

Recording Requested By:

When Recorded Return To:

Hanna & Van Atta  
525 University Avenue, Suite 600  
Palo Alto, California 94301

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REDWOOD COMMONS

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION CONTAINS A BINDING ARBITRATION PROVISION IN ACCORDANCE WITH THE FEDERAL ARBITRATION ACT. YOU MUST READ THE ARBITRATION PROVISION CAREFULLY AND SHOULD CONSULT LEGAL COUNSEL WITH ANY QUESTIONS.

IF THIS DOCUMENT CONTAINS ANY RESTRICTION BASED ON RACE, COLOR, RELIGION, SEX, SEXUAL ORIENTATION, FAMILIAL STATUS, MARITAL STATUS, DISABILITY, NATIONAL ORIGIN, SOURCE OF INCOME AS DEFINED IN SUBDIVISION (P) OF SECTION 12955 OF THE GOVERNMENT CODE, OR ANCESTRY, THAT RESTRICTION VIOLATES STATE AND FEDERAL FAIR HOUSING LAWS AND IS VOID, AND MAY BE REMOVED PURSUANT TO SECTION 12956.2 OF THE GOVERNMENT CODE. LAWFUL RESTRICTIONS UNDER STATE AND FEDERAL LAW ON THE AGE OF OCCUPANTS IN SENIOR HOUSING OR HOUSING FOR OLDER PERSONS SHALL NOT BE CONSTRUED AS RESTRICTIONS BASED ON FAMILIAL STATUS.

## REDWOOD COMMONS

### DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

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## REDWOOD COMMONS

### DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

**THIS DECLARATION**, made on the date hereinafter set forth, by Daniel M. Meredith and Cherise Meredith, husband and wife, as joint tenants, hereinafter collectively referred to as "Declarant," is made with reference to the following facts:

**A. Location of Property.** Declarant collectively are the owners of certain real property (the "Property") located in the City of San Mateo ("City"), County of San Mateo, State of California, more particularly described as "Parcel A" on the Parcel Map filed for record in the Office of the Recorder of San Mateo County, California, on \_\_\_\_\_, 201\_, in Volume \_\_\_\_ of Parcel Maps, pages \_\_\_\_.

**B. Intention.** The Property is improved with a building consisting of two (2) residential units that Declarant intends to subdivide into two (2) Condominiums consisting of separate interests in the two Units, and undivided interests in the remaining property.

**C. Owners' Interests.** The development shall be referred to as the "Project" as defined in Section 1.27. Each Condominium Unit in the Project shall consist of a three dimensional space, and an interest in the Common Area as shown on the Condominium Plan, and defined in this Declaration.

**D. General Plan of Improvement.** Declarant intends by this document to impose upon the Project mutually beneficial restrictions under a general plan of improvement for the benefit of all of the Condominiums and the Owners thereof.

**NOW, THEREFORE**, Declarant hereby declares that the Project shall be held, conveyed, mortgaged, encumbered, leased, rented, used, occupied, sold, and improved, subject to the following declarations, limitations, covenants, conditions, restrictions and easements, all of which are imposed as equitable servitudes pursuant to a general plan for the development of the Project for the purpose of enhancing and protecting the value and attractiveness of the Project, and every part of the Project, in accordance with the plan for the improvements of the Project and the division of the Project into Condominiums. All of the limitations, covenants, conditions, restrictions and easements shall constitute covenants which shall run with the land and shall be binding upon Declarant and its successors and assigns, and all parties having or acquiring any right, title or interest in or to any part of the Project or the property which constitutes the Project.

### ARTICLE I. DEFINITIONS

**1.1. "Assessment":** That portion of the cost of maintaining, improving, repairing, operating and managing the Project which is to be paid by each Owner as determined by the Association, and shall include regular and special Assessments.

**1.2. "Association":** The REDWOOD COMMONS ASSOCIATION, an unincorporated association, the Members of which shall be the two (2) Owners of Condominiums in the Project.

**1.3. "City":** The City of San Mateo, California.

**1.4. "Common Area":** All of the Project except the Units, and includes Parcel A shown on the Map. Title to the Common Area shall be held equally by all of the Owners in common. The Common Area includes, without limitation the land, except for that portion contained within the Units, the parking and driveway areas; landscaping and any improvements within the Common Area.

1.5. **"Common Expenses"**: The actual and estimated expenses of operating the Common Area and any reasonable reserve for such purposes as found and determined by the Members and all sums designated Common Expenses by or pursuant to the Declaration.

1.6. **"Common Interest"**: The proportionate undivided interest in the Common Area that is part of each Condominium as set forth in this Declaration.

1.7. **"Condominium"**: An estate in real property as defined in California Civil Code §§783 and 4125(b), consisting of an undivided interest in common in a portion of the Project and a separate interest in space called a Unit.

1.8. **"Condominium Plan"**: The recorded three-dimensional plan of the Condominiums built or to be built on the Project which identifies the Common Area and each separate interest pursuant to California Civil Code §4125, which Plan was recorded concurrently.

1.9. **"County"**: The County of San Mateo.

1.10. **"Declarant"**: Daniel M. Meredith and Cherise Meredith, husband and wife, as joint tenants, or any successor or assign that expressly assumes the rights and duties of the Declarant(s) hereunder, in a recorded written document.

1.11. **"Declaration"**: This Declaration, as amended or supplemented from time to time.

1.12. **"Eligible Mortgages"**: Mortgages held by "Eligible Mortgage Holders".

1.13. **"Eligible Mortgage Holder"**: A First Lender who has requested notice of certain matters from the Association in accordance with Section 9.6.C.

1.14. **"Eligible Insurer or Guarantor"**: An insurer or governmental guarantor of a First Mortgage who has requested notice of certain matters from the Association in accordance with Section 9.6.C.

1.15. **"Exclusive Use Common Area"**: Those portions of the Common Area set aside for exclusive use of a Unit Owner or Owners, pursuant to Section 2.2.C, and shall constitute "Exclusive Use Common Area" within the meaning of California Civil Code § 4145.

1.16. **"First Lender"**: Any person, entity, bank, savings and loan association, insurance company, or financial institution holding a recorded First Mortgage on any Condominium.

1.17. **"First Mortgage"**: Any recorded mortgage made in good faith and for value on a Condominium with first priority over other mortgages thereon.

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

1.19. **"Map"**: That Parcel Map described above in Introductory Paragraph A.

1.20. **"Member"**: A person entitled to membership in the Association as provided herein. Regardless of the number of Persons or entities comprising the Owner, no Condominium shall, at any time, constitute or include more than one Member of the Association.

1.21. **"Mortgage"**: A deed of trust as well as a mortgage.

- 1.22. **"Mortgagee"**: A beneficiary or a holder of a deed of trust as well as a mortgagee.
- 1.23. **"Mortgagor"**: The trustor of a deed of trust as well as a mortgagor.
- 1.24. **"Occupant"**: A Person who legally occupies a Unit, including, without limitation, a tenant or guest, invitee, renter, lessee, family member, or relative
- 1.25. **"Owner" or "Owners"**: The record holder, or holders of title to a Condominium in the Project. This shall include any person having a fee simple title to any Unit, but shall exclude persons or entities having any interest merely as security for the performance of an obligation. If a Unit is sold under a contract of sale and the contract is recorded, the purchaser, rather than the fee owner, shall be considered the "Owner" from and after the date the Association receives written notice of the recorded contract.
- 1.26. **"Person"**: A natural person, a corporation, a partnership, a trust, or other legal entity.
- 1.27. **"Project"**: All of the real property described on the Map and all improvements on that real property and which is subject to this Declaration.
- 1.28. **"Rules"**: The rules adopted from time to time by the Owners.
- 1.29. **"Share"**: The percentages in and to the Common Area attributed to and appurtenant to each Unit as set forth in Section 2.2.B.
- 1.30. **"Unit"**: The elements of the Condominium, as defined in Section 2.2.A, which are not owned in common with the Owners of other Condominiums in the Project. Each Unit is identified by the words "Unit" followed by a separate number on the Condominium Plan.
- 1.31. **"Utility Facilities"**: Defined in Section 6.1.
- 1.32. **"Yard"** shall mean and refer to the fenced in portions of the Exclusive Use Common Area of a Unit that are exterior of a Unit as shown on the Condominium Plan as the areas designated as Y-1 and Y-2.

## **ARTICLE II. DESCRIPTION OF PROJECT, DIVISION OF PROPERTY, AND CREATION OF PROPERTY RIGHTS**

2.1. **Description of Project**: The Project is a condominium project consisting of the land which makes up the Project, the Condominiums and all other improvements thereon. The Project consists of two (2) Condominium Units and the Common Area improvements, including common landscaping, driveways and utility infrastructure. Reference is made to the Condominium Plan for further details.

2.2. **Division of Property**: The Project is divided as follows:

A. **Units**: Each of the Units is shown, numbered and designated in the Condominium Plan designated by the words "Unit" followed by a number and consisting of the space described on the Condominium Plan as the Unit. Each Unit includes the utility installations located within its boundaries as to which the Owner has the exclusive use. Each Unit includes both the portions of the building so described and the airspace so encompassed within the Unit boundaries. The Unit does not include those areas and those things which are defined as "Common Area" in Section 1.4. Each Unit shall have appurtenant to it nonexclusive rights for ingress, egress and support through the Common Area.

**B. Common Area:** The remainder of the Project constitutes "Common Area" as defined in Section 1.4. Each Condominium Owner shall have, as appurtenant to his or her Unit, an equal undivided one-half (1/2) interest in the Common Area, subject to the rights of each Owner in the Exclusive Use Common Area appurtenant to that Owner's Condominium. Each Condominium includes a Unit and such undivided interest in the Common Area. Each Condominium shall have appurtenant to it, nonexclusive easements for ingress, egress and support through the Common Area. The Common Interest appurtenant to each Unit is permanent in character and cannot be altered without the unanimous consent of the Owners and of the holders of first mortgages on the Condominiums, as expressed in an amended Declaration. The undivided Common Interest cannot be separated from the Unit, and any conveyance or transfer of the Unit shall include the undivided Common Interest, the Owner's membership in the Association, and any other benefits or burdens appurtenant to that Owner's Condominium. Each Owner may use the Common Area in accordance with the purposes for which they are intended subject to this Declaration and the Rules, without hindering the exercise of or encroaching upon the rights of any other Owners subject to the rights of each Owner in the Exclusive Use Common Area appurtenant to that Owner's Condominium.

**C. Exclusive Use Common Areas:** The following described portions of the Common Area, referred to as "Exclusive Use Common Areas," are hereby set aside and allocated for the exclusive use of the Owner of the Condominium to which they are either physically attached or assigned by Unit number on the Condominium Plan and are appurtenant to that Condominium: Yard designated "Y" followed by the number of the Unit, and all improvements therein; porch designated "PO" followed by the number of the Unit; parking spaced designated "P" followed by the number of the Unit; and, steps designated "S" followed by the number of the Unit.

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

**A.** The access rights of the Association as described in Section 5.2.B to maintain, repair or replace improvements or property located in the Common Area.

**B.** The exterior Unit boundaries extend beyond the perimeter of the Residence Building. The Association, or its contractors, shall have an nonexclusive easement and right of entry into those areas of the Unit which are exterior of the Residence Building for the purposes of maintaining the Units and the Common Area as set forth in Sections 5.1.A. and 5.1.B. hereof. The Association's right to enter an Exclusive Use Common Area granted to a Unit shall, except for emergency situations, be preceded by prior written notice of no less than 24 hours to the Unit Owner, and may occur only during normal business hours on weekdays, unless the Unit Owner consents otherwise. The Association shall be responsible for any injury or harm, or damage to property, which occurs because of such entry being made by the Association or its contractors.

**C.** The rights of the Association or the Owners to install, maintain, repair or replace utilities as described in Article VI.

**D.** The encroachment rights described in Section 9.5.

**E.** The rights of Owners to make improvements or alterations authorized by California Civil Code § 4760, subject to the provisions of Section 7.9.

**2.4. Partition Prohibited:** The Common Area shall remain undivided as set forth above. Except as provided by California Civil Code §4610 or authorized under Sections 8.2.B or 8.3, no Owner shall bring any action for partition of the Common Area, it being agreed that this restriction is necessary in order to preserve the rights of the Owners with respect to the operation and management of the Project. Judicial partition by sale of a single Condominium owned by two (2) or more persons and division of the sale proceeds is not prohibited by this paragraph.

**2.5. All Easements Part of Common Plan:** Whenever any easements are reserved or created or are to be reserved or created in this Declaration, such easements shall constitute equitable servitudes for the mutual benefit of all property in the Project, even if only certain Units are specifically mentioned as subject to or benefiting from a particular easement. Easements referred to in this Declaration that are created by grant deeds, subsequent to the date of this Declaration shall be part of the common plan created by this Declaration for the benefit of all property Owners within the Project.

### **ARTICLE III. ASSOCIATION, ADMINISTRATION, MEMBERSHIP AND VOTING RIGHTS, DELEGATION, AND BUDGET**

**3.1. Association to Manage Common Areas:** The management of the Common Area shall be vested in the Association. The Owners of all the Condominiums covenant and agree that the administration of the Project shall be in accordance with the provisions of this Declaration.

**3.2. Membership:** The Owner of a Condominium shall automatically, upon becoming the Owner of same, be a Member of the Association, and shall remain a Member thereof until such time as the ownership ceases for any reason, at which time the membership in the Association shall automatically cease.

**3.3. Transferred Membership:** Membership in the Association shall not be transferred, encumbered, pledged, or alienated in any way, except upon the sale or encumbrance of the Condominium to which it is appurtenant, and then only to the purchaser, in the case of a sale, or mortgagee, in the case of an encumbrance of such Condominium. On any transfer of title to an Owner's Condominium, including a transfer on the death of an Owner, the membership passes automatically along with title to the transferee. A mortgagee does not have membership rights until it obtains title to the Condominium by Foreclosure or deed in lieu of Foreclosure. Any attempt to make a prohibited transfer is void. No Member may resign his or her membership. On notice of a transfer, the Association shall record the transfer on its books.

**3.4. Membership and Voting Rights:** Each Owner shall be a Member of the Association, and each Member shall have one (1) vote in the affairs of the Association. All decisions of the Association shall require a unanimous vote of the Members. If there is more than one Owner of any Condominium, all Owners shall be Members, but only one vote shall be allocated to each Condominium. The vote cast by any Member shall be conclusively presumed to be the vote cast by all Owners of the Condominium for which the vote was cast.

**3.5. Meetings** The Association shall hold meetings as often as the Members shall desire. The Association shall designate one of the Members to maintain the Association's books and records. All Members shall have access to the books and records (including the right to copy at the Member's expense) on reasonable notice to the Member maintaining the books and records.

**3.6. Delegation of Authority:** The Association shall have the rights and shall perform the duties described in the Declaration. The Members may designate in writing one (1) Member who will have the power and authority to act on behalf of the Association, including but not limited to entering into binding contracts, procuring insurance policies maintained by the Association and processing any insurance claims under policies maintained by the Association. The authority may be revoked by a Member at any time with or without cause. Third parties may conclusively rely on the written designation as to a Member's power and authority to act on behalf of the Association unless and until the third party receives written notice that the designation has been revoked. The Association may maintain operating and reserve bank accounts at a bank selected by the Association. Unless agreed otherwise by the Owners of all the Condominiums, the signatures of both Owners shall be required to make withdrawals from the Association account. In addition to the powers described herein, the Association may exercise the powers granted to a nonprofit mutual benefit corporation under California Corporations Code §7140 except use a corporate seal or issue membership certificates.

**3.7. Annual Budget:** During the month of January of each year, the Association shall establish a budget for all expenses for the coming year. Each Owner shall be responsible for payment of one-half (1/2) of the budgeted expenses, and other expenses incurred by the Association during the year. On request of any Owner, the Association shall prepare and distribute any financial statements and reports that may be required by law.

**3.8. Association Decision Binding on Owners:** All agreements and determinations lawfully made by the Association in accordance with this Declaration shall be deemed to be binding on all owners, their successors and assigns.

#### **ARTICLE IV. ASSESSMENTS AND LIENS**

**4.1. Creation of the Lien and Personal Obligation of Assessments:** The Declarant, for each Condominium within the Project, hereby covenants, and each subsequent Owner of any Condominium by acceptance of a deed for that Condominium, whether or not it shall be so expressed in such deed, covenants and agrees:

(1) to pay to the Association annual Assessments or charges, and special Assessments for purposes permitted in this Declaration, such Assessments to be established and collected as subsequently provided in this Declaration, and

(2) to allow the Association or the other Owner to enforce any Assessment lien established under this Declaration by nonjudicial proceedings under a power of sale or by any other means authorized by law.

The annual and special Assessments, together with interest, late charges, collection costs and reasonable attorneys' fees, shall be a charge on the Condominium and shall be a continuing lien upon the Condominium against which each such Assessment is made, the lien to become effective upon recordation of a notice of delinquent Assessment. The lien on account of prior delinquencies shall be deemed to include subsequent delinquencies and amounts due on account thereof. Each such Assessment, together with interest, late charges, collection costs, and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such Condominium at the time when the Assessment fell due. The personal obligation for delinquent Assessments shall not pass to his successors in title unless expressly assumed by them. No Owner shall be exempt from liability for payment of Assessments by waiver of the use or enjoyment of any of the Common Areas or by the abandonment of the Owner's Condominium.

The interest of any Owner in the amounts paid pursuant to any Assessment upon the transfer of ownership shall pass to the new Owner. Upon the termination of these covenants for any reason, any amounts remaining from the collection of such Assessments after paying all amounts properly charged against such Assessments shall be distributed to the then Owners on the same pro rata basis on which the Assessments were collected.

**4.2. Purpose of Assessments:** The Assessments levied by the Association shall be used exclusively to promote the economic interests, recreation, health, safety, and welfare of all the residents in the Project and to enable the Association to perform its obligations hereunder.

**4.3. Assessments:**

**A. Annual Assessments:** The Members shall establish and levy annual Assessments in an amount that they estimate to be sufficient to raise the funds needed to perform the duties of the Association during each fiscal year.

The annual Assessment shall include a portion for reserves in such amounts as the Members consider appropriate to meet the costs of the future repair, replacement or additions to the major

improvements and fixtures that the Association is obligated to maintain and repair. Reserve funds shall be deposited in a separate account and the signatures of the two Members shall be required to withdraw monies from the reserve account.

**B. Special Assessments:** The Members at any time, may levy a special Assessment in order to raise funds for unexpected operating or other costs, insufficient operating or reserve funds, or such other purposes as the Owners consider appropriate. Special Assessments shall be allocated among the Units in the same manner as annual Assessments.

**4.4. Restrictions on Increases in Annual or Special Assessments:** Any increase in annual Assessments or Special Assessments shall require the affirmative vote of both Members.

**4.5. Division of Assessments:** All Assessments, both annual and special, shall be allocated sixty percent (60%) to Unit 1, and forty percent (40%) to Unit 2. Annual Assessments shall be collected on a monthly basis unless the Members determine otherwise. Special Assessments may be collected in one (1) payment or periodically as the Members determine.

**4.6. Date of Commencement of Annual Assessment; Due Dates:** The annual Assessments provided for in this Declaration shall commence as to all Condominiums covered by this Declaration on the first day of the month following the first conveyance of a Condominium to an individual Owner. The first Assessment shall be adjusted according to the number of months remaining in the calendar year.

Subject to the provisions of Section 4.3 hereof, the Members shall use their best efforts to fix the amount of the annual Assessment against each Condominium and send written notice thereof to every Owner at least forty-five (45) days in advance of each annual Assessment period, provided that failure to comply with the foregoing shall not affect the validity of any Assessment. Annual Assessments may be prorated on a monthly basis. The due dates shall be established by the Members.

**4.7. Effect of Nonpayment of Assessments:** Any Assessment not paid within fifteen (15) days after the due date shall be delinquent, shall bear interest at the rate of twelve percent (12%) per annum commencing thirty (30) days after the due date until paid, and shall incur a late payment penalty in an amount to be set by the Members from time to time, not to exceed the maximum permitted by applicable law.

**4.8. Transfer of Condominium by Sale or Foreclosure:** Sale or transfer of any Condominium shall not affect the Assessment Lien. However, the sale of any Condominium pursuant to Foreclosure of a First Mortgage shall extinguish the lien of any Assessments on that Condominium (including attorneys' fees, late charges, or interest levied in connection therewith) as to payments which became due prior to such sale or transfer (except for Assessment Liens as to which a notice of delinquent Assessments has been recorded prior to the mortgage). No amendment of the preceding sentence may be made without the consent of both of the Owners, and the consent of the Eligible Mortgage Holders holding First Mortgages on each of the Condominiums. No sale or transfer shall relieve such Condominium from liability for any Assessments thereafter becoming due or from the lien thereof.

If a Condominium is transferred, the grantor shall remain liable to the Association for all unpaid Assessments against the Condominium through and including the date of the transfer. The grantee shall be entitled to a statement from the Association, dated as of the date of transfer, setting forth the amount of the unpaid Assessments against the Condominium to be transferred and the Condominium shall not be subject to a lien for unpaid Assessments in excess of the amount set forth in the statement, provided, however, the grantee shall be liable for any Assessments that become due after the date of the transfer.

**4.9. Priorities; Enforcement; Remedies:** If an Owner fails to pay an Assessment when due, the Association, on the action of the other Owner who is not delinquent in payment of his or her Assessments ("Non-Delinquent Owner"), has the right, and option, to bring legal action against the delinquent Owner to enforce collection of the unpaid and past due Assessment, or may impose a lien on the Unit owned by the delinquent Owner pursuant to the provisions of the Davis-Stirling Act (including, without limitation, California Civil Code Section 5675 et. seq), or both. Suit to recover a money judgment for unpaid Assessments and attorneys' fees, shall be maintainable without foreclosing or waiving the lien securing the same.

**4.10. Unallocated Taxes:** In the event that any taxes are assessed against the Common Area, or the personal property of the Association, rather than against the Condominiums, said taxes shall be included in the Assessments made under the provisions of Section 4.1 and, if necessary, a special Assessment may be levied against the Condominiums in an amount equal to said taxes, to be paid in two (2) installments, thirty (30) days prior to the due date of each tax installment.

#### **ARTICLE V. DUTIES AND POWERS OF THE ASSOCIATION; MAINTENANCE**

**5.1. Duties:** In addition to the duties or elsewhere provided for in this Declaration, and without limiting the generality of those duties, the Owners acting as the Association shall perform the following duties:

**A. Maintenance - Common Area:** The Association shall maintain, repair, replace (when necessary), restore, operate and manage the Common Area and all improvements within the Common Area. The Owner of a Unit shall be responsible for maintenance and repair within the Unit, except as herein provided. The Owner of a Unit shall be responsible for the maintenance, repair and upkeep of the Yard located within the fenced in portions of the Exclusive Use Common Areas appurtenant to the Unit.

**B. Maintenance - Roofs and Painting of Residence Buildings:** The Association shall maintain, repair and replace the roof and maintain and paint the stucco and wood trim of the building exteriors, the costs of which shall be part of the Common Expenses of the Association to be collected as part of the Association's Assessments and reserves as set forth in the Association's budget.

**C. Maintenance - Storm Drains:** The Association shall maintain the storm drains within the Project, including those which traverse through the Exclusive Use Common Areas of a Unit. The maintenance, repair and replacement of all other areas, portions or components of a Unit shall be undertaken by the Unit Owner as set forth in Section 5.3 of this Declaration.

**D. Maintenance - Shared Sewer System:** The care and maintenance of and or repairs to the shared sewage system of the Property for the two Units is the joint responsibility of the Owners. The Owners shall be jointly and severally liable for any problem to this shared sewage system occurring within the boundaries of the Property.

**E. Maintenance - Exclusion for Certain Causes:** The responsibility of the Association for maintenance and repair shall not extend to repairs or replacements arising out of or caused by the willful or negligent act or omission of an Owner or Occupant, or the Owner or Occupant's pets, except, if the repair is covered by the insurance carried by the Association, the Association shall be responsible for making the repairs, and the responsible Owner shall pay any deductible pursuant to the insurance policy. If the Owner fails to make such payment, then the Association may make such payment and shall charge the responsible Owner, which charge shall bear interest at the rate of twelve percent (12%) per annum (but no greater than the maximum rate allowed by law) until paid in full. Any repairs arising out of or caused by the willful or negligent act of an Owner or Occupant, or the Owner or Occupant's pets, the cost of which is not covered by insurance carried by the Association, shall be made by the responsible Owner. If the responsible Owner fails to

take the necessary steps to make the repairs within a reasonable time under the circumstances, the Association shall make the repairs and charge the cost thereof to the responsible Owner, which cost shall bear interest at the rate of twelve percent (12%) per annum (but no greater than the maximum rate authorized by law) until paid in full. If an Owner disputes his or her responsibility for the repairs, the Owner shall be entitled to notice and a hearing before any charge may be imposed.

**F. Insurance:** The Association shall maintain such policy or policies of insurance as are required by Section 8.1 of this Declaration.

**G. Discharge of Liens:** The Association shall discharge by payment, if necessary, any lien against the Common Area, and charge the cost thereof to the Member or Members responsible for the existence of the lien.

**H. Assessments:** The Association shall fix, levy, collect and enforce Assessments as set forth in Article IV hereof.

**I. Payment of Expenses and Taxes:** The Association shall pay all expenses and obligations incurred by the Association in the conduct of its business including, without limitation, all licenses, taxes or governmental charges levied or imposed against the property of the Association.

**J. Enforcement:** The Association shall be responsible for the enforcement of this Declaration.

**K. Compliance with Laws:** The Association shall maintain and operate the Common Area of the Project in accordance with all applicable municipal, state, and federal laws, statutes and ordinances, as the case may be.

**5.2. Powers:** In addition to the powers or elsewhere provided for herein, and without limiting the generality thereof, the Association, acting upon the vote or written assent of both Members, shall have the following powers:

**A. Manager:** The Association may employ a manager or other persons and contract with independent contractors or managing agents to perform all or any part of the duties and responsibilities of the Association.

**B. Access:** For the purpose of performing construction, maintenance or emergency repair for the benefit of the Common Area or the Owners in common, undertaking the maintenance described in Sections 5.1.A, 5.1.B, 5.1.C, 5.1.D and 5.1.E and/or to perform maintenance work that a Unit Owner has failed to perform as provided in Section 5.3, the Association's agents or employees shall have the right, after reasonable notice (not less than twenty-four (24) hours except in emergencies) to the Owner of the Unit in which maintenance work has not been performed, to enter the exterior of a Residence Building or to enter any portion of the Common Area at reasonable hours. Such entry shall be made with as little inconvenience to the Owner as practicable and any damage caused by such entry shall be repaired at the expense of the Association.

**C. Contracts:** The Association shall have the power to contract for goods and/or services for the Common Area(s), for the Condominiums, or for the Association, subject to any limitations set forth in this Declaration.

**5.3. Owner's Right and Obligation to Maintain and Repair:** Except for those portions of the Project which the Association is required to maintain and repair, each Unit Owner shall, at his or her sole cost and expense, maintain and repair the Owner's Unit, keeping the same in good condition. Each Owner shall be responsible for and shall bear the cost of maintenance, repair and replacement of all of the structure, facilities and other items within such Owner's Unit, including but not limited to the following: all interior and exterior walls, foundations, utilities, windows, skylights, ceilings and floors

(including carpeting, tile, wall paper, paint or other covering); light fixtures, smoke detectors; garbage disposals, hot water heaters, ranges, refrigerators, dishwashers, washing machines, dryers, and any and all other appliances of any nature whatsoever; furnaces, heating, ventilating and air conditioning equipment servicing such Unit; interior and exterior doors, including all hardware thereon; plumbing and other fixtures of any nature whatsoever; "built-in" features; and decorative features, fireplaces, if any, and any furniture and furnishings. In addition, each Owner shall bear the cost of maintenance, repair and replacement of the following items within the Owner's Unit: the garage except roofing and painting of exterior walls and Yard landscaping. Each Owner shall have the exclusive right to paint, plaster, panel, tile, wax, paper or otherwise refinish and decorate the inner surfaces of the walls, ceilings, floors, and doors bounding his Unit.

All repairs to the structural elements of the building shall be performed by the Association.

## ARTICLE VI. UTILITIES

**6.1. Owners' Rights and Duties:** The rights and duties of the Owners of Condominiums within the Project with respect to sanitary sewer, water, drainage, electric, gas, television receiving, telephone equipment, cables and lines, (collectively "Utility Facilities") shall be as follows:

A. Whenever Utility Facilities are installed within the Project, which Utility Facilities or any portion of those facilities lies in or upon Condominiums owned by other than the Owner of a Condominium served by those Utility Facilities, the Owners of any Condominium served by those Utility Facilities shall have the right of reasonable access for themselves or for utility companies to repair, replace and generally operate and maintain those Utility Facilities as and when necessary.

B. Whenever Utility Facilities serving more than one (1) Condominium are installed within the Project, the Owner of each Condominium served by those Utility Facilities shall be entitled to the full use and enjoyment of such portions of those Utility Facilities as service his or her Condominium.

C. In the event of a dispute between Owners with respect to the repair or rebuilding of Utility Facilities, or with respect to the sharing of the cost of those facilities, then, upon written request of one (1) Owner addressed to the other Owner(s), the matter shall be submitted to binding arbitration within sixty (60) days pursuant to Section 9.11.C. The decision of the arbitrator(s) shall be final and conclusive on the parties, and judgment on the decision may be entered in any court having jurisdiction.

D. The water, gas and electricity to each Unit shall be under a separate meter, and each Owner shall be responsible for paying his or her own utility bills. Each Owner shall be responsible for the cost of removal of his\her\its garbage from the Project by the scavenger company.

**6.2. Easements for Utilities and Maintenance:** Easements over and under the Project for the installation, repair, and maintenance of electric, telephone, water, gas, and sanitary sewer lines and facilities, heating facilities, cable or master television antenna lines, drainage facilities, walkways, and landscaping as shown on the recorded Map of the Project, and as may be hereafter required or needed to service the Project, are hereby reserved by Declarant and its successors and assigns, together with the right to grant and transfer the same. Reciprocal easements exist for the installation, repair, maintenance and replacement of meters for water, gas and electricity, so each Owner shall have access to the meter(s) for his Unit, regardless of where located.

**6.3. Association's Duties:** The Association shall maintain all Utility Facilities located in the Common Area except for those facilities maintained by utility companies, public, private, or municipal, and those maintained by the Owners as described in Section 5.3. The Association shall pay all charges for utilities supplied to the Project except those metered or charged separately to the Condominiums.

## ARTICLE VII. USE RESTRICTIONS

In addition to all of the covenants contained in this Declaration, the use of the Project and each Condominium in the Project is subject to the following:

**7.1. Condominium Use:** No Condominium shall be occupied and used except for residential purposes by the Owners or Occupants, and no trade or business shall be conducted in any Condominium. A Condominium may be used as a combined residence and executive or professional office by the Owner thereof, so long as such use does not interfere with the quiet enjoyment by other Condominium Owners of their Condominiums and does not include visiting clients. No tent, shack, trailer, basement, garage, outbuilding or structure of a temporary character shall be used at any time as a residence, either temporarily or permanently.

Residents shall be limited as follows: No more than two (2) persons per bedroom in any Condominium shall be permitted as permanent residents. (A "permanent resident" means any person residing in a Condominium more than fourteen (14) days out of any twelve (12) consecutive month period). One (1) additional person shall be allowed in addition to the maximum number of permanent residents otherwise permitted in each Condominium.

**7.2. Nuisances:** No noxious, illegal, or seriously offensive activities shall be carried within any Condominium, or in any part of the Project, nor shall anything be done that may be or may become a serious annoyance or a nuisance to or which may in any way interfere with the quiet enjoyment of each of the Owners' Condominiums or which shall in any way increase the rate of insurance for the Project, or cause any insurance policy to be cancelled or to cause a refusal to renew the same, or which will impair the structural integrity of any building.

**7.3. Vehicle Restrictions and Towing:** No trailer, camper, mobile home, commercial vehicle, recreational vehicle, truck having carrying capacity of greater than 3/4 ton, or van having seating capacity in excess of eight (8) persons or vehicle, boat, inoperable automobile, or similar equipment shall be permitted to be parked or remain upon any area within the Project. Permitted vehicles which are used both for business and personal use are not prohibited. No unreasonably noisy or smoky vehicles shall be operated on the Project. No unregistered or unlicensed motor vehicles shall be operated or parked upon the Project. The occupants of a Condominium, including their guests, shall not have or park more than two (2) permitted vehicles within the Project at any one time, unless agreed upon by each of the Owners. The Owners may install a sign at each vehicular entrance to the Project containing a statement that public parking is prohibited and that all vehicles not authorized to park on the Project will be removed at the owner's expense. The sign shall contain the telephone number of the local traffic law enforcement agency and shall not be less than 17 x 22 inches in size with lettering not less than one (1) inch in height.

**A.** The Association or the Owners may cause the removal of any vehicle wrongfully parked on the Project, including a vehicle owned by an occupant in accordance with the provisions of applicable laws.

**B.** Garage space shall not be converted into any use (such as a recreational room or storage room) that would prevent its use as parking space for the number of vehicles the space was designed to contain. Owners are to use their garage parking spaces for parking of their vehicles.

**7.4. Signs:** No signs shall be displayed to the public view on any Condominiums or any portion of the Project, except such signs as are approved by each of the Owners. Each Owner may display only one (1) "For Sale" or "For Rent" or "For Exchange" sign and may also display one (1) sign advertising directions to another Owners' Condominium which is for sale, rent, or exchange, provided the design, dimensions and locations are reasonable.

**7.5. Animals:** No animals of any kind shall be raised, bred, or kept in any Condominium, or on any portion of the Project, with the exception of trained dogs used for assistance by visually impaired, hearing impaired or physically handicapped persons pets and animals normally kept in cages or aquariums, such as small birds and fish, and, unless the Owners agree otherwise on a case by case basis, no more than two(2) usual and ordinary household pet such as dogs or cats provided it is not kept, bred, or maintained for any commercial purposes, and it is kept under reasonable control at all times. Owners shall prevent their pet from soiling all portions of the Common Area and shall promptly clean up any mess left by their pet. Owners shall be fully responsible for any damage caused by their pet. Any pets maintained in the Yard(s) (Areas) shall be kept in a manner that does not unreasonably disturb the Owner or other occupants of the neighboring Unit.

**7.6. Garbage and Refuse Disposal:** All rubbish, trash and garbage shall be regularly removed from the Project, and shall not be allowed to accumulate thereon. Trash, garbage and other waste shall not be kept except in sanitary containers kept within the garage of a Unit or concealed within the fenced-in yard area of a Yard. All equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition. All equipment, garbage cans or recycling containers, woodpiles, or storage piles shall be kept screened and concealed from view of other Condominiums, streets and Common Areas, except when placed out for pick up on the designated garbage pick up day. No toxic or hazardous materials shall be disposed of within the Project by dumping in the garbage containers or down the drains, or otherwise.

**7.7. Radio and Television Antennas:** No Owner may be permitted to construct and/or use and operate his own external radio and/or television antenna, satellite dish in excess of 36" in diameter or related equipment without the consent of the other Owner. In considering whether to give approval, the Owner shall consider and give great weight to considerations of aesthetics and uniformity of appearance and the requirements of any applicable laws. The Owners shall, in acting upon requests for approval of a satellite dish, comply with Civil Code § 4725. All fees for the use of any cable television system shall be borne by the respective Owners, and not by the Association.

**7.8. Right to Lease:**

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

- (1) all leases must be in writing;
- (2) the lease must be for the entire Condominium and not merely parts of the Condominium, unless the Owner remains in occupancy;
- (3) all leases shall be subject in all respects to provisions of the Declaration;
- (4) an Owner who leases his or her Condominium shall promptly notify the other Owner in writing of the names of all Occupants occupying such Condominium and provide the address and telephone number where such Owner can be reached;

B. Any failure of an Occupant to comply with this Declaration shall be a default under the lease, regardless of whether the lease so provides. In the event of any such default, the Owner immediately shall take all actions to cure the default including, if necessary, eviction of the Occupant;

C. If any Occupant is in violation of the provisions of this Declaration, the Association, or the other Owner, may bring an action in its own name and/or in the name of the Owner to have the Occupant evicted and/or to recover damages. If the court finds that the Occupant is violating, or has violated any of the provisions of this Declaration, the court may find the Occupant guilty of unlawful detainer notwithstanding the fact that the Owner is not the plaintiff in the action and/or the Occupant is not otherwise in violation of Occupant's lease. The remedy provided by this

subsection is not exclusive and is in addition to any other remedy or remedies which the Association has. If permitted by present or future law, the Association or the Owner bringing an action hereunder may recover all its costs, including court costs and reasonable attorneys' fees incurred in prosecuting the unlawful detainer action.

D. Each Owner shall provide a copy of this Declaration and any Rules to each Occupant of his Unit. By becoming an Occupant, each Occupant agrees to be bound by this Declaration and any Rules and recognizes and accepts the right and power of the Association and the other Owner to evict an Occupant for any violation by the Occupant of this Declaration.

E. No Condominium or any portion of any Condominium in the Project shall be leased, subleased, occupied, rented, let, sublet, or used for or in connection with any short term or shared use or occupancy arrangements such as "AirBnB" or other arrangements that provide for the advertising, listing, locating and/or rental of a Condominium as a short term or shared lodging.

**7.9. Architectural Control:** No building, fence, wall, pool, spa, obstruction, outside or exterior wiring, balcony, screen, patio, patio cover, tent, awning, carport, carport cover, improvement or structure of any kind shall be commenced, installed, erected, painted, repainted or maintained within any Unit, any Yard (Area), or elsewhere upon the Project, nor shall any alteration or improvement of any kind be made to any such improvements or structures, until the same has been approved in writing by the other Owner. Notwithstanding the foregoing, Owners may improve or alter any improvements within the interior of the Owner's Residence Building, provided such improvement or alteration does not impair the structural or acoustical integrity of any Common Area, the utilities or other systems servicing the Common Area or other Condominiums, and does not involve altering any Common Area.

An Owner who desires to make improvements or alterations, shall submit plans and specifications showing the nature, kind, shape, color, size, materials and location of any proposed improvements or alterations, shall be submitted to the other Owner for approval as to quality of workmanship and design and harmony of external design with existing structures, and as to location in relation to surrounding structures, topography, and finish grade elevation. No permission or approval shall be required to repaint in accordance with the original color scheme, or to rebuild in accordance with original plans and specifications. Nothing contained herein shall be construed to limit the right of an Owner to paint the interior of his Unit any color desired.

No landscaping or other physical improvements or additions shall be made to any decks, balconies, patios or Yard(s) (Areas) which are visible from the street or from the Common Area by any Owner until plans and specifications showing the nature, kind, shape and location of the materials shall have been submitted to and approved in writing by the other Owner.

All reviews and determinations made under this Section 7.9 shall be done on a timely basis and approvals shall not be unreasonably withheld or delayed.

Before commencement of any alteration or improvements approved by the other Owner, the Owner shall comply with all appropriate governmental laws and regulations. Approval by the other Owner does not satisfy the appropriate approvals that may be required by any governmental entity with appropriate jurisdiction.

**7.10. Structural Integrity:** Nothing shall be done in or on the building or in or on the Common Area which will impair the structural integrity of the building.

**7.11. Drapes:** All drapes, curtains, window coverings, shutters, or blinds visible from the street or Common Areas shall be beige, white or off-white in color or lined in beige, white or off-white, or as the case may be, of colors, materials and patterns which are approved by the Owners.

7.12. **Clothes Lines:** There shall be no outside laundering or drying of clothes. No draping of towels, carpets, or laundry over exterior railings shall be allowed.

7.13. **Liability of Owners for Damage to Common Area:** The Owner of each Condominium shall be liable to the Association for all damage to the Common Area or improvements to the extent described in Section 5.1.F.

7.14. **Basketball Standards and Sports Apparatus:** No basketball or other sports apparatus shall be attached to a Residence Building exterior, or affixed to any portion of the Common Area, nor shall any portable basketball apparatus be used within the Project, unless approved by each of the Owners.

7.15. **Activities Causing Increase in Insurance Rates:** Nothing shall be done or kept in any Unit or in any improvements constructed thereon, or in the Common Area, which will increase any applicable rate of insurance or which will result in the cancellation of insurance on any Unit or any part of the Common Area, or which would be in violation of any law.

7.16. **Common Area Use:** Nothing shall be stored, grown, or displayed in the portions of the Common Area not within Exclusive Use Common Areas that is not approved in advance by each of the Owners.

#### ARTICLE VIII. INSURANCE; DAMAGE OR DESTRUCTION; CONDEMNATION

##### 8.1. Insurance.

A. **Association Insurance:** The Association shall obtain and maintain the following insurance:

(1) a master hazard policy insuring all improvements, equipment and fixtures in the Project including the Units as originally constructed with policy limits of the full replacement value of the covered improvements;

(2) an occurrence version comprehensive general liability policy insuring the Association, its agents, the Owners and their respective family members, against liability incident to the ownership or use of the Common Area or any other Association owned or maintained real or personal property. The amount of general liability insurance that the Association shall carry at all times shall be reasonable for as compared to similar projects in the County and shall not be less than the minimum amounts required by California Civil Code §5800 and §5805.

(3) workers' compensation insurance to the extent required by law (or such greater amount as the Owners deems necessary). The Association shall obtain a Certificate of Insurance naming it as an additional insured in regard to workers' compensation claims from any independent contractor who performs any service for the Association, if the receipt of such a certificate is practicable;

(4) such other insurance as the Owners consider necessary or advisable; and

(5) the following endorsements should be included, if applicable:

(a) changes in building codes, and demolition coverage (sometimes referred to as "ordinance or law endorsement");

(b) inflation guard coverage;

(c) "agreed-amount" endorsement (to eliminate a coinsurance

problem);

(d) replacement cost endorsement; and

(e) primary coverage endorsement.

**B. Waiver of Subrogation:** Any insurance maintained by the Association shall contain "waiver of subrogation" as to the Association and its officers, directors and Members, the Owners and occupants of the Condominiums and mortgagees, and, if obtainable, a cross-liability or severability of interest endorsement insuring each insured against liability to each other insured. All individually owned insurance shall contain a waiver of subrogation as to the Association and its officers, directors and Members, the Owners and occupants of the Condominiums and mortgagees, and all Members are deemed to have waived subrogation rights as to the Association and/or other Members, whether or not their policies so provide.

**C. Review of Policies:** The Association shall periodically (and not less than once every three (3) years) review all insurance policies maintained by the Association to determine the adequacy of the coverage and to adjust the policies accordingly.

**D. Separate Insurance Limitations:** No Condominium Owner shall separately insure his Condominium against loss by fire or other casualty covered by any insurance carried by the Association. If any Owner violates this provision, any diminution in insurance proceeds otherwise payable under the Association's policies that results from the existence of such other insurance will be chargeable to the Owner who acquired other insurance. The insurance maintained by the Association does not cover the personal property in the residences and does not cover personal liability for damages or injuries occurring in the Units. Any Owner can insure his personal property against loss and obtain any personal liability insurance that he desires. In addition, any improvements made by an Owner within his Unit may be separately insured by the Owner, but the insurance is to be limited to the type and nature of coverage commonly known as "improvements insurance". The Owner shall not obtain such insurance if the policy referred to in Section 8.1(1) will provide coverage for such improvements.

**E. Separate Individual Insurance:** Each Owner shall obtain and maintain, at the Owner's sole expense, fire and casualty coverage as may be required by any mortgagee of the Owner's Unit, and with respect to amount, the coverage shall be for one hundred percent (100%) of current replacement cost of all improvements within his Unit. All such individually carried insurance shall contain a waiver of subrogation by the carrier as to the other Owners, the Association, Declarant, and the mortgagees of such Unit.

**F. Copies of Policies:** The Association shall make available to all Members a copy of the Association's policy to enable Members to insure their Units without duplicating insurance carried by the Association and inadvertently triggering a co-insurance clause in the Association's policy referred to in Section 8.1(1).

**G. Limitation on Liability:** The Association shall have no liability to any Owner or mortgagee if, after a good faith effort, it is unable to obtain the insurance required hereunder, because the insurance is no longer available or, if available, can be obtained only at a cost that the Owners determine is unreasonable under the circumstances, or the Members fail to approve any Assessment increase needed to fund the insurance premiums.

**8.2. Damage or Destruction:** If Project improvements are damaged or destroyed by fire or other casualty, the improvements shall be repaired or reconstructed substantially in accordance with the original as-built plans and specifications, modified as may be required by applicable building codes and regulations in force at the time of such repair or reconstruction and subject to such alterations or upgrades as may be approved by both of the Owners, unless both of the Owners determine not to make such repairs or reconstruction.

**A. Process For Repair or Reconstruction:** The Owners shall designate a construction consultant, a general contractor, and an architect for the repair or reconstruction. All insurance proceeds, Association monies allocated for the repair or reconstruction, and any borrowings by the Owners for the repair or reconstruction shall be deposited with a commercial lending institution experienced in the disbursement of construction loan funds (the "depository") as selected by the Owners. Funds shall be disbursed in accordance with the normal construction loan practices of the depository.

(1) If the damage (a) is isolated to only one Unit; (b) does not affect the maintenance or repair of any of the other Units; and (c) the cost of repair does not exceed five (5) percent of the replacement cost of the Unit, the Owner of the affected Units may effect the repair of such damage and the insurance proceeds necessary to pay for such repair shall be distributed to the Owner to pay for such repair. When the damage or loss is isolated to one Unit, the amount of any deductible to be paid or uninsured amount of such loss shall be the responsibility of that Unit Owner, and shall not be assessed to any other Unit Owner.

(2) The repair or reconstruction shall commence as soon as reasonably practicable after the date of such damage or destruction and shall be completed as quickly as is reasonably practicable after commencement of reconstruction, subject to delays that are beyond the control of the party responsible for making the repairs. The Owner of the damaged or destroyed improvement immediately shall take such steps as may be reasonably necessary to secure any hazardous condition and to screen any unsightly views resulting from the damage or destruction.

**B. Process If Repair or Reconstruction Not Undertaken:** If the Owners elect not to repair or reconstruct the damage to the Project in accordance with the foregoing, all available insurance proceeds shall be disbursed among all Owners and their respective Mortgagees in proportion to the respective fair market values of their Condominiums as of the date immediately preceding the date of damage or destruction as determined by a qualified independent appraiser selected by the Owners, after first applying the proceeds to the cost of mitigating hazardous conditions on the Project, making provision for the continuance of public liability insurance to protect the interests of the Owners until the Project can be sold, and complying with all other applicable requirements of governmental agencies. In the event of a failure to agree upon an appraiser, the appraiser shall be appointed by the then President of the County Bar Association.

If the Project is sold, the sales proceeds shall be distributed to all Owners and their respective Mortgages in proportion to their respective fair market values of their Condominiums as of the date immediately preceding the date of damage or destruction as determined by the independent appraisal procedure described above. Any Owner may file a partition action as to the entire Project under California Civil Code §4610, or any successor statute, and the court shall order partition by sale of the entire Project and distribution of the sale proceeds as provided in this Declaration.

**8.3. Condemnation:** In the event of a taking or acquisition of part or all of the Common Area(s) by a condemning authority, the award or proceeds of settlement shall be payable to the Owners for the use and benefit of the Owners and their Mortgagees as their interests may appear. Proceeds of condemnation shall be distributed among Owners of Condominiums and their respective Mortgagees according to the relative values of the Condominiums affected by the condemnation, said values to be determined by the method provided in Section 8.2.B. In the event of condemnation, any Owner may file a partition action as to the entire Project under California Civil Code §4610, or any successor statute, and the court shall order partition by sale of the entire Project and distribution of the sale proceeds as provided in this Declaration.

## **ARTICLE IX. GENERAL PROVISIONS**

**9.1. Enforcement:** Each Owner shall have the right to enforce, by any proceeding at law or

in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration, and in such action shall be entitled to recover reasonable attorneys' fees as are ordered by the Court. In the event an Owner fails to pay for repairs, maintenance, or for insurance, or any joint obligations under this Declaration, the Association or the other Owner may bring an action at law to recover the amount due and shall be entitled to recover reasonable attorneys' fees in such action, or may file a lien as provided in Section 4.1.

**9.2. Invalidity of Any Provision:** Should any provision or portion of this Declaration be declared invalid or in conflict with any law of the jurisdiction where this Project is situated, the validity of all other provisions and portions hereof shall remain unaffected and in full force and effect.

**9.3. Term:** The covenants and restrictions of this Declaration shall run with and bind the Project, and shall inure to the benefit of and shall be enforceable by the Owners of any property subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of thirty (30) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years, unless an instrument in writing, signed by both of the then Owners of the Condominiums, has been recorded within the year preceding the beginning of each successive period of ten (10) years, agreeing to change said covenants and restrictions in whole or in part, or to terminate the same.

**9.4. Amendments:** This Declaration may be amended only by a written instrument signed by each of the Owners, and shall become effective upon being recorded in the County.

**9.5. Encroachment Rights:** If any portion of the Common Area encroaches on any Unit or any part of a Unit, or if any portion of a Unit encroaches on any Common Area due to engineering errors, errors or adjustments in original construction, reconstruction, repair, settlement, shifting, or movement of the building, or any other cause, the owner of the encroachment shall have the right to maintain, repair or replace the encroachment, as long as it exists, and the rights and obligations of Owners shall not be altered in any way by said encroachment, settlement or shifting; provided, however, that no right shall be created in favor of an Owner or Owners if said encroachment occurred due to the intentional conduct of said Owner or Owners. In the event a structure is partially or totally destroyed, and then repaired or rebuilt, the Owners agree that minor encroachments over adjoining Condominiums or Common Area shall be permitted and that there shall be appropriate rights for the maintenance of such encroachments so long as they shall exist.

In the event that an error in engineering, design or construction results in an encroachment of a building into the Common Area, or into or onto an adjoining Unit, or into a required setback area, a correcting modification may be made in the subdivision map and/or Condominium Plan. Said modification shall be in the form of a certificate of correction and shall be executed by Declarant (so long as Declarant is the sole owner of the Property) and by Declarant's engineer (in the case of a Condominium Plan) and, in addition, by the city engineer (in the case of a parcel map).

**9.6. Rights of First Lenders:** No breach of any of the covenants, conditions and restrictions contained in this Declaration, nor the enforcement of any of its lien provisions, shall render invalid the lien of any First Mortgage (meaning a mortgage with first priority over any other mortgage) on any Condominium made in good faith and for value, but all of those covenants, conditions and restrictions shall be binding upon and effective against any Owner whose title is derived through Foreclosure or trustee's sale, or otherwise. Notwithstanding any provision in this Declaration to the contrary, First Lenders shall have the following rights:

**A. Copies of Documents:** The Owners shall make available to First Lenders, and to holders, insurers or guarantors of any First Mortgage, current copies of the Declaration concerning the Project and the books, records and financial statements of the Association. "Available" means available for inspection, upon request, during normal business hours or under other reasonable circumstances. The Owners may impose a fee for providing the requested documents which may not

exceed the reasonable cost to prepare and reproduce them.

**B. Audited Statement:** Any holder of a First Mortgage shall be entitled, upon written request, to have an audited financial statement for the immediately preceding fiscal year prepared at its expense if one is not otherwise available. Such statement shall be furnished within one hundred twenty (120) days of the Association's fiscal year-end.

**C. Notice of Action:** Upon written request to the Association, identifying the name and address of the Eligible Mortgage Holder or Eligible Insurer or Guarantor, and the Condominium number or address, such Eligible Mortgage Holder or Eligible Insurer or Guarantor will be entitled to timely written notice of:

(1) any condemnation loss or any casualty loss which affects a material portion of the Project or any Condominium on which there is a First Mortgage held, insured, or guaranteed by such Eligible Mortgage Holder or Eligible Insurer or Guarantor, as applicable;

(2) any default in performance of obligations under this Declaration or delinquency in the payment of Assessments or charges owed by an Owner of a Condominium subject to a First Mortgage held, insured or guaranteed by such Eligible Mortgage Holder or Eligible Insurer or Guarantor, which remains uncured for a period of sixty (60) days;

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

(4) any proposed action which would require the consent of a specified percentage of Eligible Mortgage Holders as specified in Section 9.6.D.

**D. Consent to Action:**

(1) Except as provided by statute or by other provision of this Declaration in case of substantial destruction or condemnation of the Project:

(a) the consent of all Owners of Condominiums and the approval of all Eligible Mortgage Holders holding mortgages on Condominiums shall be required to terminate the legal status of the Project as a Condominium Project;

(b) the consent of all Owners of Condominiums and the approval of all Eligible Mortgage Holders holding mortgages on Units shall be required to add or amend any material provisions of this Declaration which establish, provide for, govern or regulate any of the following: (i) voting rights; (ii) increases in Assessments that raise the previously assessed amount by more than twenty percent (20%), Assessment Liens, or the priority of Assessment Liens; (iii) reductions in reserves for maintenance, repair, and replacement of Common Areas; (iv) responsibility for maintenance and repairs; (v) reallocation of interests in the Common Areas, or rights to their use; (vi) convertibility of Units into Common Areas or vice versa; (vii) expansion or contraction of the Project, or the addition, annexation, or withdrawal of property to or from the Project; (viii) hazard or fidelity insurance requirements; (ix) imposition or any restrictions on the leasing of Units; (x) imposition of any restrictions on an Owner's right to sell or transfer his or her Unit; (xi) restoration or repair of the Project (after damage or partial condemnation) in a manner other than that specified in this Declaration; or (xii) any provisions that expressly benefit mortgage holders, insurers, or guarantors;

(c) an Eligible Mortgage Holder who receives a written request to approve additions or amendments without delivering or posting to the requesting party a negative response within thirty (30) days after the notice of the proposed addition or amendment shall be deemed to have approved such request, provided the notice has been delivered to the mortgage

holder by certified or registered mail, return receipt requested.

(2) except as provided by statute in case of condemnation or substantial loss to the Condominiums and/or common elements of the Project, unless all of the holder(s) of the First Mortgages (based upon one (1) vote for each First Mortgage owned), or all Owners of the individual Condominiums have given their prior written approval, the Association and/or the Owners shall not be entitled to:

(a) by act or omission, seek to abandon or terminate the Condominium Project (except for abandonment or termination provided by law in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain);

(b) change the pro rata interest or obligations of any individual Condominium for the purpose of: (i) levying Assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards; or (ii) determining the pro rata share of ownership of each Condominium in the Common Area, provided that no Owner's undivided interest in the Common Area may be changed without the consent of that Owner;

(c) partition or subdivide any Condominium Unit;

(d) 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 other public purposes consistent with the intended use of the Common Area by the Condominium Project shall not be deemed a transfer within the meaning of this clause);

(e) use hazard insurance proceeds for losses to any of the Project (whether to Units or to Common Area) for other than the repair, replacement or reconstruction of such Project.

**E. Right of First Refusal:** The right of an Owner to sell, transfer, or otherwise convey his or her Condominium shall not be subject to any right of first refusal or similar restriction.

**F. Priority of Liens:** Any lien created under the provisions of this Declaration is expressly made subject and subordinate to the lien and encumbrance of any First Mortgage that encumbers all or any portion of the Project, or any Unit. Each holder of a First Mortgage lien on a Condominium who comes into possession of the Condominium by virtue of Foreclosure of the Mortgage, or any purchaser at a foreclosure sale under a first deed of trust, will take the Condominium free of any claims for unpaid Assessments and fees, late charges, fines or interest levied in connection with such claims, against the Condominium which accrue prior to the time such holder takes title to the Condominium, except for claims for a pro rata share of such Assessments or charges to all Condominiums including the mortgaged Condominium, and except for Assessment Liens as to which a notice of delinquent Assessment has been recorded prior to the Mortgage.

**G. Distribution of Insurance or Condemnation Proceeds:** No provision of this Declaration gives an Owner, or any other party, priority over any rights of First Lenders in the case of a distribution to Owners of insurance proceeds or condemnation awards for losses to or taking of Condominiums and/or Common Area.

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

**9.7. Termination of any Responsibility of Declarant:** In the event Declarant shall convey all of its right, title and interest in and to the Project to any person, then and in such event, Declarant

shall be relieved of the performance of any further duty or obligation hereunder, and such partnership, individual or individuals, corporation or corporations, shall be obligated to perform all such duties and obligations of the Declarant.

**9.8. Owners' Compliance:** Each Owner or Occupant of a Condominium shall comply with the provisions of this Declaration. Failure to comply with any such decisions, or resolutions shall be grounds for an action (1) to recover sums due, (2) for damages, (3) for injunctive relief, (4) for costs and attorney's fees, or (5) any combination of the foregoing.

**9.9. Notice:** Any notice permitted or required by this Declaration may be delivered either personally or by mail. If delivery is by mail, it shall be deemed to have been delivered seventy-two (72) hours after a copy of the same has been deposited in the United States mail, first class or registered, postage prepaid, addressed to the Owner to be notified at the address of the Unit or at such other address given by such Owner to the other Owner in a written notice.

**9.10. Fair Housing.** No Owner shall, either directly or indirectly, forbid or restrict the conveyance, encumbrance, leasing, or mortgaging, or occupancy of his Unit to any person of a specified race, sex, age, marital status, color, religion, ancestry, national origin, sexual orientation, familial status, source of income or disability of that person.

**9.11. Alternative Dispute Resolution:** The Owners shall resolve any civil claim or action through alternative dispute resolution proceedings such as mediation, binding arbitration, or non-binding arbitration proceedings. The Owners shall follow the requirements of applicable State law, including the provisions of the Davis-Stirling Act. Prior to initiating the prosecution of a civil action solely for declaratory relief or injunctive relief to enforce this Declaration, or for declaratory relief or injunctive relief to enforce this Declaration in conjunction with a claim for monetary damages, the Owners shall endeavor to submit the matter to alternative dispute resolution in compliance with the provisions of the Davis-Stirling Act.

A. Immediately after initiating the prosecution or defense of any civil action, the Owners shall make a reasonable effort, in good faith, to meet and confer with every person who is a party concerning appropriate processes for resolving the civil action, including available alternative dispute resolution proceedings; concerning appropriate processes for avoiding or reducing costs or losses by the parties associated with the action; and providing for the scope of discovery, if any, to be conducted prior to the inception of any alternative dispute resolution procedure. The Owners shall consider diversion of the prosecution or defense of any civil action to alternative dispute resolution proceedings such as mediation, non-binding arbitration, or binding arbitration and is authorized to agree to participate and to participate fully and in good faith in the resolution of any civil action through any alternative dispute resolution proceedings, including, but not limited to, mediation, non-binding arbitration, and binding arbitration, and paying costs reasonably incurred by the Association on account of those alternative dispute resolution proceedings.

B. The Association shall comply with the requirements of the California Civil Code by providing Members of the Association annually with a summary of the provisions of Article 2 of Chapter 7 of the Davis-Stirling Act (Sections 5925-5965), including the following language: "Failure by any Member of the Association to comply with the alternative dispute resolution requirements of Section 5930 of the Civil Code may result in the loss of your right to sue the Association or another Member of the Association regarding enforcement of this Declaration or the applicable law."

C. If a dispute is the subject of arbitration under this Section 9.11, the following shall apply:

(1) costs and fees of the arbitration, including ongoing costs and fees of the arbitration shall be paid as agreed by the parties, and, if the parties cannot agree, as determined by the arbitrator(s), with the costs and fees of the arbitration to ultimately be borne as determined by the

arbitrator(s);

(2) neutral and impartial individual(s) shall be appointed to serve as arbitrator(s), with the arbitrator(s) to be appointed within a reasonable period of time, which in no event shall be more than 60 days from the administrator's receipt of a written request from a party to arbitrate the claim or dispute. In selecting the arbitrator, the provisions of §1297.121 of the Code of Civil Procedure shall apply. An arbitrator may be challenged for any of the grounds listed in §1297.121, or in §1297.124 of the Code of Civil Procedure;

(3) venue of the arbitration to be in the County unless the parties agree to some other location;

(4) for the prompt and timely commencement of the arbitration in accordance with (i) the rules of the arbitration, or if the rules do not specify a date by which arbitration is to commence, then (ii) a date was agreed by the parties, and if they cannot agree as to a commencement date, (iii) a date determined by the arbitrator(s);

(5) for the arbitration to be conducted in accordance with rules and procedures which are reasonable and fair to the parties;

(6) for the prompt and timely conclusion of the arbitration;

(7) the arbitrator(s) shall be authorized to provide all recognized remedies available in law or equity for any cause of action that is the basis of arbitration; provided, however, that there shall in no event be any award of punitive damages. The arbitrator(s) shall not have the power to commit errors of law or legal reasoning, and the award may be vacated or corrected on appeal to a court of competent jurisdiction for any such error;

(8) a judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

**9.12. Number; Gender:** The singular and plural number and masculine, feminine and neuter gender shall each include the other where the context requires.

**9.13. City Provisions:**

**A.** The entire Project and all of the properties located thereon shall be subject to the conditions and restrictions of all subdivision and other Project approvals by the City, with respect to the Project. Any changes and/or modifications to the Project and/or any Unit, including but not limited to changes to the exterior of any Unit, may be subject to review and approval of the City, as may be determined by review of the Project approvals by the City.

**B.** This Section may not be amended without the prior written consent of the Director of Community Development for the City. Nothing contained in this Section shall limit any other right or remedy which the City may have under its ordinances or state law.

**C. Compliance with the City Conditions of Approval:** It shall be the responsibility of each Owner to insure that any changes or modifications to the Project or any Unit are in compliance with the original City approval of the project.

**D. Property Shall Comply with City Zoning Ordinances.** The Property, including all Common Areas, private streets and, parks within the Property, shall at all times comply with the City's Zoning Code and shall not be used for any purpose other than as permitted in the City Zoning Code.

**E. Modifications to Property.** Any alterations, modifications, or other improvements

to the Property shall comply with all applicable City Codes.

F. **Maintenance and Landscaping of Common Areas and Tree Protection.** The Association is responsible for maintenance and landscaping of all parts of the Project which are held in common and such maintenance shall be performed to the standard of maintenance prevalent in the neighborhood. No trees shall be removed except in accordance with City requirements.

G. **Amendments to Organizational Documents Require City Approval.** Any amendments or modifications to the organizational documents shall be submitted to the City Attorney for approval. No amendment or modification to the organizational documents shall be effective without prior written consent of the City Attorney.

H. **Severability.** Invalidation of any one of the City's required covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

I. **Appliance Warranty.** The initial purchaser of each Unit shall receive a one year warranty covering the operation and maintenance of all built-in appliances.

9.14. **Condominium Plan Consent:** Declarant, by its execution of this Declaration, and any beneficiary under a deed of trust encumbering the Project, by its subordinating to this Declaration, certify that each consents to the recordation of the Condominium Plan, pursuant to the requirements of California Civil Code §§4285(c) and 4290.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has executed this Declaration this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Daniel M. Meredith

\_\_\_\_\_  
Cherise Meredith

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT - CIVIL CODE SECTION 1189

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

STATE OF CALIFORNIA

COUNTY OF \_\_\_\_\_

On \_\_\_\_\_, 202\_ before me, \_\_\_\_\_, a Notary Public, personally appeared \_\_\_\_\_ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal

(SEAL)