be applied against the subsequent tax year's Member Assessments as provided in Internal Revenue Service Revenue Ruling 70-604. If the Board does not determine to so apply such excess membership income to reserves or to the subsequent year's Member Assessments, any other lawful disposition of such excess income shall be as determined by the vote of the Members.
- 8.10 Reimbursement Assessments. The Board, after notice and a hearing as provided for in Section 13.11 ("Notices: Content, Delivery") and Section 13.12 ("Hearing Called by the Board; Executive Session; Open Meeting"), may levy a Reimbursement Assessment against an Owner and his or her Condominium:
- (a) To reimburse the Association for costs incurred to maintain, repair, or replace property (including property within a Unit) when such damage is

due to the act or neglect of such Owner, his or her Contract Purchaser, or member of his or her household, pet, tenant, invitee, or guest, or as otherwise provided in the Governing Documents;

- (b) If the failure of such Owner, his or her Contract Purchaser, or member of his or her household, pet, tenant, invitee, or guest to comply with any provision of the Governing Documents has necessitated or resulted in an expenditure of funds by the Association to deal with such lack of compliance or to bring such person or the Condominium into compliance;
- (c) To reimburse the Association for any costs of collecting from an Owner any amount the Owner is obligated to pay the Association.

Without limiting the generality of the foregoing, and to the fullest extent permitted by law, all costs including attorneys' fees, incurred by the Association to enforce Section 5.8 ("Restriction on Businesses"), Section 5.13 ("Animals"), Section 6.7 ("Association as Third Party Beneficiary"), Section 6.8 ("Indemnification Regarding Tenant's Actions"), Section 8.18 ("Assignment of Rents as Security for Payment"), and Section 13.6 ("Injunctions"), or to defend any claim arising or alleged to arise from any of the foregoing sections, shall be reimbursed to the Association as a Reimbursement Assessment. Any Reimbursement Assessment shall be due and payable to the Association when levied.

- 8.11 Enforcement Assessments. Subject to the requirements set forth in Section 13.8 ("Imposing Sanctions"), the Board may levy an Enforcement Assessment (and any fine or monetary penalty imposed by the Board in accordance with the provisions of the Governing Documents shall be deemed to be such an Enforcement Assessment), for violation of any of the provisions of the Governing Documents. Any Enforcement Assessment shall be due and payable to the Association when levied.
- 8.12 No Offsets. All Assessments levied by the Board shall be payable in the full amount specified, including any Additional Charges imposed as provided by the terms of this Declaration, and no offsets against any such amounts shall be permitted for any reason whatsoever, including without limitation a claim that the Association has failed to properly exercise its duties of maintenance or enforcement.
- 8.13 Bad Checks. An Owner who writes a check to the Association on insufficient funds shall be charged a service fee in the amount permitted by *Civil Code* section 1719 and may be liable for damages to the Association in an amount equal to three (3) times the amount of the bad check, as provided by statute.
- 8.14 Delinquent Assessments, Acceleration in the Event of Delinquency. Any installment or other portion of an Assessment not received within fifteen (15)

days after its due date shall be delinquent and, to the fullest extent permitted by law including *Civil Code* section 5650(d), shall be subject to a late charge and, thirty (30) days after the due date, interest not to exceed the maximum rate permitted by law, as well as all other Additional Charges. If any monthly installment of the Regular Assessment or any installment of a Special Assessment that has been levied or is permitted to be paid on an installment basis is delinquent for a period of sixty (60) days, the Association may, but shall not be obligated to, declare the entire balance of the Regular Assessment or the Special Assessment immediately due and payable together with all other delinquent amounts.

8.15 Enforcement by Action at Law or Foreclosure. The Board, on behalf of the Association, may enforce the payment of any delinquent Assessment plus Additional Charges by bringing an action at law against any Owner personally obligated to pay the same, or by foreclosing the lien against the Owner's Condominium by judicial or non-judicial foreclosure, to the fullest extent permitted by law. To the extent prohibited by *Civil Code* section 5725(b), the amount of an Enforcement Assessment may not become a lien that is enforceable by non-judicial foreclosure.

8.15.1 Pre-lien Notice. At least thirty (30) days prior to recording a Notice of Delinquent Assessment against a Condominium to collect a debt that is past due, the Association shall provide written notice to the Owner(s) of the Condominium, as required by *Civil Code* section 5660 ("Pre-lien Notice").

8.15.2 Prior to Recording a Lien. Prior to recording a Notice of Delinquent Assessment, the Association shall comply with all applicable requirements imposed by law, including offering to participate in internal dispute resolution (Section 13.16 of this Declaration) or Alternative Dispute Resolution (Section 13.17 of this Declaration) to the extent required pursuant to *Civil Code* section 5670 and making the decision to record a lien for delinquent Assessments at an open meeting of the Board, to the extent required pursuant to *Civil Code* section 5673.

8.15.3 Owner's Right to Discuss Payment Plan. To the extent provided in *Civil Code* section 5665, an Owner may submit to the Board a written request to discuss a payment plan for a debt noticed in a Pre-lien Notice. If the Owner's written request is mailed to the Board (as evidenced by a postmark or receipt of mailing) within fifteen (15) days after the postmark on the Pre-lien Notice, the Board shall meet with the Owner within forty-five (45) days of the postmark date of the Owner's written request, unless there is not a regularly scheduled Board meeting within the period, in which case the Board, in its discretion, may hold a special meeting in executive session to meet with the

Owner or may designate a committee of one (1) or more Board members to meet with the Owner.

- 8.15.4 Notice of Delinquent Assessment. The amount of the past due debt noticed in the Pre-lien Notice shall be a lien from and after the recording of a Notice of Delinquent Assessment. No later than ten (10) days after recordation, a copy of the Notice of Delinquent Assessment shall be mailed by certified mail in compliance with *Civil Code* section 5675 to every person whose name is shown as an Owner of the Condominium in the Association records or in such manner and to such persons as may be required by applicable law.
- 8.15.5 Delinquent Assessments of Less Than \$1,800. To the extent provided in *Civil Code* section 5720(b), delinquent Assessments totaling less than One Thousand Eight Hundred Dollars (\$1,800) that are less than twelve (12) months delinquent may not be collected by judicial or non-judicial foreclosure, but may be collected in any other manner provided by law including a civil action in small claims court to the extent provided in *Civil Code* section 5720(b)(1) or recording a lien as provided in *Civil Code* section 5720(b)(2). Prior to recording such a lien the Association shall offer to participate in internal dispute resolution (Section 13.16 of this Declaration) to the extent required by *Civil Code* section 5720(b)(2).
- 8.15.6 Initiating Foreclosure. As provided in *Civil Code* section 5700(a), no procedures shall be initiated to foreclose the lien securing any noticed past due debt under this Article 8 until after the expiration of thirty (30) days following the recording of a Notice of Delinquent Assessment. To the extent required pursuant to *Civil Code* section 5705(b), the Association shall offer to participate in internal dispute resolution (Section 13.16 of this Declaration) or Alternative Dispute Resolution (Section 13.17 of this Declaration). To the extent required by *Civil Code* section 5705(c), a decision to initiate foreclosure shall be made only by the Board in an executive session meeting.
- 8.15.7 Amount Due and Payable. Except with respect to the amount of any Enforcement Assessment, upon the recording of the Notice of Delinquent Assessment referred to above, the Association may, at its option, declare the entire balance of all sums then due or to become due from the Owner, immediately due and payable, which total sum may then be included in any suit, action, or other procedure initiated to collect said sums, including all Additional Charges.
- 8.15.8 Notice of Initiating Foreclosure. To the extent required pursuant to *Civil Code* section 5705(d), the Association shall provide written notice

of initiating foreclosure to the record Owner of the Condominium, including notice by personal service to any resident Owner.

- 8.16 Power of Sale. Each Owner does hereby appoint the Association as trustee to enforce and to foreclose any lien which is established pursuant to the terms of this Declaration, by private power of sale, as provided in Division III, Part 4, Title 14, Chapter 2, Article 1, (section 2920 and following) of the *Civil Code* of the State of California, and does further grant to the Board of Directors, on behalf of the Association, the authority and power to sell the Condominium of such Owner in the event of any default in payment of any Assessments or Additional Charges levied against such Condominium, for lawful money of the United States, to the highest bidder, to satisfy said lien. The Association, as trustee for the remaining Owners, or any other Owner, may purchase the Condominium at said sale.
- 8.17 Right of Redemption. To the extent provided pursuant to *Civil Code* section 5715(b), a non-judicial foreclosure to collect delinquent Assessments shall be subject to a right of redemption.
- 8.18 Assignment of Rents as Security for Payment. As security for the payment of all liens provided for under this Declaration, each Owner hereby gives to and confers upon the Association the right, power, and authority during the continuance of such ownership to collect the rents, issues, and profits of the Owner's Condominium, reserving unto the Owner the right, prior to any default by such Owner in performance of that Owner's obligations under the Governing Documents in payment of any indebtedness to the Association, to collect and retain such rents, issues, and profits as they become due and payable. Upon any such default, the Association may (i) instruct the tenant to pay rent to the Association as and when such rents become due or (ii) at any time upon ten (10) days' written notice to such Owner (either in person, by agent, or by a receiver to be appointed by a court, and without regard to the adequacy of any security for such indebtedness) in its own name sue for or otherwise collect such rents, issues, and profits, including those past due and unpaid, and in either event apply the same, less costs and expenses of operation and collection, including reasonable attorneys' fees, upon any such indebtedness, and in such order as the Association may determine or as required by applicable law. Owner waives the giving of any and all notices required by the laws of the State of California in order for the Association to exercise the rights provided by this Section 8.18. The collection of such rents, issues, and profits, and the application thereof as aforesaid, shall not cure or waive any default under the Governing Documents or invalidate any act done pursuant to this Declaration. The assignment of rents and powers described in this Section 8.18 shall not affect, but shall in all respects be subordinate to, the rights and power of the holder of any First Mortgage on any Condominium, or any part thereof, to do the same or similar acts.
- 8.19 Remedies Are Cumulative. The Board may commence any procedure for the collection of delinquent Assessments upon its own decision. The remedies

provided in this Declaration for collection of delinquent Assessments shall be cumulative and not exclusive; that is, the Association may use one (1) or more or all of the available remedies to collect delinquent Assessments to the fullest extent permitted by law.

- 8.20 Partial Payments. The Association's involuntary acceptance of a partial payment shall not prevent the Association from pursuing any or all of its available collection remedies.
- 8.21 Certificate of Satisfaction and Release of Lien. Upon payment in full of a delinquent Assessment, including any Additional Charges, or the satisfaction thereof, the Board shall cause to be recorded, in the same manner as the Notice of Delinquent Assessment, a further certificate stating the satisfaction thereof and the release of the lien.
- 8.22 Subordination to Lien of First Mortgage. Except as otherwise expressly provided by law, the lien securing each of the Assessments provided for under this Declaration shall have priority as of the date of recordation of the Notice of Delinquent Assessment as provided in Section 8.15.4, over all other liens and encumbrances applicable to the Condominiums; *provided, however*, that such Assessment lien shall be subordinate to the lien of any First Mortgage recorded against the Condominium prior to the date the Notice of Delinquent Assessment was recorded; and *provided, further*, that such subordination shall apply only to the Assessments which have become due and payable prior to the sale of such property pursuant to a decree of foreclosure of any such First Mortgage, or pursuant to a power of sale contained in any such First Mortgage. Such foreclosure sale shall not relieve such property from liability for any Assessments and Additional Charges becoming due after the sale of such property pursuant to a decree of foreclosure of any such First Mortgage, or pursuant to a power of sale contained in any such First Mortgage, nor from the lien of any subsequent Assessment, including Assessments levied against all Condominiums proportionately to compensate for the unpaid Assessments and Additional Charges, which shall constitute a lien upon the purchased Condominium in accordance with this Article 8.
- 8.23 Waiver of Exemptions. Each Owner, to the extent permitted by law, does hereby waive, to the extent of any liens created pursuant to this Declaration, the benefit of any homestead or exemption laws of the State of California in effect at the time any Assessment or installment thereof becomes delinquent or any lien is imposed pursuant to the terms of this Declaration.
- 8.24 Property Exempt from Assessments. The following property subject to this Declaration shall be exempt from the Assessments, Additional Charges, and liens created herein:

- (a) All property dedicated to and accepted by the City or County or other local public authority and devoted to public use;
- (b) Any Condominium which is owned by the Association as a result of the Association having acquired such Condominium through foreclosure; *provided, however*, that such exemption shall apply only during the period in which the Association is record owner of such Condominium; and
- (c) All Common Area.

ARTICLE 9 MAINTENANCE OF PROPERTY

9.1 Association's Responsibility for Common Area Generally. The Association shall operate and manage, and provide maintenance, repair, and replacement of the Common Area (including Exclusive Use Common Area) and all facilities, improvements, and landscaping thereon, including but not limited to all other real and/or personal property that may be acquired by the Association, keeping such property in good condition and repair; *provided, however*, that the Association shall not be responsible for maintenance, repair, or replacement of Exclusive Use Common Area to the extent the responsibility therefor is expressly assigned to one (1) or more Owners, as set forth in Section 9.2 ("Owners' Responsibility for Exclusive Use Common Area"). Without limiting the generality of the foregoing:

9.1.1 Landscaping; Janitorial; Painting. The Association shall specifically be responsible for providing lighting, landscaping, irrigation, gardening (including periodic replacement, as the Board deems necessary, of trees, shrubs, and other plants upon the Common Area), and janitorial services for the Common Area, as needed, and shall cause any and all other acts to be done which may be necessary to assure the maintenance of the Common Area in good condition and repair, including painting of the exterior surfaces of the fences and building(s), (including the Unit entry door, which is the responsibility of Owners as set forth in Section 9.2.10(i) but only in conjunction with the routine painting of the structures), and such other portions of the Common Area as the Board, in its discretion, determines to be necessary.

9.1.2 Common Area Utilities and Services. The Association shall obtain for the benefit of the Owners and the Residents such utilities and services for the Common Area as the Board shall determine beneficial. The Association shall maintain all utility installations and utility laterals located in the Common Area except for (i) those that are maintained by public or private utility companies or agencies and (ii) utility installations that are part of a Unit as defined in Section 1.48. The Association shall pay all charges for utilities supplied to the Project except for those metered or charged separately to the Units.

Notwithstanding the preceding sentence, if any Owner-installed or tenant-installed alteration to a Unit or any business use conducted within a Unit results in disproportionate electrical, water, or other utility usage for a particular Unit and such usage is not separately metered, the Board may allocate such utility costs in a manner the Board determines is reasonable and equitable as provided in Section 8.7.2 ("Allocation of Regular Assessment").

9.1.3 Employees or Independent Contractors. The Association may perform its obligations and provide such services as the Board shall determine through employees of the Association or through independent contractors. In either case, Residents or Owners shall not interfere with or attempt to instruct any of such persons in the performance of their duties.

9.2 Owners' Responsibility for Exclusive Use Common Area.

9.2.1 Electric Vehicle Charging Station. An Owner whose request to install an electric vehicle charging station ("EVCS") pursuant to Section 7.2.14 and Section 7.4.4 was approved by the Board shall be responsible at such Owner's sole cost and expense for the maintenance, repair and replacement of the EVCS and for all cost and expense associated with the removal of an EVCS, including the costs and expense to restore the Common Area to its pre-installation condition.

9.2.2 Balcony. Each Owner shall be responsible at such Owner's sole expense for day-to-day upkeep of the Balcony spaces of his or her Condominium, keeping such space broom clean and free of debris. Sliding glass door tracks must be kept clean and free of dirt and debris. Nothing shall be placed on or affixed to the railing of the Balcony. Nothing shall be placed on the floor of the Balcony that will trap moisture. In particular, spacers and saucers must be placed under any potted plants to prevent water from pooling and water runoff. Nothing may be kept or stored within the Balcony Space, except for common outdoor furnishing.

9.2.3 Carports. Each Owner shall be responsible at such Owner's sole expense for day-to-day upkeep of the Carport space appurtenant to his or her Unit, keeping the space clean and sanitary. Each Carport space shall be maintained so that at all times the number of vehicles the Carport was designed to accommodate may be parked inside the Carport. Storage within the Carport space shall be subject to Rules adopted by the Association.

- 9.2.4 Deck. Each Owner shall be responsible at such Owner's sole expense for day-to day upkeep of the Deck space appurtenant to his or her Unit, keeping such space broom-clean and free of debris. Sliding glass door tracks must be kept clean and free of dirt and debris. Nothing shall be placed on or affixed to the railing or fencing of the Deck. Nothing shall be placed on the floor of the Deck that will trap moisture. In particular, spacers and saucers must be placed under any potted plants to prevent water from pooling and water runoff. Nothing may be kept or stored within the Deck Space, except for common outdoor furnishing.
- 9.2.5 Fireplace. Each Owner shall be responsible at such Owner's sole expense for maintenance, repair, and replacement of the fireplace box and flue damper of the Fireplace serving his or her Unit and for the periodic cleaning of the chimney flue.
- 9.2.6 Garage. Each Owner shall be responsible at such Owner's sole expense for day-to-day upkeep of the Garage space appurtenant to his or her Unit, keeping the space broom clean and sanitary, and for maintenance, repair, and replacement of the garage door opening system and all garage door hardware. Each Garage space shall be maintained so that at all times the number of vehicle the Garage was designed to accommodate may be parked inside the Garage. All storage within the Garage shall be maintained in a safe and sanitary condition.
- 9.2.7 Landscaping Within Exclusive Use Common Area. Each Owner shall be responsible at such Owner's sole expense for landscaping within his or her Balcony, Deck, or Patio, keeping the same in good condition and repair; *provided, however*, that no landscaping that is visible from the Common Area shall be undertaken or installed without prior architectural approval as set forth in Section 7.1(d) ("Prior Architectural Approval Required for Exterior and Interior Changes").
- 9.2.8 Patios. Each Owner shall be responsible at such Owner's sole expense for the day-to-day upkeep of the Patio space of his or her Condominium, keeping such space broom clean and free of debris. Sliding glass door tracks must be kept clean and free of dirt and debris. Nothing may be kept or stored within the Patio Space, except for common outdoor furnishing.
- 9.2.9 Storage Space. Each Owner shall be responsible at such Owner's sole expense for day-to day upkeep of the Storage Space appurtenant to his or her Unit, keeping such space safe and sanitary, broom-clean and free of debris and for maintenance, repair, and replacement of locks and keys for his or her Storage Space. Volatile, highly flammable, or hazardous substances shall not be kept in any Storage

Space other than small amounts of ordinary household cleaning products in their original packaging.

9.2.10 Other Exclusive Use Common Area Items. Each Owner shall be responsible at such Owner's sole expense for the following:

- (i) maintenance, repair, and replacement of the Unit entry door, hardware, locks and keys;
- (ii) maintenance, repair, and replacement of the window frames, glass, hardware and window screens serving a Unit;
- (iii) maintenance, repair, and replacement of the skylights located on the roof and serving a Unit;
- (iv) maintenance, repair, and replacement of the dryer vents and ducts serving the Unit exclusively;
- (v) maintenance, repair, and replacement of internal and external telephone wiring;
- (vi) maintenance, repair, and replacement of the air-conditioning units located within and serving a single Unit.

9.3 Owners' Responsibility for Unit. Each Owner shall be responsible at such Owner's sole expense for providing maintenance, repair, and replacement of his or her Unit and the fixtures and equipment located therein or any portion thereof, as defined in Section 1.48 ("Unit"), and the contents thereof, keeping the same in a clean, sanitary, workable, and attractive condition. Without limiting the generality of the foregoing:

9.3.1 Interior Decorating. Interior decorating of Units is subject to the provisions of Section 7.2.13 ("Interior Decoration of Unit").

9.3.2 Plumbing Repairs; Leaks; Owners' Responsibility to Report. Without limiting the generality of Section 9.3, each Owner shall be responsible at such Owner's sole expense for providing maintenance, repair, and replacement of all appliances and plumbing fixtures and all hoses and connections including but not limited to wax seals for toilets; supply hoses and connections to toilets, dishwashers, clothes washers, and refrigerators; and for the hoses and connections to the water heater and for the water heater tank located within the Unit. Except for work performed at the direction of the Association by employees of the Association, if any, only licensed and bonded plumbers are permitted to perform plumbing repairs within the Project.

With a view to minimizing both immediate and consequential damage to the property (such as mold) and costs for both the Association and Unit Owners, water or sewage backups or overflows or leaks within or into a Unit must be reported immediately to the Association for repair by or at the direction of the Association.

The fact that the Association responds to any water damage incident or performs or arranges for the performance of repairs or mitigation or other remediation shall not alter the financial responsibility of the Owner(s) and the Association, respectively, for the water damage as otherwise provided in the Declaration. Without limiting the generality of the preceding sentence, an Owner may be liable to the Association for the cost of maintenance, repair, or replacement due to damage as provided in Section 9.8 ("Owners' Liability to Association for Negligent Damage") and may be liable to other Unit Owners or Residents as provided in Section 9.9 ("Owners' Liability to Other Unit Owners or Residents").

- 9.3.3 Owners' Cooperation. Unit Owners and Residents shall cooperate with the Board and its agents in the performance of maintenance, repair, or replacement by the Association of any portion of Common Area that is the Association's responsibility, including, by way of example only, painting of the exterior surfaces of the buildings adjacent to the Balcony area or Patio area, or maintenance, repair, or replacement by the Association of the fence surrounding the Patio area, or inspection and certification of fire safety and other life safety systems.
- 9.3.4 Architectural Approval; Structural Integrity of Buildings. Each Owner's rights and responsibilities for maintenance, repair, and replacement are subject to all applicable provisions of the Governing Documents, including but not limited to Article 7 ("Architectural Approval"). Nothing in this Section 9.3 shall be construed to permit any interference with or damage to the structural integrity of any building.
- 9.4 Wood Destroying Organisms; Owners' Duty to Prevent and Notify. To the extent provided in *Civil Code* section 4780(a) and *Civil Code* section 4785, the Association shall be responsible for and shall have the authority to perform maintenance and repair of the Common Area occasioned by the presence of wood-destroying pests or organisms, including decay, dry rot, and termites. Notwithstanding the foregoing, every Owner and Resident shall be responsible for taking reasonable measures to prevent conditions that may cause such damage, including but not limited to use of proper spacers under planters and other objects that may trap moisture, stacking of firewood on racks, and prompt removal of leaves, dirt, and other debris and may be liable to the Association for the cost of maintenance, repair, or replacement due to damage as provided in

Section 9.8 ("Owners' Liability to Association for Negligent Damage"). Each Owner shall promptly notify the Association of any water or sewage backups or overflows, any water leaking within or into his or her Unit, or if infestation by or damage from wood destroying organisms anywhere in the Project is discovered.

- 9.5 Authority for Entry of Unit or Exclusive Use Common Area. The Association or its agents shall have the right to enter any Unit or any portion of Exclusive Use Common Area, whenever such entry is necessary, in the Board's discretion, for purposes of inspection and/or in connection with the performance of any maintenance, repair, construction, or replacement for which the Association is responsible or which it is authorized to perform. Such entry shall be made with as little inconvenience to the Residents as practicable and only upon reasonable advance written notice of not less than twenty-four (24) hours, except that in emergency situations notice shall be given as the situation reasonably permits.
- 9.6 Board Discretion to Require Maintenance. The Board shall have the discretion to determine whether any maintenance, repair, or replacement that is the responsibility of an Owner, including within a Unit, is necessary to preserve the appearance and value of the property within the Project or any portion thereof and may notify an Owner of the work the Board deems necessary. In the event an Owner fails to perform such work within sixty (60) days after notification by the Board to the Owner, the Board may, after written notice to the Owner and the right of a hearing before the Board pursuant to Section 13.12 ("Hearing Called by the Board; Executive Session; Open Meeting"), cause such work to be done and charge the cost thereof to the Owner as a Reimbursement Assessment.
- 9.7 Limitation of Association Liability. The Association shall not be responsible or liable for damage to a Condominium or its contents, except to the extent arising from the willful misconduct or gross negligence of the Association, its employees, contractors, or agents.
- 9.8 Owners' Liability to Association for Negligent Damage. In the event the need for any maintenance, repair, or replacement performed by the Association is caused by the willful or negligent act or omission of an Owner or a Resident, a member of his or her household, pets, tenants, invitees, or guests, the cost of such maintenance, repair, or replacement not covered by insurance, including any applicable insurance deductible and the cost of materials, labor, supplies, and services shall be charged to, and paid by, the Owner of the Condominium in the form of a Reimbursement Assessment.
- 9.9 Owners' Liability to Other Unit Owners or Residents. In the case of damage to a Condominium or its contents arising or allegedly arising from another Unit or the conduct of the Owner or Resident of another Unit (for example and not by way of limitation, damage to a Unit resulting from water leaking from another Unit), if any affected party or their insurers should assert claims against the Owner or Resident of another Unit to recover damages, any such claims shall not alter the

obligation of each Unit Owner as provided in this Declaration to maintain, repair, and replace their respective Units; to carry insurance; and to perform and/or pay for repairs or reconstruction of their Unit in the event of casualty. Moreover, any such claims shall not affect the authority of the Board to enforce a Unit Owner's obligations with respect to his or her own Unit under the Declaration and shall not obligate the Association or the Board to intervene in any such claims or disputes between Unit Owners or Residents.

ARTICLE 10 INSURANCE

- 10.1 Insurance Coverage to be Maintained by Association. The Association shall procure and maintain, as a common expense of all Owners, the types of insurance described in Section 10.3 ("Master Hazard Insurance to be Maintained by Association"), Section 10.4 ("Commercial General Liability Insurance to be Maintained by Association"), and Section 10.5 ("Other Insurance to be Maintained by Association"), if and to the extent such insurance, with the coverages described below, is available at a reasonable premium cost.
- 10.2 Premiums. The costs of insurance maintained by the Association or pursuant to this Declaration shall be a common expense of the Association and shall be included in the Regular Assessment.
- 10.3 Master Hazard Insurance to be Maintained by Association.
- 10.3.1 Scope of Coverage. The Association shall maintain a Special Form or All Risk blanket policy of property insurance covering the following real and personal property: (i) the building structures including any additions or extensions thereto; (ii) all of the Common Area fixtures, machinery, and equipment permanently affixed to the building; windows, monuments, lighting fixtures, and exterior signs; (iii) all furnishings equipment, and personal property owned by the Association or owned in common by all of the Owners; (iv) the standard fixtures installed within the Units at the time of original construction by the developer and any equivalent replacements thereof, including but not limited to interior walls and doors; ceiling, floor and wall surface materials (for example, paint, wallpaper, mirrors, carpets, and hardwood floors); utility fixtures (including gas, electrical, and plumbing); cabinets, built-in appliances; heating and air-conditioning systems; water heaters installed as part of the original construction and any equivalent replacement thereof; but excluding any personal property located within a Unit and excluding any improvements or upgrades to any of the foregoing to the extent the replacement cost thereof made after the original construction exceeds the replacement cost of the original improvements as determined on the date immediately preceding the date of the damage or destruction

of the improvement or upgrade; and (v) lawns, trees, shrubs and plants upon the Common Area. The limits of coverage shall be equal to one hundred percent (100%) of the full insurable replacement costs exclusive of land, foundation, excavations, and other items normally excluded from coverage. The policy may contain a reasonable deductible and the amount of the deductible shall be added to the face amount of the policy in determining whether the insurance equals the replacement cost.

10.3.2 Policy Endorsements. The policy may include such endorsements as the Board, in its discretion, shall determine based on the character and replacement cost of the Common Area and Unit improvements from time to time, such as:

- (i) an agreed amount endorsement or its equivalent;
- (ii) a guaranteed replacement cost or replacement cost endorsement;
- (iii) an inflation guard endorsement, an increased cost of construction endorsement;
- (iv) coverage for costs of demolition and coverage for cost of demolition in the event of total or partial destruction and a decision not to rebuild;
- (v) glass coverage;
- (vi) coverage for loss or damage as a result of theft, vandalism, malicious mischief; coverage for equipment breakdown of any equipment required to run and operate the Project; sprinkler leakage; windstorm, or water damage;
- (vii) a contingent liability from operation of building laws endorsement or its equivalent;
- (viii) a determinable cash adjustment clause or a similar clause to permit cash settlement covering full value of the improvements in case of total or partial destruction and a decision not to rebuild; and
- (ix) maintenance fees receivable coverage in case of damage to a Unit by a covered peril and the Board is unable, after reasonable effort to collect assessments from the Owner of the affected Unit.

10.3.3 General Policy Provisions. Such policy shall:

- (i) name the Association as the First Insured and the Owners as Insured with policy benefits payable to the Association as trustee for the Owners or any of them;
- (ii) contain a standard Mortgagee clause;
- (iii) provide a waiver of subrogation as to any and all claims against the Association, its officers and directors, the manager, and the Owners and a waiver of all defenses based upon acts of the insureds or the existence of co-insurance; and
- (iv) shall require that at least thirty (30) days' prior written notice be given to the Association by the insurer before cancellation except that in the case of cancellation for nonpayment of premiums or for fraud the notice shall be given no less than ten (10) days prior to the effective date of the cancellation.

10.4 Commercial General Liability Insurance to be Maintained by Association. The Association shall maintain commercial general liability insurance insuring the Association, its officers and directors, its manager and agents, and the Owners against any liability incident to ownership, maintenance, and repair of the Common Area, but excluding the liability of an Owner incident to personal bodily injury and property damage occurring within that Owner's Unit or in any other Unit or upon the Common Area resulting from the negligence of that Owner. The limits of liability shall be set by the Board but shall in no event be less than Three Million Dollars (\$3,000,000) or any higher applicable limit set forth in *Civil Code* section 5805.

10.4.1 Scope of Coverage. Such liability insurance policy shall insure against bodily injury, death, or property damage occurring in, on or about any portion of the Common Area and if available and at a reasonable cost as determined by the Board shall include:

- (i) water damage liability,
- (ii) hired and non-owned vehicle coverage, theft and collision coverage,
- (iii) liability for property of others,
- (iv) off-premises employee coverage, and
- (v) such other risks as are customarily covered in condominium projects.

- 10.4.2 Other Provisions. If available and at a reasonable cost as determined by the Board, such liability insurance policy:
- (i) shall contain a waiver of subrogation as to claims against the Association, the Board members, the Owners and members of the Owner's family who reside with such Owner, except in cases of arson or fraud;
 - (ii) shall contain a waiver of the defense of invalidity on account of the conduct of any Owner over which the Board has "no control;"
 - (iii) shall require that at least thirty (30) days' prior written notice be given to the Association by the insurer before cancellation except that in the case of cancellation for nonpayment of premiums or for fraud the notice shall be given no less than ten (10) days prior to the effective date of the cancellation;
 - (iv) shall provide that in no event shall the insurance be brought into contribution with insurance purchased individually by Owners or their Mortgagees;
 - (v) shall exclude policies obtained by the individual Owners from consideration under any "other insurance" clause; and
 - (vi) shall contain a provision requiring the insurer to defend lawsuits for which there is coverage under the policy even if the allegations are fraudulent, but authorizing the insurer to make such investigation and settlement of any claim or suit within the policy limit as it deems expedient.

10.5 Other Insurance to be Maintained by Association.

10.5.1 Directors' and Officers' Insurance. The Association shall maintain directors' and officers' liability insurance with limits to be set by the Board but in no event less than One Million Dollars (\$1,000,000) or any higher applicable limit set forth in *Civil Code* section 5800, and containing a cross-liability endorsement and waiver of subrogation as to the Association, the officers, and the directors, and the agents and employees of any of them. Coverage for prior acts, to the extent obtainable, shall be included.

10.5.2 Workers Compensation Insurance. The Association shall maintain workers' compensation insurance to the extent necessary to comply

with any applicable laws and may carry such insurance at any time as determined by the Board.

10.5.3 Fidelity Bond. The Association shall maintain a standard fidelity bond covering dishonest acts on the part of officers and directors of the Association, the manager, and any employees or volunteers who are responsible to handle funds of the Association. Such bond shall name the Association as obligee, shall be written in an amount which shall be determined by the Board, and shall contain a waiver of any defense based on the exclusion of persons serving without compensation.

10.5.4 Other Insurance. The Association may maintain at any time and from time to time any other insurance, including but not limited to earthquake and/or flood insurance, and bonds as the Board may from time to time deem necessary or desirable.

10.6 Insurance to be Maintained by Owner. Owners shall have the following obligations and rights to carry individual insurance:

10.6.1 HO6 Condominium Owner's Policy. Each Owner shall be responsible, at his or her sole expense, to carry an "HO6 Condominium Owners Policy" or the equivalent insurance covering the following risks which are not covered by the insurance policies carried by the Association:

- (i) the Owner's individual liability for damage to property or injury to person of others occurring within the Unit or the appurtenant Exclusive Use Common Area, in an amount not less than Three Hundred Thousand Dollars (\$300,000) for each occurrence or in such other amount as the Board may establish from time to time by Rule,
- (ii) property damage to contents and personal property within the Owner's Condominium in such amount as the Owner shall determine is adequate but not less than Seventy Thousand Dollars (\$70,000),
- (iii) insurance on Owner upgrades and betterments (as discussed below in Section 10.6.2) in such amount as the Owner shall determine is adequate to cover damage to upgrades and betterments to the extent the cost is not covered by the master property insurance policy,
- (iv) additional living expenses, loss of use, and loss of rental income,

- (v) Earthquake Loss Assessment Coverage ("ELAC") through the California Earthquake Authority,
- (vi) loss assessment coverage in an amount not less than Fifty Thousand Dollars (\$50,000), and
- (vii) insurance to pay the deductible under the blanket insurance policy carried by the Association pursuant to Section 10.3 ("Master Hazard Insurance to be Maintained by Association") in an amount not less than the deductible under that policy or such amount as the Owner shall determine is adequate.

10.6.2 Insurance for Upgrades. The hazard insurance carried by the Association pursuant to Section 10.3 ("Master Hazard Insurance to be Maintained by Association") is not intended to cover Owner-installed upgrades or betterments to the extent the replacement cost thereof made after the original construction exceeds the replacement cost of the original improvements. Each Owner shall be entitled to separately insure upgrades or betterments made by the Owner to the Unit or the Exclusive Use Common Area. Any such policy shall contain a waiver of subrogation as to any and all claims against the Association, its officers and directors, the manager, and the Owners and a waiver of all defenses based upon acts of the insureds or the existence of co-insurance. Any Owner obtaining such separate insurance shall deposit with the Board a duplicate copy or a certificate of insurance of each such policy.

10.6.3 No Overlapping Coverage. No Owner shall obtain or maintain any policy of insurance that reduces the amount of coverage under any policy obtained or maintained by the Association pursuant to Section 10.3 ("Master Hazard Insurance to be Maintained by Association"), Section 10.4 ("Commercial General Liability Insurance to be Maintained by Association"), or Section 10.5 ("Other Insurance to be Maintained by Association"). If any Owner violates the provisions of this Section 10.6.3, any diminution in insurance proceeds otherwise payable to the Association that results from the existence of such other insurance will be chargeable to the Owner who acquired such other insurance and each Owner hereby assigns to the Association the proceeds of any such policy to the extent any such decrease in proceeds in fact occurs (such proceeds to be applied pursuant to the Declaration as if produced by the Association's coverage). Such Owner will be liable to the Association to the extent of any diminution and the Association shall levy a Reimbursement Assessment against such Owner in the amount of such diminution.

- 10.6.4 Other Owner-maintained Insurance. Each Owner shall be responsible, at his or her sole cost and expense, to obtain such other insurance as the Owner shall determine is adequate to cover such other risks as the Owner shall determine.
- 10.6.5 Evidence of Insurance; No Obligation of Association. Upon request from the Board, each Owner shall provide evidence of such insurance annually. If an Owner fails to obtain any insurance he or she is obligated or permitted to obtain pursuant to this Declaration, nothing in this Declaration shall be construed to impose any obligation whatsoever on the Association to insure that which the Owner does not insure. The right of the Board to request evidence of insurance that an Owner is obligated to carry pursuant to this Declaration shall not be deemed to impose a duty on the Board or the Association to request such evidence of insurance or impose on the Association any liability to any person arising or claimed to arise out of any action or inaction by the Board, the Association or anyone acting on the Association's or the Board's behalf with respect to verifying any Owner's compliance with the Owner's obligation to carry insurance.
- 10.7 HO4 Renter's Policy. Each Owner who rents or leases a Unit shall require the tenant to purchase and maintain in force during the tenancy an "HO4 Renter's Policy" or the equivalent with a minimum personal liability limit of Three Hundred Thousand Dollars (\$300,000). If a tenant fails to obtain any insurance he or she is obligated or permitted to obtain pursuant to this Declaration, nothing in this Declaration shall be construed to impose any obligation whatsoever on the Association to insure that which the tenant does not insure. Upon request from the Board, each Owner shall provide evidence of such tenant's insurance annually.
- 10.8 Insurance Proceeds. Proceeds of all insurance policies owned by the Association shall be received by the Association and shall be distributed to the Association, the Owners, and their Mortgagees subject to the provisions of the Declaration as their interest may appear; *provided, however,* that whenever repair or reconstruction is required, the proceeds of any insurance received by the Association as a result of any loss shall be applied to such repair or reconstruction except to the extent of any excess insurance proceeds as provided in Section 11.3.4 ("Excess Insurance Proceeds") or in case of destruction and a decision not to rebuild subject to applicable provisions of Section 11.5 ("Bids to Rebuild Rejected; Alternative Plan") and/or Section 11.6 ("Sale of Entire Project").
- 10.9 Responsibility for Payment of Deductible.
- 10.9.1 Damage to Common Area. Subject to the provisions of Section 9.8 ("Owners' Liability to Association for Negligent Damage"), in the event

of damage to the Common Area (including Exclusive Use Common Area) that is covered by the hazard insurance policy maintained by the Association pursuant to Section 10.3 ("Master Hazard Insurance to be Maintained by Association"), the deductible shall be paid by the Association.

- 10.9.2 Damage to Unit. In the event of damage to a Unit that is covered by the hazard insurance policy maintained by the Association pursuant to Section 10.3 ("Master Hazard Insurance to be Maintained by Association"), the Owner of the damaged Unit shall pay the deductible.
- 10.9.3 Allocation of Deductible. In the event of a single casualty that results in damage to Common Area and to one (1) or more Units which damage is covered by the hazard insurance carried by the Association pursuant to Section 10.3 ("Master Hazard Insurance to be Maintained by Association"), the obligation to pay the deductible shall be allocated between the Association and the affected Unit Owner(s) in proportion to the claim settlement amount received by each party.
- 10.9.4 Tort Damages. Nothing in this Section 10.9 shall be deemed to affect any person's right to recover the amount of any deductible paid by such person from any other person responsible for the loss under tort or other theories of liability.
- 10.10 Owners' Liability for Conditions Affecting Insurance. As provided in Section 5.11 ("Conditions Affecting Insurance"), the responsible Unit Owner shall be liable to the Association if anything is done, placed, or kept within the Project that increases the rate of insurance or results in the cancellation of insurance under any insurance policy maintained by the Association.
- 10.11 Insurance Carriers. All insurance policies carried by the Association shall be written by companies that are not prohibited from doing business in the State of California.
- 10.12 Annual Review of Policies. The limits and coverage of all insurance policies carried by the Association shall be reviewed at least annually by the Board and increased or decreased in its discretion.
- 10.13 Coverage Not Available; Disclaimer. In the event any insurance policy or any endorsement listed in Section 10.3 ("Master Hazard Insurance to be Maintained by Association"), Section 10.4 ("Commercial General Liability Insurance to be Maintained by Association"), and Section 10.5 ("Other Insurance to be Maintained by Association") is for any reason not available, then the Association shall obtain such other or substitute policy or endorsement as may be available which provides, as nearly as possible, the coverage described above. The Association, and its directors and officers, shall have no liability to any Unit

Owner or Mortgagee if, after good faith effort, it is unable to obtain or maintain the insurance required pursuant to Section 10.3, Section 10.4, or Section 10.5 because the insurance is no longer available or, if available, can be obtained or maintained only at a cost that the Board in its sole discretion determines is unreasonable under the circumstances, or the Members fail to approve any Special Assessment or increase in the Regular Assessment needed to fund the insurance premiums. In accordance with *Civil Code* section 5810, as soon as reasonably practicable, the Association shall notify the Members by Individual Notice if any of the policies described in Section 7.5.8 of the Bylaws ("Summary of Association's Insurance Policies") have lapsed or been canceled, and are not immediately renewed, restored, or replaced, or if there is a significant change, such as a reduction in coverage or limits or an increase in the deductible for any of those policies. If the Association receives any notice of non-renewal of a policy described in Section 7.5.8 of the Bylaws and replacement coverage will not be in effect by the date the existing coverage will lapse, the Association shall immediately notify the Members by Individual Notice.

- 10.14 Copies of Policies. Copies of all insurance policies (or certificates of insurance) and paid invoices showing that premiums have been paid shall be retained by the Association and shall be available for inspection by Owners at any reasonable time.
- 10.15 Adjustment of Losses. The Board is appointed attorney-in-fact by each Owner to file all claims and to negotiate and agree on the value and extent of any loss under any policy carried by the Association pursuant to Section 10.3 ("Master Hazard Insurance to be Maintained by Association"), Section 10.4 ("Commercial General Liability Insurance to be Maintained by Association"), or Section 10.5 ("Other Insurance to be Maintained by Association"). The Board is granted full right and authority to compromise and settle any claims or enforce any claim by legal action or otherwise and to execute releases in favor of any insured.
- 10.16 Premiums. The premiums for any insurance obtained by the Association shall be a common expense of the Association and shall be paid for out of the operating fund of the Association.

ARTICLE 11 DAMAGE OR DESTRUCTION; CONDEMNATION

- 11.1 Emergency Repairs. Without waiting to obtain insurance settlements or bids, the Board may undertake such emergency repair work after a casualty as it may deem necessary or desirable under the circumstances including but not limited to mitigating or removing dangerous conditions and other actions that may be necessary to comply with applicable laws ordinances, and regulations; and the Board may charge the operating account for the costs thereof.

- 11.2 Damage to Single Unit. If the Project is damaged by fire or other casualty for which the Association is insured, and damage is limited to a single Unit and does not involve any Exclusive Use Common Area or other Common Area, the insurance proceeds shall be paid to the Owner or Owners of such Unit, or the Mortgagees thereof as their respective interests appear, and such Owner or Mortgagees shall use the same to rebuild or repair such Unit. In the event the insurance proceeds are insufficient to complete such work or the damage is not insured against, the Owner shall pay and advance such additional sums as may be necessary to complete such rebuilding and repair.
- 11.3 Damage to Two or More Units or to Any Common Area. If the Project is damaged by fire or other casualty for which the Association is insured, and such damage extends to two (2) or more Units or extends to any part of the Common Area including any Exclusive Use Common Area, then the following provisions shall apply:
- 11.3.1 Evaluation of Damage. The Board shall: (i) prepare or cause to be prepared an estimate of loss which includes a scope of work, (ii) obtain bids from responsible contractors to restore the damaged or destroyed property to its condition immediately prior to such damage or destruction (including compliance with current building code and ordinance requirements and any modifications approved by the Board), and (iii) obtain a determination of the amount of available insurance proceeds that will be recovered from the Association's insurance carrier(s).
- 11.3.2 Appraisal of Damaged Property. The Board may, and upon the written request of Owners holding at least twenty percent (20%) of the Total Voting Power shall, cause an appraisal of the Project to be made, which appraisal shall set forth an opinion as to the value of the Project as it then exists (in its damaged condition) together with an opinion of the increment in value, if any, that would accrue if the Project or some portion thereof were razed.
- 11.3.3 Insurance Proceeds Equal Eighty-five Percent or More. If the amount of available insurance proceeds is equal to at least eighty-five percent (85%) of the cost of repairing or rebuilding the damaged property to its condition immediately prior to such damage or destruction, the insurance proceeds shall be paid to the Association, and the Board shall thereupon contract to repair or rebuild the damaged portions of the Project, including all Units, and the Common Area so damaged. In the event the insurance proceeds together with the amount of reserve funds allocated for repair or replacement of damaged components, are insufficient to pay all of the costs of repairing and/or rebuilding, the Board shall levy a Special Assessment against all Owners up to the maximum amount permitted without a Member approval vote pursuant

to Section 8.8.2 ("Permitted Amount of Special Assessments") to pay for such deficiency.

- 11.3.4 Excess Insurance Proceeds. Any excess insurance funds shall be deposited in the operating account of the Association.
- 11.3.5 Insurance Proceeds Are Less Than Eighty-five Percent. If the amount of available insurance proceeds is less than eighty-five percent (85%) of the cost of repairing or rebuilding the damaged property to its condition immediately prior to such damage or destruction, then such insurance proceeds shall be paid to a bank, savings and loan association, or trust company designated by the Board. Said funds shall be held for the benefit of all Owners and their Mortgagees, as their respective interests shall appear, pursuant to an insurance trust agreement consistent with the provisions of this Declaration, approved and executed by the Board. The Board shall obtain bids from responsible contractors and shall, as soon as possible, call a special meeting of the Owners and First Mortgagees. Notice of such meeting shall include a summary of the appraisal, if any, obtained pursuant to Section 11.3.2 ("Appraisal of Damaged Property"), a summary of the bids for repair, restoration, and reconstruction, and the amount of insurance proceeds payable to the Association as a result of the damage, any reserve funds allocated for repair or replacement of damaged components, and the maximum amount of a Special Assessment permitted without a Member approval vote pursuant to Section 8.8.2 ("Permitted Amount of Special Assessments"). Following such meeting a vote of the Members shall be taken on whether to accept any of such bids. Alternatively, the Owners by vote of two-thirds (2/3) of the Total Voting Power of the Association may elect to sell the Project.
- 11.4 Bid to Rebuild Is Accepted. In the event a bid to rebuild the damaged property is accepted pursuant to Section 11.3.5 ("Insurance Proceeds Are Less Than Eighty-five Percent"), the Board shall levy a Special Assessment against all Owners pursuant to Section 8.8.2 ("Permitted Amount of Special Assessments") to make up the deficiency, if any, between the total insurance proceeds and allocated reserve funds and the contract price for such repair or rebuilding. All insurance proceeds, including any subject to liens of Mortgagees, shall be used for such rebuilding or repair. If any bid shall be accepted to repair or rebuild, the contractor shall provide a completion bond naming the Association and each Owner as beneficiaries.
- 11.5 Bids to Rebuild Rejected; Alternative Plan. In the event all bids to rebuild the damaged property are rejected pursuant to Section 11.3.5 ("Insurance Proceeds Are Less Than Eighty-five Percent"), but two-thirds (2/3) of the Total Voting Power of the Association and the required percentage of First Mortgagees, as

provided in Section 12.17 ("Requiring Mortgagees' Consent") has not voted to sell the Project, the Board shall recommend such alternative reconstruction of the damaged or destroyed improvements at a lesser cost as it deems reasonable or adequate, which alternatives shall be placed to bid and the bids presented for a vote of the Owners and First Mortgagees in the manner described above. Notwithstanding the provisions of Section 12.17 ("Requiring Mortgagees' Consent"), in the event that no such alternative plan of reconstruction is accepted by the Owners and First Mortgagees or if repair or rebuilding has not commenced within one (1) year after the date of damage or destruction, the Board is hereby empowered, as the agent for all Owners, to sell the entire Project, including all Units and the Common Area in its then present condition, on terms satisfactory to the Board.

11.6 Sale of Entire Project.

11.6.1 Authority of Board. The Board shall be authorized to incur fees for legal and accounting services, appraisals, engineering, examination of title and other expenses reasonably related to the sale of the Project. The members of the Board are hereby authorized to execute and deliver, on behalf of all of the Owners, any instruments necessary or required to affect such a sale or sales and each Owner shall be obligated to execute and deliver such instruments and to perform such acts as may be necessary to affect such sale or sales.

11.6.2 Disbursement of Proceeds. After payment of expenses directly relating to the sale of the Project and properly payable out of the escrow at the closing of the sale, the remaining sale proceeds, together with any other sums held by the Association or any trustee and any remaining assets of the Association (which assets shall be liquidated to the extent possible) shall be disbursed as follows:

- (a) To pay any outstanding expenses of the Association or of the insurance trustee relating to the sale of the Project, including, but not limited to, costs of appraisal, collection of insurance proceeds, compensation of the insurance trustee, engineering, legal and accounting expenses, costs of preparing the Project for sale and other related expenses.
- (b) To pay all other debts and liabilities of the Association.
- (c) To pay the Owners and their respective Mortgagees according to the respective fair market values of the Units at the time of the destruction as determined by an independent appraisal as described in Section 11.10 ("Appraisals"). An equitable adjustment shall be made in the distribution to account for

Owners' liabilities to the Association, including, but not limited to, liability for unpaid Assessments and Additional Charges.

11.7 Condemnation of Common Area.

11.7.1 Association to Represent Owners. If at any time all or any portion of any Common Area, or any interest therein, shall be taken for any public or quasi-public use under any statute, by right of eminent domain, or by private purchase in lieu of eminent domain, the Association shall represent the interests of all Owners in any proceedings relating to such condemnation to the extent such Owners have any interest in the Common Area.

11.7.2 Allocation of Condemnation Award. Subject to the rights of Institutional Mortgagees as provided in Section 12.16 ("Mortgagees' Rights to Insurance Proceeds or Condemnation Awards"), the entire compensation or award in condemnation (to the extent such award is not apportioned among the Owners by court judgment or by agreement between the condemning authority and each of the affected Owners in the Project), shall be distributed proportionately to all Owners and their Mortgagees as their interests appear according to the respective fair market values of their Condominiums immediately prior to the time of condemnation as determined by an independent appraisal as described in Section 11.10 ("Appraisals"); *provided, however*, that in the case of partial condemnation, if the cost of obtaining such appraisal and effecting such distribution is likely to amount to more than fifty percent (50%) of the condemnation proceeds, such proceeds may be retained by the Association and paid to the Association and shall be used in the manner determined by the Board, provided that such use shall not be inconsistent with the purposes of the Association.

11.8 Condemnation of One or More Units.

11.8.1 Total Condemnation of Unit. If an entire Unit or so much thereof as to render the remainder unfit for use as a dwelling, is condemned or taken for a public or quasi-public use pursuant to any statute, by right of eminent domain, or by private purchase in lieu of eminent domain, the Owner's membership in the Association shall terminate as of the last day of the month in which the condemner obtains the right to possession, or upon the Owners vacating the premises, whichever occurs last.

11.8.2 Partial Condemnation of a Unit. If only a portion of a Unit is taken and the remainder is fit for use as a dwelling, the Owner shall continue to be a Member of the Association.

- 11.8.3 Rights of Association. In any condemnation action involving an Owner's Unit, the Association shall have the right to seek compensation for any damages incurred by the Association.
- 11.9 Repair or Rebuilding After Condemnation. After partial condemnation of the Common Area or condemnation of one (1) or more Units, the remaining portion of the Project shall be repaired or rebuilt (unless seventy-five percent (75%) of the Owners vote not to repair or rebuild), and shall be resurveyed if necessary, and the Declaration shall be amended to reflect such taking and to readjust proportionately the percentages of undivided interest of the remaining Owners in the Project. If seventy-five percent (75%) of the Owners vote not to repair or rebuild the remaining portion of the Project, the Board is hereby empowered, as the agent for all Owners, to sell the remaining portion of the Project, including all Units and the Common Area in its then present condition, on terms satisfactory to the Board, subject to applicable provisions of Section 11.5 ("Bids to Rebuild Rejected; Alternative Plan") pursuant to Section 11.6 ("Sale of Entire Project").
- 11.10 Appraisals. Where the provisions of this Article 11 require an independent appraisal of property, said appraisal shall be made by an experienced and qualified real estate appraiser certified in the State of California, which appraiser shall be selected by the Board.
- 11.11 Notice to Mortgagees; Mortgagees' Right to Proceeds. Nothing in this Article 11 shall be deemed to abridge the rights of Mortgagees set forth in Section 12.11 ("Notices to Eligible Holders") and Section 12.16 ("Mortgagees' Right to Insurance Proceeds or Condemnation Awards").

ARTICLE 12 RIGHTS OF MORTGAGEES

- 12.1 Conflict. Notwithstanding any contrary provision contained elsewhere in the Governing Documents, the provisions of this Article 12 shall control with respect to the rights and obligations of Institutional Mortgagees specified in this Article 12.
- 12.2 Institutional Mortgagee Defined. "Institutional Mortgagee" shall mean (i) a First Mortgagee that is a bank, a savings and loan association, an insurance or mortgage company, or other entity or institution chartered under or regulated by any federal and/or state law; (ii) an insurer or governmental guarantor of a First Mortgage including but not limited to the Federal Housing Authority and the Department of Veterans Affairs; or (iii) the State of California.
- 12.3 Eligible Holder Defined. "Eligible Holder" shall mean any Institutional Mortgagee who has delivered a written notice to the Association which contains its name and address and the number or address of the Condominium encumbered by the

Mortgage and requests that the Association deliver a written notice to it of any or all of the events specified in Section 12.11 ("Notices to Eligible Holders").

- 12.4 Mortgages Permitted. Any Unit Owner may encumber his or her Unit with a Mortgage. Upon request of the Board, any Owner who encumbers his or her Unit with a Mortgage shall notify the Association in writing of the name and address of his or her Mortgagee and Mortgage insurer, if any.
- 12.5 Intention to Conform to Mortgagees' Requirements. It is intended that the Declaration, the Bylaws, and the Articles, and the Project in general, shall be able to meet the requirements necessary to purchase, guarantee, insure, or subsidize any Mortgage of a Condominium in the Project by the Federal Home Loan Mortgage Corporation and the Federal National Mortgage Association or any other or successor institution(s) serving the same or similar function. To that end, the Board is authorized, but not obligated, to take any action or adopt any resolution required by any Mortgagee to bring the Declaration or the Bylaws or the Project into conformity with the requirements of any of these entities or agencies as the Board in its discretion shall determine is reasonably achievable and consistent with the interests of the Association and of its Members as a whole.
- 12.6 Subordination of Assessment Lien. Assessment liens shall be subordinate to the lien of First Mortgages to the extent provided in Section 8.22 ("Subordination to Lien of First Mortgage").
- 12.7 Notice of Mortgage Default. Each Mortgagee of a Unit shall give the Association written notice of default by its mortgagor under the Mortgage within ten (10) days following recordation of a notice of default in accordance with the provisions of *Civil Code* section 2924b or any amendment or superseding statute.
- 12.8 Reserve Fund. The Association shall maintain reserve funds in a reserve account which shall be sufficient to pay for maintenance, repair, and periodic replacement of Common Area improvements that the Association is obligated to maintain. This reserve fund shall be funded by Regular Assessments payable in installments rather than by Special Assessments; *provided, however*, that this provision shall not be deemed to limit the power of the Association to levy any type of assessment or charge authorized by this Declaration.
- 12.9 Effect of Right of First Refusal. The Governing Documents do not contain any provisions creating a "right of first refusal," but should any such right be created in the future, any such right shall not impair the rights of any Institutional Mortgagee to: (i) foreclose or take title to any Unit pursuant to the remedies provided in the Mortgage, (ii) accept a deed (or assignment) in lieu of foreclosure in the event of a default by a mortgagor, or (iii) sell or lease a Unit so acquired by the Institutional Mortgagee.

- 12.10 Management Contracts; Professional Management. Any agreement for professional management of the Project shall be for a term not to exceed one (1) year without the consent of fifty-one percent (51%) of the Total Voting Power of the Association; *provided, however*, that in no event shall such an agreement exceed a term of three (3) years. Any such agreement shall provide that the agreement may be terminated by either party without cause and without payment of a termination fee upon not more than ninety (90) days' written notice. The approval of sixty-seven percent (67%) of the Total Voting Power of the Association and fifty-one percent (51%) of the Eligible Holders, based on one (1) vote for each First Mortgage owned, shall be required to assume self-management of the Project, if professional management of the Project has been required by an Eligible Holder at any time.
- 12.11 Notices to Eligible Holders. An Eligible Holder (as defined in Section 12.3, above) is entitled to timely written notice of:
- (a) Any condemnation loss or casualty loss that affects either a material portion of the Project or of the Condominium on which the Eligible Holder holds a First Mortgage;
 - (b) Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association.
- 12.12 Disclosures by Lenders. Any Mortgagee can furnish information to the Association, Board, or Members concerning the status of any Mortgage.
- 12.13 Mortgagees' Right to Attend Meetings. Because of its financial interest in the Project, any Mortgagee may appear (but cannot vote) at meetings of the Association, the Board, or the Members to draw attention to violations of this Declaration that have not been corrected or that have been made the subject of remedial proceedings or assessments.
- 12.14 Inspection of Books and Records. Upon request, any Owner or First Mortgagee shall be entitled to inspect the books, records, and financial statements of the Association and the Governing Documents and any amendments thereto during normal business hours or under other reasonable circumstances.
- 12.15 Mortgagees' Right to Pay Taxes and Insurance Premiums. First Mortgagees of individual Units may, jointly or separately, pay taxes or other charges which are in default and which may become or have become a charge against the Common Area, or secure new hazard insurance coverage on the lapse of a policy for such Common Area. First Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association and, on demand, the Association shall execute an agreement in favor of all Institutional Mortgagees reflecting entitlement to reimbursement.

12.16 Mortgagees' Right to Insurance Proceeds or Condemnation Awards. No Owner or other party shall have priority over any right of Institutional Mortgagees in case of a distribution to Owners of insurance proceeds or condemnation awards for losses to or taking of a Unit or the Common Area. Any provision to the contrary in the Governing Documents is to such extent void. All applicable insurance policies shall contain loss payable clauses acceptable to a majority of the affected Institutional Mortgagees, naming the Mortgagees as their interests may appear.

12.17 Requiring Mortgagees' Consent. Except as provided by statute in the case of condemnation or substantial loss to Units and/or Common Area, unless sixty-seven percent (67%) of the Institutional Mortgagees, based on one (1) vote for each First Mortgage owned, or sixty-seven percent (67%) of the Owners have given their prior written approval, the Association shall not be entitled to:

- (a) Use hazard insurance proceeds for losses to any Project property (whether to Units or Common Area) for other than the repair, replacement or reconstruction of the Project property;
- (b) By act or omission seek to partition or subdivide any Unit;
- (c) By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Area. The granting of easements for public utilities or for the other public purposes consistent with the intended use of the Common Area by the Project shall not be deemed a transfer within the meaning of this clause;
- (d) Change the pro rata interests or obligations of any individual Condominium for the purpose of levying assessments or allocating the distribution of hazard insurance proceeds or condemnation awards or for determining pro rata share of ownership interest in Common Area provided that no Owner's undivided interest in the Common Area cannot be changed without the consent of that Owner;
- (e) By act or omission seek to change, waive or abandon the provisions of this Declaration, or the enforcement of any of them, pertaining to architectural design control of the exterior appearance of structures in the Project, the maintenance of the Common Area, walks, fences, and driveways or the upkeep of lawns and plantings in the Project.
- (f) By act or omission seek to abandon or terminate the Condominium project except for abandonment provided by statute in case of substantial loss to the Units and the Common Area.
- (g) Fail to maintain fire and extended coverage insurance on insurable Association property, including any Common Area improvements, on a

current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based on current replacement cost).

Any amendment or addition to the Declaration or Bylaws regarding any of the foregoing subjects shall not be considered material and need not be approved by Mortgagee if the amendment or addition is solely for the purpose of correcting technical errors or for clarification.

- 12.18 Mortgagees' Consent. Whenever consent of a Mortgagee is required for an action described in Section 12.17 ("Requiring Mortgagees' Consent"), any Mortgagee who receives a written request to approve an addition or amendment and who does not deliver or have its response postmarked within thirty (30) days after the date of the written request shall be deemed to approve the addition or amendment. All notices or other communications made pursuant hereto shall be in writing and shall be deemed properly delivered, given or served when (i) personally delivered against receipted copy; or (ii) mailed by certified or registered mail, postage prepaid, in either case (i) or (ii) to the parties at their last known address.
- 12.19 Effect of Amendments. No amendment to the Declaration, the Bylaws, or the Articles of Incorporation shall affect the rights of any Mortgagee under any Mortgage made in good faith and for value and recorded before the recordation of such amendment unless the Mortgagee either joins in the execution of the amendment or approves it in writing as part of such amendment.
- 12.20 Mortgage Protection. No breach of any of the covenants, conditions and restrictions nor the enforcement of any lien provisions contained in this Declaration shall render invalid the lien of any First Mortgage made in good faith and for value on any Condominium, but all of the covenants, conditions, and restrictions shall be binding upon and effective against any Owner whose title is derived through foreclosure, trustee's sale or otherwise.

ARTICLE 13 ENFORCEMENT; NOTICE; HEARINGS

- 13.1 Violations as Nuisance. Every act or omission constituting or resulting in a violation of any of the provisions of the Governing Documents shall be deemed to constitute a nuisance and, in addition to any other remedies which may be available, such nuisance may be abated or enjoined by the Association or its officers or Board of Directors or by any Owner; *provided, however*, that the Board shall not be obligated to take action to abate or enjoin a particular violation if, in the exercise of its discretion, the Board determines that acting to abate or enjoin such violation is not likely to foster or protect the interests of the Association and its Members as a whole. Notwithstanding the preceding sentence and without limiting the generality of the proviso therein, nothing in the Governing Documents

shall be deemed to impose upon the Association, the Board, or the officers, employees, or agents of the Association a duty to intervene in any physical dispute or altercation or any criminal or alleged criminal activity other than to notify law enforcement officials.

- 13.2 Violation of Law Is a Violation of the Declaration. Any violation of a state, municipal, or local law, ordinance or regulation pertaining to the ownership, occupancy, or use of any property within the Project is hereby declared to be a violation of this Declaration and subject to any and all of the enforcement procedures set forth herein.
- 13.3 Owners' Responsibility for Conduct and Damages. Each Owner shall be fully responsible for informing members of his or her household, Contract Purchasers, tenants, invitees, and guests of the provisions of the Governing Documents, and shall be fully responsible for the conduct, activities, and any Governing Document violation of any of them, and for any damage to the Project or the Association resulting from the negligent or intentional conduct of any of them or the conduct of any pet belonging to any of them. If a Condominium is owned jointly by two (2) or more persons, the liability of each Owner in connection with the obligations imposed by the Governing Documents shall be joint and several; that is, each co-Owner individually shall be fully liable and responsible and all co-Owners collectively shall be fully liable and responsible. The foregoing provisions of this Section 13.3 are in addition to and shall not limit the generality of the provisions of Section 5.8.2 ("Indemnification Regarding Business Activity"); Section 5.13 ("Animals"); Sections 6.7 ("Association as Third Party Beneficiary"); Section 6.8 ("Indemnification Regarding Tenant's Actions"); and Section 7.23 ("Disclaimer of Liability").
- 13.4 No Avoidance. No Owner may avoid the burdens or obligations imposed by the Governing Documents through non-use of any Common Area facilities or by abandonment of his or her Unit.
- 13.5 Enforcement Rights Are Cumulative. To the fullest extent permitted by law, including *Civil Code* section 5975, the Association, its directors, officers, or agents, and any Owner shall have the right to enforce any and all provisions of the Governing Documents by any proceeding at law or in equity, or, with respect to action by the Association, through the use of such other remedies (including self-help remedies that do not breach the peace or otherwise violate applicable law or this Declaration) as are available and deemed appropriate by the Board. Each remedy provided is cumulative and not exclusive.
- 13.6 Injunctions. Except for the non-payment of any Assessment levied pursuant to the provisions of this Declaration, it is hereby declared that a remedy at law to recover damages for a default in the performance of any of the terms and provisions of any of the Governing Documents or for the breach or violation of any such provisions is inadequate and that the failure of any Owner, Contract

Purchaser, member of his or her household, tenant, invitee, guest, or household pets or any other occupant or user of any of the property within the Project to comply with any provision of the Governing Documents may be enjoined in any judicial proceedings initiated by the Association, its officers or Board of Directors, or by any Owner or by their respective successors in interest.

- 13.7 Limitation on Association's Disciplinary Rights. To the extent provided in *Civil Code* section 4510, the Association shall not have the power and authority to cause a forfeiture or abridgment of an Owner's right to the full use and occupancy of his or her Unit as the result of the failure by such Owner, members of his or her household, Contract Purchaser, tenants, invitees, guests or pets to comply with any provision of the Governing Documents, except where such forfeiture or abridgment is the result of the judgment of a court of competent jurisdiction, a decision arising out of an arbitration proceeding, or a foreclosure or sale under private power of sale for failure of such Owner to pay Assessments levied by the Association pursuant to this Declaration and except to the extent of the Association's rights pursuant to Section 8.18 ("Assignment of Rents as Security for Payment"). The provisions of this Section 13.7 shall not affect the Association's right to impose other sanctions including imposing Enforcement Assessments as provided in Section 13.8 ("Imposing Sanctions").
- 13.8 Imposing Sanctions. Upon an explicit finding and for reasons specified by the Board following a hearing called by the Board and conducted in accordance with this Article 13, the Board shall have the power to impose sanctions on a Member who is in default in the payment of any Assessment or Additional Charge levied by the Board or is found to be in violation of any provision of the Governing Documents. Sanctions may include loss of Good Standing, suspension of other rights, and/or monetary penalties (fines), as described below.
- 13.8.1 Loss of Good Standing. The Board may suspend a Member's Good Standing for so long as the Member remains in default of such payment or until the violation is remedied. When a Member is not in Good Standing, his or her Association voting rights shall be suspended and the Member shall be disqualified from serving on the Board.
- 13.8.2 Suspension of Other Rights. The Board may suspend a Member's or a Resident's right to use Common Area recreational facilities for so long as a Member remains in default of such payment, or for such period as may be specified by the Board if the violation involves misbehavior related to Common Area recreational facilities.
- 13.8.3 Monetary Penalties (Fines). The Board may adopt a policy imposing monetary penalties or fines as Enforcement Assessments in accordance with a schedule of fines adopted by the Board pursuant to *Civil Code* section 5850 and distributed to the Members in the annual policy statement pursuant to *Civil Code* section 5310. Multiple fines

may be imposed for multiple violations. The schedule of fines may be changed by the Board by a Rule change pursuant to *Civil Code* section 4360.

- 13.8.4 Monthly Sanctions for Continuing Violations. In the case of a continuing violation, such as an uncorrected architectural violation, where an Owner fails to remedy the violation after notice from the Board to do so, the Board may impose sanctions, including monetary penalties, such sanctions to remain in effect for a period of one (1) month or until the continuing violation is remedied, whichever occurs sooner. (By way of example and not limitation, a violation in the nature of parking every day in a prohibited parking space would *not* constitute a “continuing violation” but each instance would constitute a separate violation.) If the continuing violation has not been remedied within the one (1) month period, the Board may impose separate and successive sanctions for the continuing violation, provided the Board conducts a separate hearing, not more frequently than once a month, before imposing each successive sanction. The Board may limit the scope of such hearing to facts and circumstances occurring subsequent to the previous hearing relating to the subject continuing violation.
- 13.8.5 Reimbursement Assessment Not a Sanction. The imposition of a Reimbursement Assessment pursuant to the Declaration does not constitute and shall not be deemed to be a sanction.
- 13.9 Investigation of Complaints. Upon receipt of a written complaint from an Owner or a Resident, the Board shall conduct an investigation of the allegations in the complaint and shall make relevant findings upon which the Board shall base a decision to pursue or not pursue the matter. If the Board decides not to pursue a matter it shall notify the complaining party in writing stating the reason(s) for its decision.
- 13.10 Written Notice of Violation. If the Board determines, whether on its own initiative or pursuant to a written complaint, that a violation of the Governing Documents exists or has occurred, it shall notify the responsible Owner(s) by written notice in compliance with Section 13.11 (“Notices: Content, Delivery”).
- 13.11 Notices: Content, Delivery. Any notice of violation required or given under this Article 13 shall be in writing and shall comply with *Civil Code* section 5855 as to content and time of service and *Civil Code* section 4040 as to method of service.
- 13.11.1 Content of Notice of Violation. Any notice given by the Association to a Member shall comply with *Civil Code* section 5855 and, at a minimum, set forth a brief description of the act or omission constituting the alleged violation of the Governing Documents; a reference to the specific Governing Document provision or provisions alleged to have

been violated; if applicable, a statement that the Member may request a hearing by the Board; the date, time, and location of any hearing called by the Board; and any sanction, disciplinary action, or other enforcement action being contemplated by the Board.

13.11.2 Delivery of Notice. Any notice may be given by any method provided for in *Civil Code* section 4040; *provided, however*, that (i) if notice is given by mail, it shall be sent postage prepaid by United States first-class mail and/or by certified mail return receipt requested; and (ii) if given by the Association to a Member, it shall be sent to the most recent address for the affected Member as shown on the records of the Association. Pursuant to *Civil Code* section 4050, if sent by United States mail, such notice shall be deemed delivered upon deposit in the United States mail, postage prepaid. If such notice is sent by electronic means, delivery is complete at the time of the transmission, as set forth in *Civil Code* section 4050.

13.11.3 Owner's Address for Notice. It shall be each Owner's responsibility to notify the Association in writing of any change in the Owner's address for the purpose of receiving notices from the Association. The fact that a different address appears on correspondence to the Association from an Owner shall not constitute such written notice, unless it is expressly stated that such address is a change of address for the purpose of receiving notice from the Association. Upon transfer of title to a Condominium, the transferee shall be responsible for notifying the Association of such transfer. The notification shall set forth the address of the Condominium, the names of the transferee and the transferor, and the date of sale or other transfer. Prior to receipt of such notification, any and all communications required or permitted to be given by the Association or the Board to the Condominium Owner shall be deemed to be duly made and given to the transferee if duly and timely made and given to the person shown as the Owner of the Condominium and at the address in the Association's records.

13.11.4 Notice to Co-Owners or Occupants. Unless otherwise provided by law, when a Unit is owned by two (2) or more co-Owners or is occupied by two (2) or more Occupants, notice to one (1) Owner or to one (1) Occupant shall be deemed notice to all Owners or to all Occupants, as the case may be.

13.12 Hearing Called by the Board; Executive Session; Open Meeting. To the extent required by *Civil Code* section 5855, whenever the Board determines to conduct a hearing, it shall notify the affected Owner(s) and/or Resident(s) in writing by individual delivery pursuant to *Civil Code* section 4040, at least ten (10) days before the Board meeting at which the matter will be considered. If the matter concerns Member discipline or the imposition of sanctions, the Board shall meet

in executive session if requested by the Member, unless (and then only to the extent) applicable law requires that certain actions by the Board be conducted at an open meeting of the Board, such as *Civil Code* section 5673 concerning a decision to record a lien for delinquent Assessments. If the matter concerns compliance with architectural approval requirements, the hearing shall be conducted in open meeting pursuant to *Civil Code* section 4765. In the Board's discretion, other interested person(s) may attend a hearing and may present information relevant to the subject matter of the hearing. If a notified Owner or Resident fails to attend a noticed hearing, the Board may nevertheless conduct its deliberations and make a determination based on its own investigation and any other information supplied to it that the Board deems reasonably reliable.

13.13 Owner's Request for Hearing. An Owner who has received a notice of violation sent pursuant to Section 13.10 ("Written Notice of Violation") or a notice of corrective action sent pursuant to Section 13.15 ("Enforcement by Association in Emergency Situations") or as otherwise provided in the Governing Documents, may request a hearing before the Board by submitting a written request to the Board. If an Owner is requesting a meeting to discuss a payment plan for a past due debt owed to the Association, the meeting shall be scheduled and conducted as provided in Section 8.15.3 ("Owner's Right to Discuss Payment Plan"). If the Owner is requesting a hearing concerning a notice of violation sent pursuant to Section 13.10 ("Written Notice of Violation") or a notice of corrective action sent pursuant to Section 13.15 ("Enforcement by Association in Emergency Situations"), the request for hearing must be submitted within ten (10) days after the date of such notice. The Board shall schedule a hearing at its next regular meeting that is at least five (5) days after its receipt of an Owner's request for hearing or, in the Board's discretion, at another time agreed by the Board and the Owner. Hearings shall be conducted in executive session or at an open meeting as provided in Section 13.12 ("Hearing Called by the Board; Executive Session; Open Meeting").

13.14 Notice of Hearing Decisions. Within fifteen (15) days after a hearing is conducted, the Board shall notify the Owner or Resident in writing as to its decision. If the Board decides to impose sanctions, the notice shall describe the sanctions imposed and, if applicable, their effective dates.

13.15 Enforcement by Association in Emergency Situations.

13.15.1 Definition of Emergency Situation. For purposes of this Section 13.15, the following shall constitute emergency situations:

- (i) an immediate and unreasonable infringement of or threat to the safety or peaceful enjoyment of Residents of the Project,
- (ii) a traffic or fire hazard,

- (iii) a threat of material damage to or destruction of the Project or any portion thereof,
- (iv) a violation of any provision of the Governing Documents that is of such a nature that there is no material question regarding the identity of the violator or whether the violation has occurred (such as parking violations).

13.15.2 Immediate Corrective Action. Notwithstanding any other provisions of the Governing Documents, under circumstances that constitute an emergency, the Board or its duly authorized agents may undertake immediate corrective action. The Board shall promptly thereafter send written notice of the corrective action to the affected Owner including notice of any Reimbursement Assessment assessed to the Owner for costs incurred by the Association in connection therewith. If the Owner requests a hearing pursuant to Section 13.13 ("Owner's Request for Hearing"), enforcement of any Reimbursement Assessment imposed by the Board shall be held in abeyance and shall be pursued only if affirmed by the Board at the hearing.

13.16 Internal Dispute Resolution.

13.16.1 Fair, Reasonable, and Expeditious Procedure. The provisions of Article 7 ("Architectural Approval") and of Section 13.9 ("Investigation of Complaints") through Section 13.15 ("Enforcement by Association in Emergency Situations") are intended to provide a fair, reasonable, and expeditious procedure for resolving disputes between the Association and any Member that are subject to *Civil Code* sections 5900 through 5920 (which applies to, among other things, enforcement of applicable provisions of the *Corporations Code* and enforcement of the Governing Documents). The above-referenced provisions of the Declaration shall constitute the Association's "internal dispute resolution" process as required by *Civil Code* section 5905.

13.16.2 Statutory Default Procedures. If the Association shall fail to comply with the Association's internal dispute resolution process, then the Association and the affected Member shall abide by the statutory default procedures provided in *Civil Code* section 5915, or successor statute. Any resolution so agreed upon by the parties thereto, that is not in conflict with the law or the Governing Documents, shall bind the parties and shall be judicially enforceable as provided in *Civil Code* section 5910.

13.16.3 Alternative Dispute Resolution ("ADR") May Also Apply. If (a) the subject matter of the dispute (including, among other things, enforcement of applicable provisions of the *Corporations Code* and

enforcement of the Governing Documents) and the remedy sought (including certain kinds of declaratory, injunctive, or writ relief, which may be in conjunction with certain limited monetary relief, but excluding small claims actions and excluding Assessment disputes) are subject to *Civil Code* sections 5925 through 5965 and (b) the Association and the affected Member do not agree on a resolution through the foregoing internal dispute resolution process provided for in Section 13.16.1 (“Fair, Reasonable, and Expeditious Procedure”), then no party to the dispute may pursue a civil remedy that is subject to *Civil Code* sections 5925 through 5965, without first complying with the “alternative dispute resolution” procedures set forth in that statute and referenced in Section 13.17 (“Alternative Dispute Resolution Before Initiating Lawsuit”).

- 13.16.4 Annual Description of Internal Dispute Resolution Process. The Association shall annually provide the Members with a description of the internal dispute resolution process required by *Civil Code* section 5920 as part of the annual policy statement prepared pursuant to *Civil Code* section 5310. Such description may consist of a copy of Article 7 (“Architectural Approval”) and Section 13.9 (“Investigation of Complaints”) through this Section 13.16 (“Internal Dispute Resolution”).

13.17 Alternative Dispute Resolution Before Initiating Lawsuit.

- 13.17.1 Annual Summary. As provided in *Civil Code* section 5965, the Association shall annually provide to its Members a summary of the provisions concerning alternative dispute resolution contained in *Civil Code* sections 5925 through 5965 as part of the annual policy statement prepared pursuant to *Civil Code* section 5310. Such summary may consist of a copy of this Section 13.17. Such summary 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 the member’s right to sue the association or another member of the association regarding enforcement of the governing documents or the applicable law.”

- 13.17.2 When ADR Applies. The requirements of this Section 13.17 apply to civil action or proceedings as defined in *Civil Code* section 5925(b) when the remedy sought is solely for declaratory, injunctive, or writ relief or if for the foregoing relief in conjunction with monetary damages not in excess of the jurisdictional amount for a small claims action as stated in *Code of Civil Procedure* sections 116.220 and 116.221, all as provided in *Civil Code* section 5930(b). *Civil Code* sections 5925 through 5965 apply to disputes between Members as well as to

disputes between the Association and a Member. The ADR requirements of this Section 13.17 do not apply to Assessment disputes or to an action in small claims court.

- 13.17.3 Statutory ADR Process. In accordance with *Civil Code* sections 5925 through 5965, the Association or a Member may not file an “enforcement action” as defined in the statute unless the parties have endeavored to submit their dispute to “alternative dispute resolution” as the term is defined in *Civil Code* section 5925(a) and as the process is specified in *Civil Code* sections 5935, 5940, and 5945.
- 13.18 Non-waiver. Failure to enforce any provision of the Governing Documents at any time shall not be deemed a waiver of the right to do so thereafter with respect to the same or any other violation of any provision of the Governing Documents.
- 13.19 Costs and Attorneys’ Fees. In the event the Association shall take any action to enforce any of the provisions of the Governing Documents or shall determine that any Owner or Resident, Contract Purchaser, member of his or her household, tenant, invitee, guest, or pet has violated any provision of the Governing Documents, and whether or not legal or judicial proceedings are initiated, the Association shall, to the fullest extent permitted by law, be entitled to recover the full amount of all costs including attorneys’ fees incurred by the Association in responding to such violation and/or in enforcing any Governing Document provision. Without limiting the generality of the foregoing, in the event an Owner pursuant to *Civil Code* section 4605 brings a civil action for violation of *Civil Code* section 4600 (concerning the granting of exclusive use of a portion of the Common Area to a Member) or pursuant to *Civil Code* section 4955 a civil action for violation of the Common Interest Open Meeting Act (*Civil Code* sections 4900 through 4955) if the Association shall prevail in any such action, the Association shall be entitled to recover reasonable attorneys’ fees except to the extent prohibited by law. In awarding attorneys’ fees, the court shall not be bound by any court fee schedule, but shall, if it is in the interest of justice to do so, award the full amount of costs, expenses, and attorneys’ fees paid or incurred in good faith. The remedies of the Association to recover the amount of such costs, expenses, and attorneys’ fees shall include, but shall not necessarily be limited to, the imposition of a Reimbursement Assessment.

ARTICLE 14 AMENDMENT

- 14.1 Required Approval. Subject to Section 12.17 (“Requiring Mortgagees’ Consent”), this Declaration may be amended by the affirmative vote of Members representing at least a Majority of a Quorum of the Owners, *provided, however*, that for purposes of voting to amend the Declaration a quorum shall mean at least fifty percent (50%) of the Total Voting Power of the Association; *provided, further*, that, upon advice of legal counsel licensed to practice law in the State of

California including the drafting by legal counsel of appropriate amendatory provisions, the Board shall have the authority without the requirement of Member approval to amend any provision of the Declaration (i) to resolve any conflict between the Declaration and applicable law which may arise due to the enactment or amendment of a statute or due to a development in applicable case law or (ii) to conform the provisions of the Declaration to changes in applicable statutory law that impose requirements that are non-discretionary in nature.

- 14.2 Amendment Must Be Recorded. Any amendment of the Declaration shall be signed and acknowledged by the duly authorized officer(s) of the Association and recorded in the Office of the County Recorder.
- 14.3 Presumption of Validity. There will be a presumption subsequent to the recording of an amendment to this Declaration pursuant to Section 14.2 ("Amendment Must Be Recorded") that all votes and consents required to pass the same pursuant to Section 14.1 ("Required Approval") were duly obtained in accordance with the Governing Documents and applicable law. Such presumption may be rebutted by an action commenced within one (1) year from the date the amendment is recorded. In the absence of any such action, such presumption shall thereafter become conclusive.

ARTICLE 15 GENERAL PROVISIONS

- 15.1 Headings. The headings used in this Declaration are for convenience only and are not to be used in interpreting the meaning of any of the provisions of this Declaration, or otherwise.
- 15.2 Severability. The provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any provision hereof shall not invalidate any other provisions hereof.
- 15.3 Liberal Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of fostering a plan of community ownership and occupancy and of management of the Project for the benefit of the community.
- 15.4 Amendment to Referenced Statutes; Time for Performance. References in the Declaration to particular statutes, including sections of the *Civil Code* or the *Corporations Code*, shall be deemed to include any successor statute and any amendments to existing or successor statutes. Whenever this Declaration states a time for the performance of any act by the Association which by law (as it may exist from time to time) must be performed at or within a specified time, the time for the performance of such act shall be deemed to be the widest timeframe permitted under then-applicable law.

- 15.5 Number; Gender. The singular shall include the plural and the plural the singular unless the context requires the contrary, and the masculine, feminine, and neuter shall each include the masculine, feminine, or neuter, as the context requires.
- 15.6 Exhibits. All exhibits attached to this Declaration are incorporated by this reference as though fully set forth herein.
- 15.7 Power of Attorney. To the extent necessary to carry out and enforce the provisions of this Declaration, an irrevocable power of attorney coupled with an interest is granted to the Association by the Owners and each of them.
- 15.8 No Fixed Term. The covenants, conditions, restrictions, limitations, reservations, grants of easement, rights, rights-of-way, liens, charges, and equitable servitudes contained in this Declaration shall run with and shall benefit and burden all of the real property subject to this Declaration, including without limitation the Units and Common Areas, and shall inure to the benefit of and be binding upon the Owners, the Association, its Board of Directors and officers, and their respective agents and successors in interest, until it is amended or revoked pursuant to Section 14.1 ("Required Approval") or until the Project is partitioned as authorized by Section 3.6 ("Limitation on Partition; Power of Attorney").

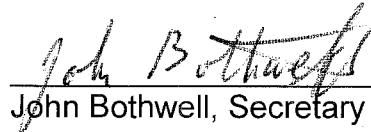
IN WITNESS WHEREOF, we, the Members of CAPITOLA KNOLLS HOMEOWNERS ASSOCIATION, pursuant to the requisite approval, and by means of the signatures of the President and the Secretary, do hereby affirm, approve, and adopt the foregoing Amended and Restated Declaration of Covenants, Conditions and Restrictions of Capitola Knolls Homeowners Association, which Amended and Restated Declaration of Covenants, Conditions and Restrictions shall be recorded with the County Recorder of Santa Cruz County, California.

DATED: Feb. 17, 2016

CAPITOLA KNOLLS HOMEOWNERS
ASSOCIATION, a California nonprofit
mutual benefit corporation



Laurie Dekker Salatich, President



John Bothwell, Secretary

EXHIBIT A

(Paragraph 1.12.2)

Percentage Ownership Interest in Common Area Parcels A, B and D

PARCEL	BUILDINGS	PERCENTAGE INTEREST
A	1 THROUGH 17	1/68TH
B	18 THROUGH 24	1/28TH
D	25 THROUGH 41	1/68TH

EXHIBIT B

(Paragraph 1.14)

List of Condominium Plans and Property Comprising the Project Subject to this Declaration

1. Exhibit A to the Declaration of Restrictions (Enabling Declaration Establishing a Plan for Condominium Ownership of Capital Knolls) recorded on June 27, 2001, as Instrument No. 2001-0039249, at Book 2519, Pages 35 through 85, inclusive, in the Official Records of Santa Cruz County, State of California;
2. Exhibit A to the Declaration of Annexation (Capitola Knolls Phase 2) recorded on May 10, 1976 at Book 2593, Pages 98 through 138, inclusive, in the Official Records of Santa Cruz County, State of California
3. Exhibit A to the Declaration of Amendment (Capitola Knolls Phase 2) recorded on May 20, 1976 at Book 2619, Pages 149 to 152, inclusive, in the Official Records of Santa Cruz County, State of California
4. Exhibit A to the Declaration of Annexation (Capitola Knolls Phase 3) recorded on June 18, 1976 at Book 2630, Pages 275 through 277, inclusive, in the Official Records of Santa Cruz County, State of California;

CERTIFICATE OF 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)
)
COUNTY OF Santa Cruz) ss.

On February 17th 2016, before me, Morgan O'Reilly, Notary Public, personally appeared **LAURIE DEKKER SALATICH**, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the person, or the entity upon behalf of which the person(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 Morgan O'Reilly (Seal)



CERTIFICATE OF 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 Santa Cruz)

On February 17th 2016, before me, Morgan O'Reilly, Notary Public, personally appeared **JOHN BOTHWELL**, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person(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 *Morgan O'Reilly* (Seal)

