

Recording Requested By And
When Recorded Return To:

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

937-939 NORTH IDAHO STREET

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 SEX, GENDER IDENTITY, GENDER EXPRESSION, FAMILIAL STATUS, RACE, COLOR, RELIGION, ANCESTRY, NATIONAL ORIGIN, DISABILITY, MEDICAL CONDITION, GENETIC INFORMATION, MARITAL STATUS, SEXUAL ORIENTATION, CITIZENSHIP, PRIMARY LANGUAGE, IMMIGRATION STATUS, OR 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.

Notice of Airport in Vicinity: This property is presently located in the vicinity of an airport, within what is known as an airport influence area. For that reason, the property may be subject to some of the annoyances or inconveniences associated with proximity to airport operations (for example: noise, vibration, or odors). Individual sensitivities to those annoyances can vary from person to person. You may wish to consider what airport annoyances, if any, are associated with the property before you complete your purchase and determine whether they are acceptable to you. An "airport influence area," also known as an "airport referral area," is the area in which current or future airport-related noise, overflight, safety, or airspace protection factors may significantly affect land uses or necessitate restrictions on those uses as determined by an airport land use commission.

937-939 NORTH IDAHO STREET

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

TABLE OF CONTENTS

INTRODUCTORY PARAGRAPHS A thru D	1
ARTICLE I. DEFINITIONS	1
1.1. "Association":.....	1
1.2. "City":	1
1.3. "Common Area(s)":.....	1
1.4. "Common Expenses":.....	1
1.5. "Common Interest":.....	1
1.6. "Condominium":	2
1.7. "Condominium Plan":.....	2
1.8. "County":.....	2
1.9. "Declarant":.....	2
1.10. "Declaration":	2
1.11. "Eligible Mortgages":.....	2
1.12. "Eligible Mortgage Holder":.....	2
1.13. "Eligible Insurer or Guarantor":.....	2
1.14. "Exclusive Use Common Area":	2
1.15. "First Lender":.....	2
1.16. "First Mortgage":.....	2
1.17. "Foreclosure":	2
1.18. "Map":.....	2
1.19. "Member":.....	2
1.20. "Mortgage":.....	2
1.21. "Mortgagee":	2
1.22. "Mortgagor":.....	2
1.23. "Occupant":.....	2
1.24. "Owner" or "Owners":.....	3
1.25. "Person":.....	3
1.26. "Project":.....	3
1.27. "Residence Building":.....	3
1.28. "Rules":.....	3
1.29. "Share":	3
1.30. "Unit":	3
1.31. "Utility Facilities":	3
1.32. "Yard Area":.....	3
ARTICLE II. DESCRIPTION OF PROJECT, DIVISION OF PROPERTY, AND CREATION OF PROPERTY RIGHTS.....	3
2.1. Description of Project.....	3
2.2. Division of Property:	3
A. Units	3
B. Common Area.....	3
C. Exclusive Use Common Areas	4
2.3. Rights of Entry and Use	4
2.4. Partition Prohibited.....	4
2.5. All Easements Part of Common Plan	4
ARTICLE III. ASSOCIATION, ADMINISTRATION, MEMBERSHIP AND VOTING RIGHTS, DELEGATION, AND BUDGET	4
3.1. Association to Manage Common Areas.....	5
3.2. Membership	5
3.3. Transferred Membership	5

3.4.	Membership and Voting Rights.....	5
3.5.	Meetings	5
3.6.	Delegation of Authority	5
3.7.	Annual Budget.....	5
3.8.	Association Decision Binding on Owners.....	5
ARTICLE IV.	DUTIES AND POWERS OF THE ASSOCIATION; MAINTENANCE.....	5
4.1.	Duties	6
A.	Maintenance - Common Area.....	6
B.	Maintenance - Common Fence	6
C.	Maintenance - Storm Drains.....	6
D.	Maintenance - Shared Sewer System	6
E.	Maintenance - Exclusion for Certain Causes	6
F.	Insurance	6
G.	Discharge of Liens.....	6
H.	Payment of Expenses and Taxes.....	6
I.	Enforcement.....	6
J.	Compliance with Laws	7
4.2.	Powers.....	7
A.	Manager.....	7
B.	Access	7
C.	Contracts	7
4.3.	Owner's Right and Obligation to Maintain and Repair.....	7
ARTICLE V.	UTILITIES	7
5.1.	Owners' Rights and Duties	7
5.2.	Easements for Utilities and Maintenance.....	8
5.3.	Association's Duties	8
ARTICLE VI.	USE RESTRICTIONS	8
6.1.	Condominium Use	8
6.2.	Nuisances	8
6.3.	Vehicle Restrictions and Towing.....	9
6.4.	Signs	9
6.5.	Animals.....	9
6.6.	Garbage and Refuse Disposal.....	9
6.7.	Radio and Television Antennas	9
6.8.	Right to Lease.....	10
6.9.	Architectural Control.....	10
6.10.	Structural Integrity.....	11
6.11.	Clothes Lines.....	11
6.12.	Liability of Owners for Damage to Common Area	11
6.13.	Basketball Standards and Sports Apparatus.....	11
6.14.	Activities Causing Increase in Insurance Rates	11
6.15.	Common Area Use.....	11
ARTICLE VII.	INSURANCE; DAMAGE OR DESTRUCTION; CONDEMNATION.....	11
7.1.	Insurance	11
A.	Association Insurance	11
B.	Waiver of Subrogation	12
C.	Review of Policies	12
D.	Separate Individual Insurance.....	12
E.	Copies of Policies	12
F.	Limitation on Liability	12
7.2.	Condemnation.....	12
ARTICLE VIII.	GENERAL PROVISIONS	12
8.1.	Enforcement.....	12
8.2.	Invalidity of Any Provision.....	13
8.3.	Term	13
8.4.	Amendments.....	13
8.5.	Encroachment Rights.....	13
8.6.	Rights of First Lenders	13
A.	Consent to Action	13

B.	Contracts	14
C.	Distribution of Insurance or Condemnation Proceeds	14
D.	Status of Loan to Facilitate Resale	14
E.	Right to Appear at Meetings.....	15
8.7.	Termination of any Responsibility of Declarant.....	15
8.8.	Owners' Compliance.....	15
8.9.	Notice	15
8.10.	Fair Housing	15
8.11.	Alternative Dispute Resolution	15
8.12.	Number; Gender	16
8.13.	City Provisions.....	16
8.14.	Condominium Plan Consent	17

DRAFT

937-939 NORTH IDAHO STREET

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION, made on the date hereinafter set forth, by ROBERT K. ZLATIC, TRUSTEE, hereinafter 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 "Lot 1" on the Parcel Map filed for record in the Office of the Recorder of San Mateo County, California, on _____, 20__, in Volume ____ of Parcel Maps, pages ____.

B. **Intention.** The Property is improved with 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 1.26. Each Condominium Unit in the Project shall consist of a three dimensional space, containing a Residence Building, 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. **"Association":** The IDAHO STREET CONDOMINIUM ASSOCIATION, an unincorporated association, the Members of which shall be the two (2) Owners of Condominiums in the Project.

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

1.3. **"Common Area(s)":** All of the Project except the Units, and includes Lot 1 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.

1.4. **"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.

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

1.6. "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.

1.7. "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, a copy of which Plan is attached hereto as Exhibit "A," and incorporated by reference herein.

1.8. "County": The County of San Mateo.

1.9. "Declarant": ROBERT K. ZLATIC, TRUSTEE, or any successor or assign that expressly assumes the rights and duties of the Declarant(s) hereunder, in a recorded written document.

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

1.11. "Eligible Mortgages": Mortgages held by "Eligible Mortgage Holders".

1.12. "Eligible Mortgage Holder": A First Lender who has requested notice of certain matters from the Association in accordance with Section 8.6.C.

1.13. "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 8.6.C.

1.14. "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.

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

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

1.17. "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.

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

1.19. "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.

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

1.21. "Mortgagee": A beneficiary or a holder of a deed of trust as well as a mortgagee.

1.22. "Mortgagor": The trustor of a deed of trust as well as a mortgagor.

1.23. **"Occupant":** A Person who legally occupies a Unit, including, without limitation, a tenant or guest, invitee, renter, lessee, family member, or relative

1.24. **"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.

1.25. **"Person":** A natural person, a corporation, a partnership, a trust, or other legal entity.

1.26. **"Project":** All of the real property described on the Map and all improvements on that real property and which is subject to this Declaration.

1.27. **"Residence Building":** Each dwelling situated within the confines of a Unit as described on the Condominium Plan.

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 Area"** shall mean and refer to the fenced in portions of the Exclusive Use Common Area of a Unit that are exterior of the Residence Building 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 shall contain a Residence Building, a garage, and the earth beneath the Unit and the sky above the Unit, and all other improvements within 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 Residence 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 1.3. 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 1.3. 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. A portion of the Common Area designated "Unit 1 and 2 Storage Common Area" on the Condominium Plan is for the shared use of the Owners of Units 1 and 2. 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: Parking space designated "P", followed by the number of the Unit; Yard designated "Y" 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 4.2.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 a 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 Common Area as set forth in Sections 4.1.A. and 4.1.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 8.5.

E. The rights of Owners to make improvements or alterations authorized by California Civil Code § 4760, subject to the provisions of Section 6.9.

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 7.2.B or 7.3, 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. DUTIES AND POWERS OF THE ASSOCIATION; MAINTENANCE

4.1. **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 of the Residence Building within the Unit, except as herein provided. The Owner of a Unit shall be responsible for the maintenance, repair and upkeep of the Yard Area located within the Exclusive Use Common Areas appurtenant to the Unit.

B. **Maintenance - Common Fence:** The Association shall maintain, repair, paint, resurface, replace (when necessary), the common fences between the two Yard Areas. The fences that enclose the rear portions of the Yard Areas shall be maintained, repaired and replaced by the Unit Owner having the use of the particular Yard Area.

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 4.3 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 7.1 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. **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.

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

J. **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.

4.2. **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 4.1.A, 4.1.B, 4.1.C and 4.1.D and/or to perform maintenance work that a Unit Owner has failed to perform as provided in Section 4.3, 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.

4.3. **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, and the Residence Building within his 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.

Each Unit Owner shall have a nonexclusive easement to enter upon the Common Area to undertake repairs to a Residence Building or Yard Area as may be necessary, provided that the Unit Owner does not harm or injure the Common Area in so doing, or promptly and fully repairs any injury to the Common Area which might occur. Where the exterior wall of a Residence Building or Yard Area of a Unit abuts or is adjacent to the Yard Area of an adjacent Unit, the Unit Owner shall be entitled to enter the Yard Area of the adjacent Unit, after providing advance written notice to the Owner of the adjacent Unit, if necessary to effect the maintenance and repair of his or her Residence Building or Yard Area, provided that the Unit Owner does not harm or injure the Yard Area of the adjacent Unit in so doing, or promptly and fully repairs any injury to the Yard Area which might occur. Notwithstanding the foregoing, unless the Owners determine otherwise, the Association shall be responsible for maintenance and upkeep of the unfenced front Yard Areas.

ARTICLE V. UTILITIES

5.1. **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 8.11. 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.

5.2. **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, 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.

5.3. **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 4.1.B. The Association shall pay all charges for utilities supplied to the Project except those metered or charged separately to the Condominiums.

ARTICLE VI. 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:

6.1. **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 ninety (90) 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.

6.2. 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.

6.3. 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 of a Residence Building 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. If an Owner has more than one vehicle, one vehicle shall be parked in the garage of the Unit and the other vehicle shall be parked within the exclusive use easement parking space assigned to the Unit.

6.4. 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.

6.5. Animals: "Service animals" used for assistance by visually impaired, hearing impaired or physically handicapped persons, or certified companion animals prescribed by a physician, may be kept by an Owner or Occupant in accordance with the Rules. A "service animal" is defined in 28 CFR § 36.104, as the Code of Federal Regulations under the Americans with Disabilities Act of 1990, meaning a dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability, or as such definition may be revised by the government of the United States. 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 may be raised, bred or kept in any Condominium or in any portion of the Project provided they are not kept, bred, or maintained for any commercial purposes, and they are kept under reasonable control at all times. Owners shall prevent their pets from soiling all portions of the Common Area and shall promptly clean up any mess left by their pets. Owners shall be fully responsible for any damage caused by their pets. Any pets maintained in the yards shall be kept in a manner that does not unreasonably disturb the Owner or other occupants of the neighboring Unit.

6.6. 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 area of a Yard Area. 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.

6.7. 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.

6.8. 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.

6.9. 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 Residence Building any color desired.

No landscaping or other physical improvements or additions shall be made to any decks, balconies, patios or Yard 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 6.9 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.

6.10. Structural Integrity: Nothing shall be done in or on any Residence Building or in or on the Common Area which will impair the structural integrity of any Residence Building.

6.11. 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.

6.12. 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 4.1.E.

6.13. 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.

6.14. 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.

6.15. 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 VII. INSURANCE; DAMAGE OR DESTRUCTION; CONDEMNATION

7.1. 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 Common Area 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; and,

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

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 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 on 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.

E. 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 7.1(1).

F. 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.

7.2. 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 7.2.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 VIII. GENERAL PROVISIONS

8.1. **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. The provisions of Civil Code §5675 (Assessment Liens) do not apply to this project.

8.2. **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.

8.3. **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.

8.4. **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.

8.5. **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).

8.6. **Rights of First Lenders:** No breach of any of the covenants, conditions and restrictions contained in this Declaration, 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. 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) responsibility for maintenance and repairs; (iii) reallocation of interests in the Common Areas, or rights to their use; (iv) convertibility of Units into Common Areas or vice versa; (v) expansion or contraction of the Project, or the addition, annexation, or withdrawal of property to or from the Project; (vi) hazard or fidelity insurance requirements; (vii) imposition or any restrictions on the leasing of Units; (viii) imposition of any restrictions on an Owner's right to sell or transfer his or her Unit; (ix) restoration or repair of the Project (after damage or partial condemnation) in a manner other than that specified in this Declaration; or (x) 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) 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.

B. Contracts: Any agreement for professional management of the Project, or lease or any other contract providing for services of the developer, sponsor, or builder, may not exceed one (1) year. Any agreement, contract, or lease, including a management contract, must provide for

termination by either party for cause on thirty (30) days' written notice, or without cause and without payment of a termination fee or penalty on ninety (90) days' or less written notice.

C. 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.

D. 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.

E. Right to Appear at Meetings: Any Eligible Mortgage Holder may appear (but cannot vote) at meetings of Owners to draw attention to violations of this Declaration that have not been corrected or that have been made the subject of remedial proceedings.

8.7. 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.

8.8. 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.

8.9. 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.

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

8.11. 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 8.11, 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.

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

8.13. 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. For the purposes of this Section, the question of whether there has been a breach of a maintenance obligation or adequate maintenance shall be determined by the provisions of the original Declaration as first recorded with the County Recorder for San Mateo County and by any amendment thereto, but only to the extent that such maintenance obligation or duty of maintenance is increased by such amendment

D. 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.

E. **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.

F. **Modifications to Property.** Any alterations, modifications, or other improvements to the Property shall comply with all applicable City Codes.

G. **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.

H. **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.

8.14. **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 attached hereto as Exhibit "A" and incorporated here, 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 _____, 2020.

THE ROBERT K. ZLATIC AND JEAN M. ZLATIC
1998 TRUST

By: _____
ROBERT K. ZLATIC, TRUSTEE

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 _____, 2020 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)