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**DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS
AND RESERVATION OF EASEMENTS
FOR
AQUA 388**

NOTE: CERTAIN DISPUTES ARISING UNDER THIS DECLARATION, INCLUDING DISPUTES CONCERNING THE DESIGN OR CONSTRUCTION OF THE PROPERTIES, SHALL BE SUBMITTED TO JUDICIAL REFERENCE, A FORM OF ALTERNATIVE DISPUTE RESOLUTION, IN ACCORDANCE WITH SECTION 12.4.

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DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS

AND RESERVATION OF EASEMENTS

FOR

AQUA 388

THIS DECLARATION is made by 350 OCEAN TOWER I, L.L.C., a Delaware limited liability company. The capitalized terms used in the Preamble are defined in Article I.

PREAMBLE:

A. Declarant is the owner of real property ("**Properties**") located in the City of Long Beach, Los Angeles County, State of California, described as follows:

Lot 1 of Tract No. 53405, as shown on a Subdivision Map, Recorded in Book 1265 at Pages 83 to 86, inclusive, of Maps, in the Office of the Los Angeles County Recorder.

B. Declarant intends to create a "condominium project," as defined in Section 1351(f) of the California Civil Code, to subdivide the Properties as authorized by Section 66427 of the California Government Code into "condominiums" as defined in Section 783 of the California Civil Code and to impose mutually beneficial restrictions under a general plan of improvement for the benefit of all the Condominiums created pursuant to the Davis-Stirling Common Interest Development Act.

C. The Properties are to be held, conveyed, encumbered, leased, used and improved subject to the limits, restrictions, reservations, rights, easements, conditions and covenants in this Declaration, all of which are in furtherance of a plan for subdividing, maintaining, improving and selling the Properties. All provisions of this Declaration are imposed as equitable servitudes on the Properties. All limits, restrictions, reservations, rights, easements, conditions and covenants in this Declaration shall run with and burden the Properties and shall be binding on and for the benefit of all of the Properties and all Persons acquiring any interest in the Properties.

D. Declarant and its successors and assigns covenant that each undivided interest in the Common Area, the appurtenant Membership in the Association, all easements conveyed therewith and fee title to the respective Unit conveyed therewith shall not be separated or separately conveyed, and each such undivided interest, Membership and easement shall be deemed to be conveyed or encumbered with its respective Unit even though the description in the instrument of conveyance or encumbrance may refer only to the Unit. This restriction on severability of the component interests of the Condominiums shall not extend beyond the period for which the right to partition the Properties is suspended in accordance with Section 1359 of the California Civil Code. Any conveyance by an Owner of a Condominium, or any portion thereof, shall be presumed to convey the entire Condominium together with a Membership in the Association.

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**ARTICLE I
DEFINITIONS AND INTERPRETATION**

1.1 **DEFINITIONS.** Unless otherwise expressly provided, the following words and phrases when used in this Declaration have the following meanings.

1.1.1 **ACS.** ACS means Aqua Community Services, a California corporation (formed pursuant to the California Nonprofit Public Benefit Corporation Law), its successors and assigns. ACS has been or will be formed for the purpose of providing community services to the Properties.

1.1.2 **Annual Assessment.** Annual Assessment means a charge levied against the Owners and their Condominiums representing their share of Common Expenses. The Annual Assessment is a regular assessment as described in California Civil Code Section 1366.

1.1.3 **Articles.** Articles means the Articles of Incorporation of the Association as currently in effect. A copy of the Articles is attached as *Exhibit A*.

1.1.4 **Assessment.** Assessment means any Annual Assessment, Capital Improvement Assessment, Reconstruction Assessment and Special Assessment.

1.1.5 **Association.** Association means AQUA 388 COMMUNITY ASSOCIATION, a California nonprofit mutual benefit corporation, and its successors in interest. The Association is a "Subassociation" as defined in the Master Declaration, and an "association" as defined in Section 1351(a) of the California Civil Code.

1.1.6 **Association Maintenance Funds.** Association Maintenance Funds means the accounts created for Association receipts and disbursements pursuant to Article VII.

1.1.7 **Association Property.** Association Property means real property owned in fee by the Association and therefore made subject to the restrictions on Association Property established in the Governing Documents. Association Property includes the Recreational Facilities located on the Association Property adjacent to the Building, the Building and its structural components (but not the Units in the Building), and related Improvements such as lighting fixtures, HVAC equipment (except for any such equipment that is installed to serve a single Unit), elevators, facilities for the delivery of utilities to the Properties (except for outlets that are located in the Unit), fire sprinklers, fire sprinkler pipes and fire sprinkler heads that protrude into the airspace of the Unit, the office of the Building's Manager and office equipment, fitness room, fitness room equipment, lobby, and cables and related equipment for the delivery of Telecommunications Services to the Properties (except for any outlets or connectors that protrude into the airspace of the Unit). Any references in this Declaration to Association Property are references to the Association Property as a whole and to portions thereof. Association Property is "common area," as that term is defined in California Civil Code Section 1351(b), and it is "Subassociation Property" as defined in the Master Declaration.

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1.1.8 **Board or Board of Directors.** Board or Board of Directors means the Association's Board of Directors.

1.1.9 **Budget.** Budget means a written, itemized estimate of the Association's income and Common Expenses prepared pursuant to the Bylaws.

1.1.10 **Building.** Building means the high-rise residential structure containing the Units in the Properties. The Building is a "Residential Building," as defined in the Master Declaration.

1.1.11 **Bylaws.** Bylaws means the Bylaws of the Association as currently in effect. A copy of the Bylaws as initially adopted by the Board is attached as **Exhibit B**.

1.1.12 **Capital Improvement Assessment.** Capital Improvement Assessment means a charge levied against the Owners and their Condominiums representing their share of the Association's cost for installing or constructing capital Improvements on the Common Property. Capital Improvement Assessments shall be levied in the same proportions as Annual Assessments. Capital Improvement Assessments are special assessments as described in California Civil Code Section 1366.

1.1.13 **City.** City means the City of Long Beach, California, and its various departments, divisions, employees and representatives.

1.1.14 **Close of Escrow.** Close of Escrow means the date on which a deed is Recorded conveying a Condominium in the Properties pursuant to a transaction requiring the issuance of a Final Subdivision Public Report by the DRE; provided, however, that Close of Escrow shall not apply to the sale of five (5) or more Condominiums to any builder or other entity who acquires such Condominiums for sale to members of the homebuying public, as set forth in Section 11010.35 of the California Civil Code. In addition, the term "Close of Escrow" shall not include the Recordation of a deed between Declarant and any successor to any rights of the Declarant, or the rental or lease of a Residence, or the sale of a model home for use as a model home.

1.1.15 **Common Area.** Common Area means those certain volumes of airspace described in the Condominium Plan, which shall be owned by the Owners of the Units described in each Condominium Plan as tenants-in-common. Any references in this Declaration to Common Area are references to the Common Area as a whole and to portions thereof. The Common Area constitutes an "undivided interest-in-common in a portion of real property" owned by the Owners in undivided interest as required in California Code Section 1351(f). Subject to the provisions of Article X, the undivided fee simple interest in the Common Area in the Properties is appurtenant to each Unit and is a fraction having one (1) as its numerator and the number of Units in the Properties (278) as its denominator; and shall be held by the Owners of Condominiums as tenants-in-common

1.1.16 **Common Expenses.** Common Expenses means those expenses for which the Association is responsible under this Declaration, including the following:

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(a) Actual and estimated costs of and reserves for maintaining, managing and operating the Common Property (including amounts incurred for maintenance imposed on the Association by this Declaration);

(b) Unpaid Special Assessments, Reconstruction Assessments, Capital Improvement Assessments, and amounts the Board determines are necessary to maintain the Reserve Fund at adequate levels;

(c) The costs of all utilities that are metered to more than one Condominium, and any other utilities or services (such as trash removal) that are billed to the Association for the benefit of the Properties, including the utilities metered to the Recreational Facilities;

(d) The cost of managing and administering the Association, including compensation for Managers, accountants, attorneys, and employees;

(e) The cost of providing a 24-hour onsite concierge/lobby attendant;

(f) Maintenance required by this Declaration and all other expenses incurred by the Association for the common benefit of the Owners, including the cost of Building maintenance, Recreational Facilities maintenance, janitorial services, window washing, carpet cleaning in the Common Property, elevator maintenance and other maintenance services that benefit the Common Property;

(g) Premiums for all insurance covering the Properties (or the Association's fair share of the premiums for such coverages if obtained by the Master Association), and insurance policies for the directors, officers and agents of the Association, and bonding the members of the Board;

(h) Taxes paid by the Association;

(i) Amounts paid by the Association for discharge of any lien or encumbrance levied against the Properties; and

(j) All other expenses incurred by the Association for the common benefit of the Owners.

1.1.17 **Common Property.** Common Property means the Common Area and the Association Property. Any references in this Declaration to Common Property are references to the Common Property as a whole and to portions thereof.

1.1.18 **Condominium.** Condominium means an estate in real property as defined in California Civil Code Section 1351(f). A Condominium consists of an undivided fee simple ownership interest in the Common Area in the Properties, together with a separate ownership interest in fee in a Unit and all easements appurtenant thereto.

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1.1.19 **Condominium Plan.** Condominium Plan means the Recorded plan, as currently in effect, for all or a portion of the Properties, consisting of (a) a description or survey map of the Properties or portion thereof, which shall refer to or show monumentation on the ground, (b) a three-dimensional description of the Properties or portion thereof, one or more dimensions of which may extend for an indefinite distance upwards or downwards in sufficient detail to identify the Association Property, Common Area and each Unit, and (c) a certificate consenting to the Recordation thereof signed and acknowledged by the record owner of fee title to the Properties or portion thereof, and by either the trustee or the Mortgagee of each Recorded Mortgage encumbering the Properties or portion thereof.

1.1.20 **County.** County means the County of Los Angeles, California, and its various departments, divisions, employees and representatives.

1.1.21 **Declarant.** Declarant means 350 OCEAN TOWER I, L.L.C., a Delaware limited liability company, its successors, and any Person to which it shall have assigned any of its rights under this Declaration by an express written assignment. As used in this Section, "successor" means a Person who acquires Declarant or substantially all of Declarant's assets by sale, merger, reverse merger, consolidation, sale of stock or assets, operation of law or otherwise. Declarant is a "Residential Declarant" under the Master Declaration, and a builder as described in California Civil Code Sections 911 and 1375. Declarant shall determine in its sole discretion the time, place and manner in which it discharges its obligations and exercises the rights reserved to it under this Declaration.

1.1.22 **Declaration.** Declaration means this instrument as currently in effect. The Declaration is a "Residential Declaration" as described in the Master Declaration.

1.1.23 **Design Guidelines.** Design Guidelines means the rules or guidelines setting forth procedures and standards for submission of plans for Design Review Committee approval.

1.1.24 **Design Review Committee or Committee.** Design Review Committee or Committee means the Design Review Committee created pursuant to Article V.

1.1.25 **DRE.** DRE means the California Department of Real Estate and any department or agency of the California state government that succeeds to the DRE's functions.

1.1.26 **Exclusive Use Area.** Exclusive Use Area means the Association Property over which exclusive easements are reserved for the benefit of specified Owners, for balcony purposes and for internal and external telephone wiring designed to serve a single Unit but located outside the boundaries of such Unit, in accordance with California Civil Code Section 1351(i). The approximate locations of the Exclusive Use Area balconies in the Properties are shown on the Condominium Plan.

1.1.27 **FHA.** FHA means the Federal Housing Administration of the United States Department of Housing and Urban Development and its successors.

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1.1.28 **Family.** Family means (a) one or more natural individuals, related to each other by blood, marriage or adoption, or (b) a group of natural individuals not also related, but who live as a single household in a Unit.

1.1.29 **Fannie Mae.** Fannie Mae means the Federal National Mortgage Association, a government-sponsored private corporation established pursuant to Title VIII of the Housing and Urban Development Act of 1968 and its successors.

1.1.30 **Fiscal Year.** Fiscal Year means the fiscal accounting and reporting period of the Association selected by the Board.

1.1.31 **Freddie Mac.** Freddie Mac means the Federal Home Loan Mortgage Corporation created by Title II of the Emergency Home Finance Act of 1970 and its successors.

1.1.32 **Ginnie Mae.** Ginnie Mae means the Government National Mortgage Association administered by the United States Department of Housing and Urban Development and its successors.

1.1.33 **Governing Documents.** Governing Documents mean this Declaration, the Articles, Bylaws, Rules and Regulations, Design Guidelines and Supplemental Declarations.

1.1.34 **Improvement.** Improvement means, without limitation, any structure and any appurtenance thereto including the Buildings, elevators, HVAC equipment, walkways, lighting systems, the structural elements of the Buildings, any type of wall, awning, stairway, satellite dish, antenna, and sign. In addition, Improvement shall also mean the ceilings, doors and windows that enclose a Unit and the floor coverings that are installed in a Unit. The Design Review Committee may identify additional items that are Improvements.

1.1.35 **Include; Including.** Whether capitalized or not, include and including mean "include without limitation" and "including without limitation," respectively.

1.1.36 **Maintain; Maintenance.** Whether capitalized or not, maintain and maintenance mean "maintain, repair and replace" and "maintenance, repair and replacement," respectively; provided, however, that maintain or maintenance shall not include repair and replace(ment) where the context or specific language of this Declaration provides another meaning.

1.1.37 **Maintenance Guidelines; Maintenance Manual; Maintenance Recommendations.** Maintenance Guidelines means any current written guidelines, setting forth procedures and standards for the maintenance and operation of the Association Property by the Association and the Units by the Owners, which may be provided to the Association and to each Owner by Declarant or by the Association or by any governmental entity with jurisdiction over the Properties. Maintenance Guidelines include any Maintenance Manual initially prepared at Declarant's direction and containing recommendations for frequency of

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inspections and maintenance activities for components of the Association Property and any Maintenance Recommendations prepared by Declarant pertaining to a Unit.

1.1.38 **Manager.** Manager means the Person retained by the Association to perform management functions of the Association as limited by the Governing Documents and the terms of the agreement between the Association and the Person.

1.1.39 **Master Association.** Master Association means the Aqua Maintenance Corporation, a California nonprofit public benefit corporation.

1.1.40 **Master Declaration.** Master Declaration means (i) the Master Declaration of Covenants, Conditions, Restrictions and Reservation of Easements for Aqua, Recorded concurrently herewith, as amended or restated from time to time.

1.1.41 **Membership.** Membership means the voting and other rights, privileges and duties established in the Governing Documents for members of the Association.

1.1.42 **Mortgage.** Mortgage means any Recorded mortgage or deed of trust or other conveyance of one or more Condominiums or other portion of the Properties, given as security for the performance of an obligation or payment of a debt.

1.1.43 **Mortgagee.** Mortgagee means a Person to whom a Mortgage is made or the assignee of the Mortgagees rights under the Mortgage by a Recorded instrument. For purposes of this Declaration, the term Mortgagee shall include a beneficiary under a deed of trust.

1.1.44 **Mortgagor.** Mortgagor means a Person who Mortgages his property to another. For purposes of this Declaration, the term Mortgagor shall include a trustor under a deed of trust.

1.1.45 **Notice and Hearing.** Notice and Hearing means written notice and a hearing before the Board, as provided in the Bylaws.

1.1.46 **Official Records.** Official Records means the Official Records of Los Angeles County, California.

1.1.47 **Operating Fund.** Operating Fund means that portion of the Common Expenses allocated for the daily operation of the Association.

1.1.48 **Owner.** Owner means the Person or Persons, including Declarant, holding fee simple interest to a Condominium or the holder of a leasehold interest of ten (10) years or more. Each Owner has a Membership in the Association. The term "Owner" includes a seller under an executory contract of sale but excludes Mortgagees. The term "Owner" may be expanded in a Supplemental Declaration to include other Persons.

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1.1.49 **Person.** Person means a natural individual or any entity recognized under California law. When the word "person" is not capitalized, the word only refers to natural persons.

1.1.50 **Properties.** Properties means the real property described in Preamble A above. The Properties are a "condominium project" as defined in Section 1351(f) of the California Civil Code. The Properties are a "common interest development" as defined in Section 1351(c) of the California Civil Code. Any references in this Declaration to the Properties are references to the Properties as a whole and to portions thereof.

1.1.51 **Reconstruction Assessment.** Reconstruction Assessment means a charge levied against the Owners and their Condominiums, representing their share of the Association's cost to reconstruct any Improvements on the Common Property. Such charge shall be levied among all Owners and their Condominiums in the same proportions as Annual Assessments. Reconstruction Assessments are special assessments as described in California Civil Code Section 1366.

1.1.52 **Record, Recorded, File or Filed.** Record, Recorded, File or Filed means, with respect to any document, the entry of such document in the Official Records.

1.1.53 **Recreational Facilities.** Recreational Facilities means the pool, spa, landscaping, deck, fencing, gates and related Improvements constructed in the fenced area located on Lot 1 of Tract No. 52385, which are reserved for the exclusive use and enjoyment of residents of the Properties and their guests.

1.1.54 **Reserve Fund.** Reserve Fund shall mean that portion of the Common Expenses collected as part of the Annual Assessment levied against the Condominiums in the Properties allocated (i) for the future repair and replacement of, or additions to, the major components which the Association is obligated to maintain pursuant to this Declaration, including reserves for replacement of structural elements and mechanical equipment or other facilities maintained by the Association; and (ii) amounts necessary to cover the deductibles under all insurance policies maintained by the Association.

1.1.55 **Residence.** Residence means the living area of a Condominium.

1.1.56 **Right to Repair Law.** Right to Repair Law means Division 2, Part 2, Title 7 (commencing with Section 895) of the California Civil Code.

1.1.57 **Rules and Regulations.** Rules and Regulations means the current rules and regulations promulgated by Declarant or the Board for the Properties.

1.1.58 **Special Assessment.** Special Assessment means a charge against an Owner and his Condominium representing a reasonable fine or penalty, including reimbursement costs, as provided for in this Declaration.

1.1.59 **Supplemental Declaration.** Supplemental Declaration means an instrument executed, acknowledged and Recorded by Declarant. As the Properties are developed, Declarant may Record one (1) or more Supplemental Declarations which may

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impose additional, different or more restrictive conditions, covenants, restrictions, land uses and limitations as Declarant deems advisable, taking into account the requirements of the particular portion of the Properties that is described therein. A Supplemental Declaration may affect one or more Condominiums or any other portion of the Properties. Declarant may Record a Supplemental Declaration so long as Declarant owns all of the real property described in the Supplemental Declaration. A Supplemental Declaration may modify this Declaration as it applies to the real property encumbered by the Supplemental Declaration. A Supplemental Declaration is a "Supplemental Residential Declaration" as defined in the Master Declaration.

1.1.60 **Unit.** Unit means a separate interest in space as defined in Section 1351(f) of the California Civil Code. Each Unit is a separate freehold estate, as separately shown, numbered and designated in the Condominium Plan. In addition, the Unit shall include all windows, sliding glass doors and front doors, gas, water and waste pipes, ducts, chutes, conduits, wires and other utility installations that extend into the Units, except for fire sprinkler pipes and heads. The boundaries of the Unit are approximately depicted in the Condominium Plan. In interpreting deeds, this Declaration and the Condominium Plan, the actual boundaries of each Unit shall be deemed to extend to (i) the unfinished surface of the bottom of the ceiling slab, (ii) the unfinished surface of the top of the floor slab, and (iii) the unfinished interior surfaces of the perimeter walls of the Unit, as constructed or reconstructed in substantial accordance with the original plans for the Unit. The foregoing interpretation shall apply notwithstanding any description expressed in the deed, the Condominium Plan or the Declaration, regardless of settling or lateral movements of Improvements, and regardless of minor variances between Unit boundaries shown in the Condominium Plan or deed and those of the Improvement. The Units in the Properties are numbered 101-107, inclusive, 201-212, inclusive, 214-217, inclusive, 301-312, inclusive, 314-318, inclusive, 410-412, inclusive, 414-418, inclusive, 501-512, inclusive, 514-518, inclusive, 601-612, inclusive, 614-618, inclusive, 701-712, inclusive, 714-718, inclusive, 801-812, inclusive, 814-818, inclusive, 901-912, inclusive, 914-918, inclusive, 1001-1012, inclusive, 1014-1018, inclusive, 1101-1112, inclusive, 1114-1118, inclusive, 1201-1212, inclusive, 1214-1218, inclusive, 1301-1312, inclusive, 1314-1318, inclusive, 1401-1412, inclusive, 1414-1418, inclusive, 1501-1512, inclusive, 1514-1518, inclusive, 1601-1612, inclusive, 1614-1618, inclusive, 1701-1712, inclusive, 1714-1718, inclusive, P1-P12, inclusive, and P14-P18, inclusive.

1.1.61 **VA.** VA means the Department of Veterans Affairs of the United States of America and any department or agency of the United States government that succeeds to VA's function of issuing guarantees of notes secured by Mortgages on residential real estate.

1.2 **INTERPRETATION.**

1.2.1 **General Rules.** This Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for creating and operating a residential condominium development and maintaining the Common Property. As used in this Declaration, the singular includes the plural and the plural the singular. The masculine, feminine and neuter each includes the other, unless the context dictates otherwise.

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GROUP

Sales · Leasing · Property Management

1.2.2 **Articles, Sections and Exhibits.** The Article and Section headings have been inserted for convenience only and may not be considered in resolving questions of interpretation or construction. Unless otherwise indicated, any references in this Declaration to articles, sections or exhibits are to Articles, Sections and exhibits of this Declaration. **Exhibits C and D** attached to this Declaration are incorporated herein by this reference. The locations and dimensions of any Improvements depicted on any of the exhibits attached hereto and to any Supplemental Declaration are approximate only and the as-built location and dimension of any such Improvements shall control.

1.2.3 **Priorities and Inconsistencies.** If there are conflicts or inconsistencies between this Declaration and the Articles, Bylaws, Rules and Regulations, or Condominium Plan, then the provisions of this Declaration shall prevail. If there are any conflicts or inconsistencies between this Declaration and a Supplemental Declaration, then the Supplemental Declaration shall control with respect to those Condominiums that are encumbered by the Supplemental Declaration.

1.2.4 **Severability.** The provisions of this Declaration are independent and severable. A determination of invalidity or partial invalidity or unenforceability of any one provision of this Declaration by a court of competent jurisdiction does not affect the validity or enforceability of any other provisions of this Declaration.

1.2.5 **Statutory References.** All references made in this Declaration to statutes are to those statutes as currently in effect or to subsequently enacted replacement statutes.

**ARTICLE II
MAINTENANCE COVENANTS AND USE RESTRICTIONS**

The Properties shall be held, used and enjoyed subject to the following covenants and restrictions, subject to the exemptions and rights of Declarant set forth in the Governing Documents.

2.1 **LAND CLASSIFICATIONS.** Portions of the Properties shall be designated under the following land classifications:

2.1.1 **Units.** The Units, as shown and numbered on the Condominium Plan, are Units as defined in this Declaration.

2.1.2 **Association Property.** The Association Property consists of Lot 1 of Tract No. 53405, excepting therefrom the Units and Common Area located thereon.

2.2 **SINGLE FAMILY RESIDENCE.** Each Residence shall be used as a dwelling for a single Family and for no other purpose.

2.3 **FURTHER SUBDIVISION.** Except as otherwise provided in this Declaration, no Owner may physically or legally subdivide his Condominium in any manner, including dividing the Owner's Condominium into time-share estates or time-share uses.

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2.4 ANTENNA RESTRICTIONS. No Person may install on the exterior of the Building any antenna or over-the-air receiving device, except for an "Authorized Antenna" that is not prohibited under Section 2.4.3, without the prior written approval of the Design Review Committee. The use and installation of an Authorized Antenna in the Properties is subject to applicable law and regulation and the following:

2.4.1 Definition. An Authorized Antenna is (a) an antenna designed to receive direct broadcast satellite service, including direct-to-home satellite service, that is one meter or less in diameter, or (b) an antenna designed to receive video programming service, including multichannel multipoint distribution service, instructional television fixed service, and local multipoint distribution service, that is one meter or less in diameter or diagonal measurement, (c) an antenna designed to receive television broadcast signals, or (d) an antenna used to receive and transmit fixed wireless signals or broadband service. An Authorized Antenna may be mounted on a mast to reach the height needed to receive an acceptable quality signal, subject to local governmental agency permitting requirements for safety purposes.

2.4.2 Restrictions on Installation. Subject to applicable law and regulation, an Authorized Antenna may be installed indoors or on the Exclusive Use Area balcony in a manner that minimizes the visibility of the device from the other Condominiums and adjacent real property. The foregoing locations are hereby deemed "preferred installation locations." The Committee may adopt reasonable restrictions on installation and use of an Authorized Antenna as part of its Design Guidelines in order to minimize visibility of the Authorized Antenna from other Condominiums. Such restrictions may designate one or more preferred installation locations, or require camouflage such as paint (subject to the antenna manufacturer's recommendations) or screening vegetation or other Improvements. However, no restriction imposed hereunder or by the Committee may (i) unreasonably delay or prevent the installation, maintenance or use of an Authorized Antenna, (ii) unreasonably increase the cost of installation, maintenance or use of an Authorized Antenna, or (iii) preclude acceptable quality reception.

2.4.3 Prohibitions on Installation. The Committee may prohibit the installation of an Authorized Antenna in a particular location if, in the Committee's opinion, the installation, location or maintenance of such Authorized Antenna unreasonably affects the safety of the Owners or any other Person, or for any other safety-related reason established by the Committee. The Committee may also prohibit an Owner from installing an Authorized Antenna on any real property which the Owner does not own or is not entitled to exclusively use or control under the Governing Documents, including any exterior wall of the Building, balcony railings, and the roof of the Building. The Committee also has the power to prohibit or restrict the installation of any antenna or other over-the-air receiving device that does not meet the definition of an Authorized Antenna above.

2.4.4 Review after Installation. The Committee may review the location and installation of an Authorized Antenna after it is installed. After its review, the Committee may require that the Authorized Antenna be moved to a preferred location (if one has been designated) for safety reasons or to comply with reasonable restrictions subject to this Section and applicable law.

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2.4.5 **Restatement of Applicable Law.** This Section is intended to be a restatement of the authority granted to the Committee under the law. All amendments, modifications, restatements and interpretations of the law applicable to the installation, use or maintenance of an antenna or other over-the-air receiving device shall be interpreted to amend, modify, restate or interpret this Section.

2.5 **TRASH.** Trash must be regularly removed from the Units and deposited in designated sanitary trash containers or trash chutes. No trash or containers may be left or stored outdoors or in hallways. However, trash that does not fit in designated containers or trash chutes may be set out in the area designated by the Committee for a reasonable period of time (not to exceed twelve (12) hours before the scheduled collection time) on trash collection days. In addition, no toxic or hazardous materials (other than household cleansers) nor explosive materials may be disposed of in Association trash containers or in trash chutes.

2.6 **OWNER-INSTALLED IMPROVEMENTS.** This Section 2.6 does not apply to Improvements installed (a) as a part of the original construction of the Properties by Declarant, (b) by the Association, or (c) with the prior approval of the Design Review Committee.

2.6.1 **Outdoors.** No Person may install outdoors in sight of the Association Property or other real properties any clotheslines, patio cover, wiring, air conditioning equipment, heating units, water softeners, other similar Improvements, or other exterior additions or alterations to any Condominium. Outdoor patio or lounge furniture and plants may be kept in the Exclusive Use Area balcony in accordance with the Rules and Regulations. Outdoor display of the flag of the United States is permitted pursuant to California Civil Code Section 1353.5, so long as the flag and flag pole are located solely within, on and over the Owner's Exclusive Use Area balcony. Barbeques are not allowed on the Exclusive Use Area balcony. No dog or other animal may be left unattended on the Exclusive Use Area balcony at any time.

2.6.2 **Indoors.** Owners may cover windows with clean white sheets for up to thirty (30) days following the Close of Escrow, pending installation of permanent window coverings. No Person may apply film tint or paint to the glass portion of any window or cover any window in foil, paper or other reflective material. The Board has the power, but not the duty, to promulgate Design Guidelines for window coverings that are exposed to view from streets, the Common Property or other Condominiums. Nothing may be done in any Condominium or in, on or to the Common Property that may impair the structural integrity (including water seal) of the Building, or that may alter the plumbing, electricity or natural gas facilities serving any other Condominium, except for replacement of in-Unit plumbing fixtures such as faucets or toilets within the Unit and as otherwise expressly provided in this Declaration. No Owner may pierce, remove or otherwise modify any wall, ceiling or floor separating the Unit from another Unit or from Association Property (except as approved by the Design Review Committee), nor install any wall- or ceiling-mounted loudspeakers or other noise-generating devices. No Owner may alter, remove or replace the interior surfaces of walls, floors or ceilings in the Condominium with any Improvement or material that may diminish the effectiveness of the noise mitigation engineering in the Building. No Owner may replace any Declarant-installed flooring material or noise mitigating materials in a Unit

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without the prior written approval of the Committee. No waterbeds are permitted in the Units. The Board may adopt a Rule and Regulation that restricts the hours of operation or otherwise restricting the use of Jacuzzi-type tubs in the Residences.

2.6.3 **No Liability.** Neither the Declarant nor the Association are liable or responsible for any damage that results from Improvements constructed or modified by an Owner or any other Person, with or without the approval of the Committee. Improvements should not be installed, constructed or modified without the assistance of qualified consultants.

2.7 **MECHANICS' LIENS.** No Owner may cause or permit any mechanic's lien to be filed against the Common Property or another Owner's Condominium for labor or materials alleged to have been furnished or delivered to the Owner. Any Owner who permits a mechanic's lien to be so filed shall cause the lien to be discharged within five (5) days after notice to the Owner from the Board. If the Owner fails to remove such mechanic's lien, the Board may discharge the lien and levy a Special Assessment against the violating Owner's Condominium to recover the cost of discharge.

2.8 **COMPLIANCE WITH FIRE RESTRICTIONS.** No Owner or other resident of the Properties may store any flammable materials on any Exclusive Use Area balcony. Further, no exterior fires of any kind, including those contained in barbecue grills, shall be permitted in any Unit or on any Exclusive Use Area balcony. Nothing may be done in any Condominium or in, on or to the Common Property that may impair or alter fire sprinklers within the Units or their source of water.

2.9 **INDEMNIFICATION.** Neither the Declarant nor the Association shall be liable or responsible for any damage that results from Improvements constructed or modified by an Owner. Improvements should not be installed, constructed or modified without the assistance of qualified consultants.

2.10 **FURTHER SUBDIVISION.** Except as otherwise provided in this Declaration, no Owner may physically or legally subdivide a Condominium in any manner, including dividing such Owner's Condominium into time-share estates or time-share uses. This provision does not limit the right of an Owner to (a) rent or lease all such Owner's Condominium by a written lease or rental agreement subject to this Declaration; (b) sell such Owner's Condominium; or (c) transfer or sell any Condominium to more than one Person to be held by them as tenants-in-common, joint tenants, tenants by the entirety or as community property. Any failure by the tenant of the Condominium to comply with the Governing Documents constitutes a default under the lease or rental agreement. Except as provided in this Declaration, there shall be no judicial partition of the Common Area, or any part thereof, for the term of this Declaration; nor may Declarant, any Owner or any other Person acquiring any interest in any Condominium in the Properties seek any such judicial partition. No Condominium in the Properties may be partitioned or subdivided without the written approval of the Mortgagee of any first Mortgage on that Condominium. Notwithstanding the foregoing, nothing in this Declaration shall prohibit any Owner from purchasing two (2) adjoining Condominiums and combining them into one (1) living space with the prior written

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approval of the Design Review Committee and any permits required by the City (including the Redevelopment Agency), the County, and the California Coastal Commission.

2.11 WATER SUPPLY SYSTEM. No individual water supply, sewage disposal or water softener system is permitted in any Condominium unless such system is designed, located, constructed and equipped in accordance with the requirements, standards, and recommendations of any water district having jurisdiction, the City, the Design Review Committee and all other governmental authorities with jurisdiction.

2.12 VIEW OBSTRUCTIONS. Each Owner acknowledges that construction or installation of Improvements by Declarant, by the Association, or by the Master Association or neighboring homeowners association may impair the view from the Owner's Residence. Each Owner hereby consents to such impairment. Each Owner acknowledges that there are no guaranteed views in the Properties or the Community and no Condominium is assured the existence or unobstructed continuation of any particular view unless a Recorded Supplemental Master Declaration (as defined in the Master Declaration) specifically provides otherwise.

2.13 RIGHTS OF DISABLED. Subject to California Civil Code Section 1360 and Article V of this Declaration, each Owner may at his sole expense make any improvements or alterations within the boundaries of the Condominium that do not impair the structural integrity or mechanical systems or lessen the support of any portions of the Building to facilitate access to his Unit by Persons who are blind, visually impaired, deaf or physically disabled, or to alter conditions which could be hazardous to such Persons; provided that all of the following shall apply:

2.13.1 The modifications shall be consistent with applicable building code requirements and the Owner shall at his sole expense obtain all necessary governmental permits, inspections and approvals;

2.13.2 The modifications shall be consistent with the intent of otherwise applicable provisions of the Governing Documents pertaining to safety or aesthetics;

2.13.3 Modifications external to the Unit shall not prevent reasonable passage by other residents, and shall be removed by the Owner when the Unit is no longer occupied by Persons requiring those modifications who are blind, visually handicapped, deaf, or physically disabled;

2.13.4 Any Owner who intends to modify a Unit pursuant to this paragraph shall submit his or her plans and specifications to the Committee for review to determine whether the modifications will comply with the provisions of this paragraph. The Committee shall not deny approval of the proposed modifications under this paragraph without good cause; and

2.13.5 Any change in the exterior appearance of a separate interest shall be in accordance with the Governing Documents and applicable provisions of law.

2.14 CONDOMINIUM WALLS. Owners are prohibited from puncturing, piercing or otherwise altering floor slabs, ceiling slabs, and any interior load-bearing walls,

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and all exterior walls or structural walls of an Owner's Condominium, except as may be permitted in the Design Guidelines for the hanging of art, pictures, mirrors and other similar items.

2.15 REPAIR AND MAINTENANCE.

2.15.1 Maintenance Standards. The Association shall maintain the Association Property in a clean, sanitary and attractive condition reasonably consistent with the level of maintenance reflected in the most current Budget, and in accordance with the Maintenance Guidelines and Maintenance Manual. Unless specifically provided in any Maintenance Guidelines, Maintenance Manual, or specifically directed by the City or other governmental entity with jurisdiction over the Properties, the Board shall determine, in its sole discretion, the level and frequency of maintenance of the Association Property and Improvements thereon. Each Owner shall maintain everything the Owner is obligated to maintain in a clean, sanitary and attractive condition, free of debris and reasonably protected from damage, and in accordance with the Governing Documents and the Maintenance Recommendations and Maintenance Manual.

2.15.2 By Owners. Owners' repair, maintenance and replacement responsibilities are set forth on *Exhibit C*, attached hereto. Owners shall perform all required maintenance in accordance with the Governing Documents. Unless otherwise specified in the Governing Documents, each Owner shall bear all costs and expenses of the maintenance that the Owner is required to perform pursuant to the Governing Documents. Each Owner shall pay when due all charges for any utility service that is separately metered to the Owner's Unit.

2.15.3 By Association.

(a) **Commencement of Obligations.** The Association's obligation to maintain Association Property in the Properties commences on the date Annual Assessments commence on Condominiums in the Properties.

(b) **Maintenance Items.** The Association shall be responsible for all maintenance, repair and replacement not provided by the Owners pursuant to Section 2.15.2 and *Exhibit C* attached hereto. The Association shall repair and pay for all centrally metered utilities and mechanical and electrical equipment serving the Association Property; pay all charges for utilities which serve individual Condominiums but which are subject to a common meter; pay all Common Expenses; maintain all Association Property; perform periodic structural repair, resurfacing, sealing, caulking, replacement or painting of the Exclusive Use Area balconies, so long as the need for any of these activities is not caused by the willful or negligent acts of the Owner of the Unit to which the Exclusive Use Area is appurtenant or any of such Owner's Family, tenants or guests. The Association's maintenance responsibilities include the obligation to maintain any and all stairways, hallways and lobby areas that exclusively serve the Condominiums. The Association may, but is not required to, perform any or all corrective janitorial and repair work in any Unit if the Owner thereof fails to do so after Notice and Hearing. The cost of such work shall be charged to the Owner as a component of the Owner's Annual Assessments.

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(c) **Pest Prevention and Eradication.** The Association shall adopt an inspection, eradication and prevention program for wood-destroying organisms in the Properties, and it may adopt other pest control programs that it deems necessary for maintenance of the Properties consistent with the Governing Documents. The Association, on no less than fifteen (15) nor more than thirty (30) days' notice, may require each Owner and any occupants of the Owner's Condominium to vacate the Condominium to accommodate Association efforts to eradicate such infestation. The notice must state the reason for the temporary relocation, the date and time of the beginning of treatment, the anticipated date and time of termination of treatment, and that the occupants will be responsible for their own accommodations during the temporary relocation. Any damage that is caused to a Condominium by the Association or by any Person authorized by the Association to exercise its right of entry shall be repaired by the Association as a Common Expense.

(d) **Additional Items.** The Association shall also be responsible for maintaining any Improvements that are designated for maintenance by the Association through a majority vote by the Members. Such property shall be deemed to be Association Property and subject to the Governing Documents applicable to the Association Property.

(e) **Charges to Owners.** All costs of maintenance, repairs and replacements for the Properties, and all commonly metered utilities shall be paid for as Common Expenses out of the Association Maintenance Funds as provided in this Declaration.

2.15.4 Inspections of the Properties. The Board shall cause the Design Review Committee to periodically inspect the Properties to ensure ongoing compliance with the Declaration and the Maintenance Guidelines. The Board shall also cause the Design Review Committee to perform condition inspections of the Common Property in accordance with the applicable Maintenance Guidelines. In the absence of inspection frequency recommendations in any applicable Maintenance Guidelines, inspections shall be conducted at least once every three (3) years, at the same time as the inspection required for the reserve study pursuant to the Bylaws. Each condition inspection shall (a) determine whether the Common Property is being maintained adequately in accordance with the standards of maintenance established in Section 2.15.1, (b) identify the condition of the Common Property, including the existence of any hazards or defects, and the need for additional maintenance, refurbishment, replacement, or repair, and (c) recommend preventive maintenance measures. The Board shall, during its meetings, regularly determine whether the recommended inspections and maintenance activities set forth in any applicable Maintenance Guidelines have been followed and, if not followed, determine corrective measures to be taken. The Board shall keep a record of such determinations in the Board's minutes. The Board shall keep Declarant fully informed of the Board's activities under this Section 2.15.4. The Board shall employ, consistent with reasonable cost management, experts, contractors and consultants as are necessary to perform the inspections and make the reports required by this Section.

2.15.5 Reporting Requirements. The Board shall prepare a report of the results of the inspections required by this Section. The report shall be furnished to Owners and Declarant within the time set for furnishing the Budget to the Owners. The report of a condition inspection must include at least the following:

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(a) a description of the condition of the Common Property, including a list of items inspected, and the status of maintenance, repair and need for replacement of all such items;

(b) a description of all maintenance, repair and replacement planned for the ensuing Fiscal Year and included in the Budget;

(c) if any maintenance, repair or replacement is to be deferred, the reason for such deferral;

(d) a summary of all reports of inspections performed by any expert or consultant employed by the Association to perform inspections since the Board's last condition inspection report;

(e) a report of the status of compliance with the maintenance, replacement and repair needs identified in the inspection report for preceding years and identified in any applicable Maintenance Guidelines; and

(f) such other matters as the Board considers appropriate.

For a period of ten (10) years after the date of the last Close of Escrow in the Properties, the Board shall also furnish to Declarant the report of each condition inspection performed for the Board, whenever such inspection is performed and for whatever portion of the Association Property that is inspected, within thirty (30) days after the completion of such inspection.

2.15.6 Damage by Owners. Each Owner is liable to the Association for all damage to the Common Property if the damage is caused by the negligence or willful act of an Owner, his Family, tenants or invitees, or any other persons deriving their right to use the Common Property from the Owner, or the Owner's Family, tenants or invitees. The Association may, after Notice and Hearing, (a) determine whether any claim shall be made on the Association's insurance for repair of the insured portion of the damage, and (b) levy a Special Assessment equal to the cost of repairing the damage, or, if a claim is paid from insurance, the amount of any deductible paid, and the increase, if any, in insurance premiums directly attributable to the damage caused by such Owner or the person for whom the Owner may be liable as described in this Declaration. If a Condominium is jointly owned, the liability of its Owners is joint and several, except to the extent that the Association has previously contracted in writing with the joint Owners to the contrary. After Notice and Hearing, the cost of correcting the damage (or the amount of the deductible actually paid to correct the damage covered by insurance) shall be a Special Assessment against such Owner.

**ARTICLE III
DISCLOSURES**

This Article discloses information that was obtained from third-party sources such as consultants, government and public records. No Person should rely on the ongoing accuracy or completeness of the information discussed in this Article because many of the matters discussed below are outside the control of Declarant. Accordingly, Declarant makes no

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guarantee as to the accuracy or completeness of the matters disclosed below. Furthermore, Declarant is under no obligation to update or revise any matter disclosed in this Article. This Article is intended to provide Owners with information known or provided to Declarant as of the date this Declaration was Recorded, to be used as a starting point for further independent investigation.

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

3.2 ACCESS FACILITIES; SECURITY AND PRIVACY DISCLAIMER. The lobby entrance to the Building will be controlled. Elevators in the Building may be equipped with card readers. The lobby doors and elevators are referred to collectively as the "Access Facilities."

3.2.1 Attendants. Declarant may, at its sole expense, post attendants in the lobby to assist construction personnel and visiting prospective purchasers during the construction and marketing of the Properties. So long as Declarant retains control of the Access Facilities and provides attendants at its sole expense, Declarant may eliminate or modify the numbers or presence of attendants at any or all of the Access Facilities at any time without notice. Furthermore, Declarant has the right to discontinue the operation of or leave open any Access Facilities during the construction and marketing of the Properties. Until the last Close of Escrow in the Properties, one or all of the Access Facilities may be left open to the general public at various times. Access Facilities and any staffing provided by Declarant are not intended to provide security or privacy for residents of the Properties or for any resident's personal or real property.

3.2.2 Security. Neither Declarant nor the Association have any obligation to provide security, privacy or safety for the Properties or for residents of the Properties, nor do they make any representations or warranties that any feature of the Properties will improve security, privacy or safety. Neither the Association nor Declarant shall be liable for (i) any unauthorized or criminal entry by third parties into the Properties, or any Unit in the Properties or any Improvements within the Properties, (ii) any damage or injury to Persons, or (iii) any loss of property in and about the Properties, any Unit within the Properties or any Improvements within the Properties, by or from any unauthorized or criminal acts of third parties, regardless of any action, inaction, failure, breakdown, malfunction or insufficiency of the security services and improvements provided by the Association or Declarant.

3.3 PROPERTY LINES. The boundaries of each Condominium within the Properties and the Common Property are delineated on the Condominium Plan, which is a public record and is available at the office of the County Recorder.

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3.4 SPECIAL TAX ASSESSMENT OR MELLO-ROOS COMMUNITY FACILITIES DISTRICTS. The Properties may lie within the boundaries of special tax assessment districts and Mello-Roos Community Facilities Districts that require the levy of a special tax for repayment of bonds issued for the purpose of paying the cost of services or capital improvements. The amount of the special tax and any other information pertaining to any such district can be obtained from the County Assessor's office.

3.5 CHANGE IN PLANS. Declarant has the right to develop the Properties with Improvements that may be different in design, size, character, style and price than previously shown to any Owner or any other Person.

3.6 ADDITIONAL PROVISIONS. There may be provisions of various laws, including the Davis-Stirling Common Interest Development Act codified at Sections 1350, et seq. of the California Civil Code, the Unruh Civil Rights Act codified at Section 51, et seq., of the California Civil Code, and the federal Fair Housing Act codified at Title 42 United States Code, Section 3601 et seq., which may supplement or override the Governing Documents. Furthermore, legislative action or court decisions may supplement, amend or repeal laws in effect at the time this Declaration is Recorded. Changes to existing laws may affect the interpretation or enforceability of the Governing Documents. Declarant makes no representations or warranties regarding the future enforceability of any portion of the Governing Documents.

**ARTICLE IV
THE ASSOCIATION**

4.1 GENERAL DUTIES AND POWERS. No later than the first Close of Escrow in the Properties, the Association shall be incorporated as a nonprofit corporation under California law. Upon incorporation, the Association shall have the duties and powers listed in the Governing Documents and also has the general and implied powers of a nonprofit corporation, generally to do all things that a corporation organized under the laws of the State of California may lawfully do which are necessary or proper in operating for the peace, health, comfort, safety and general welfare of the Owners, subject only to the limits on the exercise of such powers listed in the Governing Documents. Unless otherwise indicated in the Articles, Bylaws, this Declaration, or a Supplemental Declaration, the powers of the Association may be exercised by the Board, except for those powers reserved in specific provisions of the Governing Documents to the members of the Design Review Committee.

4.2 SPECIFIC DUTIES AND POWERS. In addition to its general powers and duties, the Association, has the following specific powers and duties.

4.2.1 Common Property. The power and duty to accept, maintain and manage the Common Property in accordance with the Governing Documents, when title and maintenance responsibility are tendered by Declarant. The Association shall execute all deeds and execute and deliver all bond exonerations when presented if the bonded obligations are satisfied. The Association may install or remove capital Improvements on the Common Property. The Association may reconstruct, replace or refinish any Improvement on the

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Common Property. The Common Property shall be conveyed to the Association before the first Close of Escrow for sale of a Condominium in the Properties.

4.2.2 Sale or Transfer of Association Property. The power, but not the duty to sell or otherwise transfer the Association Property, or any portion thereof; provided, however that the Association may not sell or transfer any portion of the Association Property without the prior approval (a) from Owners representing at least seventy-five percent (75%) of the Association's voting power and (b) of the City. Except as provided in Article IX, the Association is only permitted to sell or transfer the Association Property, or any portion thereof, (i) to another nonprofit owners association, or (ii) to the Owners of the Condominiums as tenants in common with the requirement that each Owner's interest in the Association Property as tenants in common be appurtenant to the Condominium and may not be separately transferred. In addition, any transfer or sale of the Association Property must be made expressly subject to all easements, rights and restrictions of record, including this Declaration. For purposes of this Section 4.2.2, a "transfer" shall not include the conveyance of exclusive or nonexclusive easements or the change of boundaries associated with any lot line adjustment or amendment to the Condominium Plan.

4.2.3 Utilities. The power and duty to obtain, for the benefit of the Properties, all commonly metered water, gas and electric services and to provide for trash collection, and the power but not the duty to provide for cable or master television service.

4.2.4 Granting Rights. The power to grant exclusive or nonexclusive easements, licenses, rights of way or fee interests in the Association Property owned in fee by the Association, to the extent any such grant is reasonably required (a) for utilities and facilities to serve the Common Property and the Condominiums, (b) for purposes of conformity with the as-built location of Improvements installed or authorized by Declarant or the Association, (c) in connection with any lawful lot line adjustment, or (d) for other purposes consistent with the intended use of the Properties. This power includes the right to create and convey Exclusive Use Areas. The Association may deannex any real property from the encumbrance of this Declaration in connection with any lawful lot line adjustment.

4.2.5 Employ Personnel. The power to employ Persons necessary for the effective operation and maintenance of the Common Property, including legal, management and accounting services.

4.2.6 Property Manager. The Association has the power to furnish offices or other Common Property for an "on-site" Building Manager and administrative assistant. The Manager shall at all times be a professional manager employed as an independent contractor or agent.

4.2.7 Insurance. The power and the obligation to maintain in effect policies of insurance for the Common Property in accordance with this Declaration. If economically feasible, the Master Association may purchase for the benefit of the Association and the neighboring homeowners association one or more policies of insurance of the types and coverages required under this Declaration. and in such event, the Association shall have

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the power and the duty to reimburse the Master Association for the Association's allocable share of the premiums, and other reasonable costs actually incurred in connection therewith.

4.2.8 **Rules and Regulations.** The power but not the duty to establish, amend, restate, delete, and create exceptions to, the Rules and Regulations.

(a) **Standards for Enforceability.** To be valid and enforceable, a Rule must satisfy all the following requirements:

(i) The Rule must be in writing;

(ii) The Rule is within the authority of the Board conferred by law or by this Declaration, the Articles or the Bylaws;

(iii) The Rule is not inconsistent with governing law, this Declaration, the Articles, or the Bylaws;

(iv) The Rule is adopted, amended or repealed in good faith and in substantial compliance with the requirements of Article 4 of Title 6 of Part 4 of Division 2 of the California Civil Code;

(v) The Rule is reasonable; and

(vi) The Rule complies with the requirements of California Civil Code Section 1357.110 (as amended from time to time).

(b) **Areas of Regulation.** The Rules and Regulations may concern use of the Properties, signs, parking restriction, minimum standards of property maintenance, and any other matter under the Association's jurisdiction; however, the Rules and Regulations are enforceable only to the extent they are consistent with the Articles, Bylaws, Declaration, any Supplemental Declarations and any Notices of Addition.

(c) **Limits on Regulation.** The Rules and Regulations must apply uniformly to all Owners. The rights of Owners to display in or on their Residences religious, holiday and political signs, symbols and decorations of the kinds normally displayed in single family residential neighborhoods shall not be abridged. However, the Association may adopt time, place and manner restrictions for such displays if they are visible outside the Residence. No modification to the Rules and Regulations may require an Owner to dispose of personal property that was in compliance with all rules previously in force; however, this exemption shall apply only during the period of such Owner's ownership of the Condominium and it shall not apply to: (i) subsequent Owners who take title to a Condominium after the modification is adopted; or (ii) clarifications to the Rules and Regulations.

(d) **Procedure for Adoption, Amendment and Repeal.** Rules or procedures concerning (i) the use of Common Property, (ii) the use of a Condominium, including any aesthetic standards or Design Guidelines that affect Condominiums, (iii) member discipline, including any schedule of monetary penalties for violation of the Governing Documents, (iv) any procedure for the imposition of penalties, (v) any standards

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for delinquent assessment payment plans, and (vi) any procedures adopted by the Association for resolution of assessment disputes (each, a **“Covered Rule”**) may only be adopted, amended or repealed in accordance with the following procedure:

(i) The Board must provide written notice (**“Notice”**) of a proposed change in a Covered Rule to the members at least thirty (30) days before making the change, except for an Emergency Rule Change (defined below). The Notice must include the text of the proposed change and a description of the purpose and effect of the proposed change (Notice is not required if the Board determines that an immediate change is required to address an imminent threat to public health or safety, or an imminent risk of substantial economic loss to the Association);

(ii) The decision on a proposed change shall be made at a Board meeting after consideration of comments made by the members of the Association;

(iii) The Board shall deliver Notice of the adopted change to every member of the Association within fifteen (15) days of adoption. If the change was an Emergency Rule Change, the notice shall include the text of the Emergency Rule Change, and the date on which the Emergency Rule Change expires;

(iv) If the Board determines that an immediate Rule change is required to address an imminent threat to public health or safety, or an imminent risk of substantial economic loss to the Association, it may make the change on an emergency basis (**“Emergency Rule Change”**) and no Notice will be required. An Emergency Rule Change is effective for one hundred-twenty (120) days, unless the adopted change provides for a shorter effective period. Any change that is adopted as an Emergency Rule Change may not be re-adopted under authority of this subpart.

(v) A Notice required by this Section 4.2.8(b) is subject to California Civil Code Section 1350.7.

(vi) A Rule change made pursuant to this Section 4.2.8(d) may be reversed as provided in California Civil Code Section 1357.140.

4.2.9 Borrowings. The power, but not the duty, to borrow money for purposes authorized by the Articles, Bylaws, Declaration, or any Supplemental Declarations or Notices of Addition and to use the Association’s ownership interest in the Association Property as security for the borrowing.

4.2.10 Contracts. The power, but not the duty, to enter into contracts. This includes contracts with Owners or other Persons to provide services or to maintain Improvements in the Properties and elsewhere that the Association is not otherwise required to provide or maintain pursuant to this Declaration.

4.2.11 Telecommunications Contract. Notwithstanding anything in the Governing Documents to the contrary, the Board shall have the power to enter into, accept an assignment of, or otherwise cause the Association to comply with the terms and provisions of an exclusive telecommunications services contract (**“Telecommunications Contract”**) with a

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telecommunications service provider ("***Service Provider***"), pursuant to which the Service Provider shall serve as the exclusive provider of Telecommunications Services to each Condominium in the Properties. The Board shall only enter into, accept an assignment of, or otherwise cause the Association to comply with the terms and provisions of the Telecommunications Contract if the Board determines, in its sole discretion, that such action is in the best interests of the Association. Although not exhaustive, the Board shall consider the following factors in making such a determination:

(a) ***Initial Term and Extensions.*** The initial term of the Telecommunications Contract should not exceed five (5) years, and, if the Telecommunications Contract provides for automatic extensions, the length of each such extension should also not exceed five (5) years.

(b) ***Termination.*** The Telecommunications Contract should provide that: (i) at least six (6) months prior to the expiration of either the initial or any extended term of the Telecommunications Contract, the entire Membership of the Association may, without cause, by a sixty percent (60%) vote, prevent any automatic extension that the Telecommunications Contract may provide for, and thereby allow the Telecommunications Contract to expire, and (ii) at any time, the Board may terminate the Telecommunications Contract if, in the sole discretion of the Board, the Service Provider fails to provide quality, state-of-the-art Telecommunications Services.

(c) ***Fees.*** Whether the monthly fee charged to the Association by the Service Provider for the provision of the Telecommunications Services to all of the Condominiums represents a discount from the comparable retail fees charged by the Service Provider in the general geographic area in which the Properties are located, and, if so, the amount of such discount.

(d) ***Installation of Telecommunications Facilities.*** Whether the Service Provider is solely responsible for the installation, and the cost thereof, of all of the Telecommunications Facilities necessary to provide Telecommunications Services to each Condominium.

(e) ***Removal of Telecommunications Facilities.*** Whether the Service Provider has the right to remove the Telecommunications Facilities upon expiration or termination of the Telecommunications Contract.

4.2.12 Indemnification.

(a) ***For Association Representatives.*** To the fullest extent authorized by law, the Association has the power and duty to indemnify Board members, Association officers, Design Review Committee members, and all other Association committee members for all damages, pay all expenses incurred, and satisfy any judgment or fine levied as a result of any action or threatened action brought because of performance of an act or omission within what such person reasonably believed to be the scope of the Person's Association duties ("***Official Act***"). Board members, Association officers, Design Review Committee members, and all other Association committee members are deemed to be agents

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of the Association when they are performing Official Acts for purposes of obtaining indemnification from the Association pursuant to this Section. The entitlement to indemnification under this Declaration inures to the benefit of the estate, executor, administrator and heirs of any person entitled to such indemnification.

(b) **For Other Agents of the Association.** To the fullest extent authorized by law, the Association has the power, but not the duty, to indemnify any other Person acting as an agent of the Association for damages incurred, pay expenses incurred, and satisfy any judgment or fine levied as a result of any action or threatened action because of an Official Act.

(c) **Provided by Contract.** The Association also has the power, but not the duty, to contract with any Person to provide indemnification in addition to any indemnification authorized by law on such terms and subject to such conditions as the Association may impose.

4.2.13 Prohibited Functions.

(a) **Off-site Nuisances.** The Association shall not use any Association funds or resources to abate any annoyance or nuisance emanating from outside the physical boundaries of the Properties.

(b) **Political Activities.** The Association shall not conduct, sponsor, participate in or expend funds or resources on any activity, campaign or event, including any social or political campaign, event or activity which does not directly and exclusively pertain to the authorized activities of the Association. Furthermore, the Association shall not participate in federal, state or local political activities or activities intended to influence a governmental action affecting areas outside the Properties (e.g., endorsement or support of legislative or administrative actions by a local governmental authority), nor shall it support or campaign for or against candidates for elected or appointed office or ballot proposals. There shall be no amendment of this Section so long as Declarant owns any portion of the Properties.

(c) **Standing to Resolve Disputes.** The Association shall have standing to institute, defend, settle or intervene in litigation, alternative dispute resolution or administrative proceedings (each, an "Action") in its own name as the real party in interest and without joining the Owners, in matters pertaining to (i) damage to the Association Property, (ii) damage to the Building, including portions of the Condominiums which the Association is obligated to maintain or repair, and (iii) damage to portions of the Condominiums which arises out of, or is integrally related to, damage to the Association Property or portions of the Condominiums that the Association is obligated to maintain or repair (each, a "Claim"). However, the Association shall not have standing to institute, defend, settle or intervene in any Action in any matter pertaining only to individual Condominiums and not otherwise described in subsections (i), (ii) or (iii) above.

Upon commencement of an Action by the Association pertaining to any Claim described in subparts (i), (ii) or (iii) above, the Association's standing shall be exclusive, and

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during the pendency of such Action, the Owners shall be barred from commencing a new Action or maintaining a pending Action on the same Claim. The Association's exercise of exclusive standing as to an Action on a particular Claim shall not be deemed to give rise to any affirmative obligation on the part of the Association to maintain, settle or dismiss the Action, except in the Association's sole discretion, and subject to Section 12.4.

4.2.14 Maintenance Guidelines. The Association shall have the power and duty to (a) operate, maintain and inspect the Association Property and its various components in conformance with any Maintenance Guidelines and any Maintenance Manual, and (b) review any Maintenance Manual applicable to the Association Property for necessary or appropriate revisions no less than annually after the Board has prepared the Budget; provided however, that the Association shall not revise the Maintenance Manual to reduce the level of maintenance required of any Improvement without the prior written consent of Declarant until ten (10) years after the last Close of Escrow for the sale of a Condominium in the Properties by Declarant.

4.2.15 License and Use Agreements. The Association shall enter into an exclusive use agreement, lease, license, or other agreement deemed appropriate by Declarant to govern the temporary use by Declarant of the Recreational Facilities, lobby or other Association Property, if such use is required by Declarant, during the marketing of the Properties.

4.3 STANDARD OF CARE, NONLIABILITY.

4.3.1 Scope of Powers and Standard of Care.

(a) **General Scope of Powers.** Rights and powers conferred on the Board, the Design Review Committee or other committees or representatives of the Association by the Governing Documents are not duties, obligations or disabilities charged upon those Persons unless the rights and powers are explicitly identified as including duties or obligations in the Governing Documents or law. Unless a duty to act is imposed on the Board, Design Review Committee or other committees or representatives of the Association by the Governing Documents or law, the Board, the Design Review Committee, and the other committees of the Board have the right to decide to act or not act. Any decision not to act is not a waiver of the right to act in the future.

(b) **Business Affairs.** This Section 4.3.1(b) applies to Board member actions in connection with management, personnel, maintenance and operations, insurance, contracts and finances, and Design Review Committee member actions. Each Board member shall perform his duties in good faith, in a manner the Board member believes to be in the best interests of the Association and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances. When performing his duties, a Board member is entitled to rely on information, opinions, reports or statements, including financial data prepared or presented by:

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(i) One (1) or more officers or employees of the Association whom the Board member believes to be reliable and competent in the matters presented;

(ii) Counsel, independent accountants or other Persons as to matters which the Board member believes to be within such Person's professional or expert competence; or

(iii) A committee of the Board upon which the Board member does not serve, as to matters under its designated authority, which committee the Board member believes to merit confidence, so long as the Board member acts in good faith, after reasonable inquiry when the need is indicated by the circumstances and without knowledge that would cause such reliance to be unwarranted.

This Section 4.3.1(b) is intended to be a restatement of the business judgment rule established in applicable law as it applies to the Association. All modifications and interpretations of the business judgment rule applicable to the Association shall be interpreted to modify and interpret this Section 4.3.1(b).

(c) **Association Governance.** This Section 4.3.1(c) applies to Board actions and Design Review Committee decisions in connection with interpretation and enforcement of the Governing Documents, and architectural control, regulation of uses within the Properties, rule making and oversight of committees. Actions taken or decisions made in connection with these matters shall be reasonable, fair and nondiscriminatory.

4.3.2 Nonliability.

(a) **General Rule.** No Person is liable to any other Person (other than the Association or a party claiming in the name of the Association) for injuries or damage resulting from such Person's Official Acts, except to the extent that such injuries or damage result from the Person's willful or malicious misconduct. No Person is liable to the Association (or to any party claiming in the name of the Association) for injuries or damage resulting from such Person's Official Acts, except to the extent that such injuries or damage result from such Person's negligence or willful or malicious misconduct. The Association is not liable for damage to property in the Properties unless caused by the negligence of the Association, the Board, the Association's officers, the manager or the manager's staff

(b) **Nonliability of Volunteer Board Members and Officers.** A volunteer Board member or volunteer Association officer shall not be personally liable to any Person who suffers injury, including bodily injury, emotional distress, wrongful death or property damage or loss as a result of the tortious act or omission of the volunteer officer or Board member if all applicable conditions specified in Section 1365.7 of the California Civil Code are met.

(c) **Nonliability of Owners.** Pursuant to California Civil Code Section 1365.9, no Owner shall be liable for any cause of action in tort which can be brought against the Owner solely because of the Owner's undivided interest in the Common Area so long as the Association keeps one or more policies of insurance which include coverage for

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general liability of the Association in the amount required by California Civil Code Section 1365.9 and that insurance is in effect for the cause of action being brought.

4.4 MEMBERSHIP.

4.4.1 Generally. Every Owner shall automatically acquire a Membership in the Association and retain the Membership until such Owner's Condominium ownership ceases, at which time such Owner's Membership shall automatically cease. Ownership of a Condominium in the Properties is the sole qualification for Membership. Memberships are not assignable except to the Person to whom title to the Condominium is transferred, and every Membership is appurtenant to and may not be separated from the fee ownership of such Condominium. The rights, duties, privileges and obligations of all Owners are as provided in the Governing Documents.

4.4.2 Transfer. The Membership of any Owner may not be transferred, pledged or alienated in any way, except on the transfer or encumbrance of such Owner's Condominium, and then only to the transferee or Mortgagee of such Condominium. A prohibited transfer is void and will not be reflected in the records of the Association. Any Owner who has sold his Condominium to a contract purchaser under an agreement to purchase may delegate the Owner's Membership rights to the contract purchaser. The delegation must be in writing and must be delivered to the Association before the contract purchaser may vote. The contract seller shall remain liable for all Assessments attributable to the contract seller's Condominium which accrue before title to the Condominium is transferred. If the contract seller fails or refuses to delegate his Membership rights to the contract purchaser before the Close of Escrow, the Association may record the transfer to the contract purchaser in the Association's records. However, no contract purchaser will be entitled to vote at Association meetings during the term of a purchase contract without satisfactory evidence of the delegation of the contract seller's Membership rights to the contract purchaser. The Association may levy a reasonable transfer fee against a new Owner and such Owner's Condominium (which fee shall be paid through escrow or added to the Annual Assessment chargeable to such new Owner) to reimburse the Association for the administrative cost of transferring the Membership to the new Owner on the Association's records. Such fee may not exceed the Association's actual cost involved in changing its records. The Association shall provide ACS with information regarding all transfers of Condominiums if requested by ACS.

4.4.3 Classes of Membership. The classes of voting Membership are as follows:

(a) **Class A.** Class A members are all Owners except Declarant for so long as a Class B Membership exists. Class A Members are entitled to one (1) vote for each Condominium owned and subject to Assessment. Declarant shall become a Class A member on conversion of the Class B Membership as provided below. The vote for each Condominium shall be exercised in accordance with Section 4.5, but no more than one (1) Class A vote may be cast for any Condominium.

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(b) **Class B.** The Class B member is Declarant. The Class B member is entitled to three (3) votes for each Condominium owned by Declarant and subject to Assessment. The Class B Membership shall convert to Class A Membership on the first to occur of the following events:

(i) When the total votes outstanding in the Class A Membership equal the total votes outstanding in the Class B Membership; or

(ii) The fifth anniversary of the first Close of Escrow in the Properties.

(c) **Class C Board Appointment Right.** Declarant shall have a Class C Board appointment right (whether or not Declarant is an Owner). The Class C Board appointment right shall not be considered a part of the voting power of the Association. The Class C Board appointment right entitles Declarant to select a majority of the members of the Board of Directors until the Class C Termination Date. The "Class C Termination Date" shall be the earlier to occur of the following events:

(i) The date of the two hundred-eighth (208th) Close of Escrow for the sale of a Condominium in the Properties; or

(ii) The fifth anniversary of the first Close of Escrow in the Properties.

4.4.4 Selection of Twenty Percent of the Board. Declarant (whether or not Declarant is an Owner) is entitled to select twenty percent (20%) of the members of the Board of Directors until the Selection Termination Date. The "Selection Termination Date" shall be the earlier to occur of the following events:

(a) The date of the two hundred-fiftieth (250th) Close of Escrow for the sale of a Condominium in the Properties; or

(b) The fifth anniversary of the first Close of Escrow in the Properties.

4.5 VOTING RIGHTS.

4.5.1 Limits Generally. All voting rights are subject to the Governing Documents. Except as provided in Sections 4.5.2 and 12.3 of this Declaration and Section 4.2.7 of the Bylaws, as long as there exists a Class B Membership, any provision of the Governing Documents which expressly requires the vote or written consent of a specified percentage (instead of a majority of a quorum) of the Association's voting power before action may be undertaken shall require the approval of such specified percentage of the voting power of both the Class A and the Class B Memberships. Except as provided in Sections 4.5.2 and 12.3 of this Declaration and Section 4.2.7 of the Bylaws, on termination of the Class B Membership, any provision of the Governing Documents which expressly requires the vote or written consent of Owners representing a specified percentage (instead of a majority of a quorum) of the Association's voting power before action may be undertaken shall then require

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the vote or written consent of Owners representing such specified percentage of both (1) the Association's total Class A voting power and (2) the Association's Class A voting power represented by Owners other than Declarant.

4.5.2 Vote to Initiate Construction Defect Claim. Commencing on the date of the first annual meeting of Owners, Declarant relinquishes control over the Association's ability to decide whether to initiate a construction defect claim under the Right to Repair Law (a "**Defect Claim**"). This means that Declarant, current employees and agents of Declarant, Board members who are appointed by Declarant, Board members elected by a majority of votes cast by Declarant, and all other Persons whose vote or written consent is inconsistent with the intent of the preceding sentence, are prohibited from participating and voting in any decision of the Association or Owners to initiate a Defect Claim.

4.5.3 Joint Ownership. When more than one (1) Person holds an ownership interest in any one (1) Condominium ("**Co-Owners**"), each Co-Owner may attend any Association meeting, but only one (1) such Co-Owner shall be entitled to exercise the single vote to which the Condominium is entitled. Co-Owners owning the majority interests in a Condominium may designate in writing one (1) of their number to vote. Fractional votes shall not be allowed, and the vote for each Condominium shall be exercised, if at all, as a unit. Where no voting Co-Owner is designated or if the designation is revoked, the vote for the Condominium shall be exercised as the Co-Owners owning the majority interests in the Condominium agree. Unless the Association receives a written objection in advance from a Co-Owner, it shall be conclusively presumed that the voting Co-Owner is acting with his Co-Owners' consent. No vote may be cast for any Condominium if the Co-Owners present in person or by proxy owning the majority interests in such Condominium fail to agree to the vote or other action. The nonvoting Co-Owner or Co-Owners are jointly and severally responsible for all obligations imposed on the jointly-owned Condominium and are entitled to all other benefits of ownership. All agreements and determinations lawfully made by the Association in accordance with the voting percentages established in the Governing Documents are binding on all Owners and their successors in interest.

4.6 UNSEGREGATED REAL PROPERTY TAXES. To the extent not assessed to or paid by the Owners, the Association shall pay all real and personal property taxes and assessments levied against the Properties. If Condominiums in the Properties are taxed under a tax bill covering all of the Properties, then each Owner of a Condominium in the Properties shall pay his share of any installment due under the tax bill to the Association at least ten (10) days before the delinquency date. The Association shall transmit the taxes to the appropriate tax collection agency on or before the delinquency date. The Association shall allocate taxes among the Owners and their Condominiums in the Properties in a percentage based on the individual square footage of each Condominium in relationship to the total square footage of all Condominiums in the Properties. The Association shall, at least forty-five (45) days before the delinquency date of any tax installment, deliver to each Owner in the Properties a copy of the tax bill, along with a written notice setting forth the Owner's obligation to pay his share of the tax installment and the potential additional charges to the Owner for failure to comply. The Association shall pay the taxes on behalf of any Owner who does not pay his share. The Association shall add to the Annual Assessment of a delinquent Owner the amount of any sum advanced, plus interest at the rate of ten percent

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(10%) per annum and any amount necessary to reimburse the Association for any penalty or late charge actually assessed in connection with the tax bill for the Properties, which late charge results from the failure of the delinquent Owner to make timely payment of his share of the taxes. Until Close of Escrow for the sale of ninety percent (90%) of the Condominiums in the Properties has occurred, this Section may not be amended without the written consent of Declarant.

**ARTICLE V
DESIGN REVIEW COMMITTEE**

5.1 MEMBERS OF COMMITTEE. The Design Review Committee shall be composed of three (3) members. The initial members of the Design Review Committee shall be representatives of Declarant until one (1) year after the original issuance of the Final Subdivision Public Report ("**Public Report**") in the Properties ("**First Anniversary**"). After the First Anniversary, the Board may appoint and remove one (1) member of the Design Review Committee, and Declarant may, but is not obligated to, appoint and remove a majority of the members of the Design Review Committee and fill any vacancy of such majority, until the earlier to occur of (a) Close of Escrow for the sale of ninety percent (90%) of all the Condominiums in the Properties, or (b) the fifth (5th) anniversary of the original issuance of the Public Report for the Properties, after which the Board may appoint and remove all members of the Design Review Committee. Design Review Committee members appointed by the Board must be Owners, but Design Review Committee members appointed by Declarant need not be Owners. Board members may serve as Design Review Committee members.

5.2 POWERS AND DUTIES.

5.2.1 General Powers and Duties. The Design Review Committee shall consider and act upon all plans and specifications submitted for its approval, including inspection of work in progress to assure conformity with plans approved by the Design Review Committee, and shall perform such other duties as the Board assigns to it. The Design Review Committee may provide that fees it imposes be uniform, or that fees be determined in any other reasonable manner.

5.2.2 Issuance of Standards. The Design Review Committee shall annually issue and update its Design Guidelines and provide notice of any requirements for Committee approval of proposed Improvements. The notice shall describe the types of proposed Improvements that require Committee approval, and it shall include a copy of the procedure used to review and approve or disapprove such proposed Improvements. The Design Guidelines may identify additional factors which the Design Review Committee will consider in reviewing submissions. The Design Review Committee may require such detail in plans and specifications submitted for its review as it deems proper, including floor plans, Improvement plans and descriptions or samples of proposed materials.

5.2.3 Retaining Consultants. The Design Review Committee has the power but not the duty to retain licensed architects, contractors and other professionals to

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advise its members in connection with review of Applications, including paid professional consultants.

5.3 REVIEW OF PLANS AND SPECIFICATIONS.

5.3.1 Improvements Requiring Approval. No construction, installation or alteration of an Improvement may be commenced until the plans and specifications showing the nature, kind, shape, height, width, color, materials and location of such Improvements, along with an initial review fee in an amount set in writing from time to time by the Committee, and other materials required under this Article (collectively, an "**Application**") are submitted to and approved in writing by the Design Review Committee. The provisions of this Article apply to construction, installation and alteration of solar energy systems, as defined in Section 801.5 of the California Civil Code, subject to the provisions of California Civil Code Sections 714 and 714.1, the applicable Building Code, zoning regulations, and other laws. Notwithstanding any other provision in this Declaration to the contrary, neither the Association nor any other Person may make any change to the exterior of the Building (except paint or other surface treatment as originally painted or finished when constructed) without the prior written approval of the City's Redevelopment Agency (or its successor) and the Design Review Committee of the Master Association. Except as permitted under Sections 2.13 and 2.14, no Person may puncture, remove or modify any structural element of the Building, including the floor slab, ceiling slab, or exterior walls of the Unit. Owners who desire to replace Declarant-installed floor coverings must obtain Committee's prior written approval of flooring and noise mitigating materials. Replacement noise mitigation materials must be identical to or substantially similar to those installed as part of the original construction of the Building.

5.3.2 Application Procedure. Until changed by the Board, the address for the submission of the Application is the Association's principal office. The form of Application used by the Design Review Committee may include spaces allowing "Adjacent Owners" to sign or initial the Application confirming that they have been notified of the application. The Design Review Committee may establish a definition of "Adjacent Owners" in its Design Guidelines. Applications will be complete and may be approved or disapproved by the Design Review Committee even if all of the Adjacent Owners do not initial the Applications so long as the Owner submitting plans and specifications ("**Applicant**") certifies that the Applicant has asked the Adjacent Owners to sign the Applications. The requirement that the Applicant attempt to obtain the signatures of Adjacent Owners is intended only to provide notice of the pending application to the Adjacent Owners. It does not create in the Adjacent Owners any power to approve or disapprove the Application by signing or withholding a signature. Only the Committee may approve or disapprove an Application.

The Design Review Committee may reject the Application if it determines that the Applicant's plans and specifications are incomplete. The Design Review Committee shall transmit its decision and the reasons therefor to the Applicant at the address listed in the Application within forty-five (45) days after the Design Review Committee receives all required materials. Any Application submitted shall be deemed approved unless the Design Review Committee transmits written disapproval or a request for additional information or materials to the Applicant within forty-five (45) days after the date the Design Review

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Committee receives the completed Application. The Manager or a representative of the Board or Committee shall at the written request of the Applicant execute a written approval therefor within fifteen (15) days of receipt of the written request. A decision on a proposed Improvement shall be consistent with California law, made in good faith and may not be unreasonable, arbitrary or capricious. If disapproved, the written decision shall include both an explanation of why the proposed Improvement is disapproved and a description of the procedure for reconsideration by the Board.

5.3.3 Standard for Approval. The Design Review Committee shall approve an Application submitted for its approval only if it determines that (a) installation, construction or alterations of the Improvements in the locations proposed will not be detrimental to the appearance of the surrounding area of the Properties as a whole, (b) the appearance of any structure affected by the proposed Improvements will be in harmony with the surrounding structures, (c) installation, construction or alteration of the proposed Improvements will not detract from the beauty, wholesomeness and attractiveness of the Properties or the enjoyment thereof by the Owners, (d) maintenance of the proposed Improvements will not become a burden on the Association, and (e) the proposed Improvements are consistent with this Declaration. The Design Review Committee may consider the impact of views from other Condominiums along with other factors including reasonable privacy right claims, passage of light and air, beneficial shading and other factors in reviewing, approving or disapproving any proposed construction or other Improvements. However, neither the Declarant nor the Association warrants that any views in the Properties are protected. No Condominium is guaranteed the existence or unobstructed continuation of any particular view.

5.3.4 Conditions to Approval. The Design Review Committee may condition its approval of an Application for any Improvement on such changes to the Application as it considers appropriate. The Committee may also require the Applicant, prior to commencing work, to deposit with the Association adequate funds as security to cover the cost of repair or restoration of any Common Property that may be damaged by the Applicant or the Applicant's contractors. The Committee will determine the actual amount of the deposit in each case, but the amount shall be at least enough to cover the cost of repairing or restoring damage that is reasonably foreseeable to the Committee. The deposit shall be refundable to the extent the Committee finds that the work of Improvement is complete, and that the Common Property was not damaged or was restored at least to the condition it was in prior to the commencement of work.

The Design Review Committee may also require submission of additional plans and specifications or other information before approving or disapproving material submitted. The Applicant must obtain all required approvals of the Master Association's Design Review Committee and it shall meet any review or permit requirements of the City, the County, and the California Coastal Commission before making any construction, installation or alterations permitted under this Declaration.

5.3.5 Matters Outside Scope of Approval. The Design Review Committee's approval or disapproval of each Application shall be based solely on the aesthetic considerations listed in this Article. Approval of any Application does not constitute

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a finding by the Design Review Committee that the Application or any portion of the Application (a) incorporates good engineering practices, (b) complies with applicable law, ordinance, code, or regulation, including zoning laws and building and safety codes, (c) complies with the requirements of any public utility, or (d) is permissible under the terms of any easement, license, permit, mortgage, deed of trust, or other recorded or unrecorded instrument (other than the Governing Documents) that affects the land.

5.3.6 Exculpation of Committee. By submitting an Application, each Applicant agrees that neither the Design Review Committee, nor Declarant, nor their respective agents, employees, attorneys or consultants shall be liable to any Person for:

(a) any defect in any Improvement constructed by or on behalf of the Applicant pursuant to an approved Application;

(b) any loss, damage, or injury to Persons or property arising out of or in any way connected with work performed by or on behalf of the Applicant pursuant to an approved Application; or

(c) any loss, damage, or injury to Persons or property arising out of or in any way connected with the performance of the Design Review Committee's duties hereunder, unless due to willful misconduct or gross negligence.

5.4 MEETINGS AND ACTIONS OF THE DESIGN REVIEW COMMITTEE. The Design Review Committee shall meet as necessary to perform its duties. The Design Review Committee may, by resolution unanimously adopted in writing, designate a Design Review Committee Representative (who may be a licensed architect or other professional consultant retained by the Committee) to review Applications and recommend action to be taken by the Committee or to take any other action or perform any other duties for and on behalf of the Design Review Committee except the granting of variances. In the absence of such designation, the vote or written consent of a majority of the Design Review Committee constitutes an act of the Design Review Committee. All approvals issued by the Design Review Committee must be in writing. Verbal approvals issued by the Design Review Committee, any individual Design Review Committee member or any other representative of the Association are not valid, are not binding on the Association and may not be relied on by any Person. If within six (6) months of issuance of the approval, an Owner either does not commence work pursuant to approved plans or obtain an extension of time to commence work, the approval shall be automatically revoked and a new approval must be obtained before work can be commenced.

5.5 NO WAIVER OF FUTURE APPROVALS. The Design Review Committee's approval of any proposals, plans and specifications or drawings for any work done or proposed in connection with any matter requiring the Design Review Committee's approval does not waive the right to withhold approval of any similar proposals, plans and specifications, drawings or matters subsequently or additionally submitted for approval.

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Sales · Leasing · Property Management

5.6 **COMPENSATION OF MEMBERS.** The Design Review Committee's members shall receive no compensation for services rendered, other than reimbursement for expenses incurred by them in performing their duties.

5.7 **INSPECTION OF WORK.** The Design Review Committee or its duly authorized representative may inspect any work for which approval of plans is required under this Article ("**Work**"). The right to inspect includes the right to require any Owner to take such action as may be necessary to remedy any noncompliance with the Design Review Committee-approved plans for the Work or with the requirements of this Declaration ("**Noncompliance**").

5.7.1 **Time Limit.** The Design Review Committee's right to inspect the Work and notify the responsible Owner of any Noncompliance shall terminate sixty (60) days after the Work is completed and the Design Review Committee receives written notice on a form provided by the Committee from the Owner that the Work is completed. If the Design Review Committee fails to send a notice of Noncompliance to an Owner before this time limit expires, the Work shall be deemed to comply with the approved plans.

If an Owner fails to complete Work within one (1) year from the date the approval for the Work is issued, then a Noncompliance is deemed to exist and the Association has the right, but not the obligation, to pursue the remedies listed in this Section.

5.7.2 **Remedy for Noncompliance.** If an Owner fails to remedy any Noncompliance within sixty (60) days after the date of notice from the Design Review Committee, the Design Review Committee shall notify the Board in writing of such failure. After Notice and Hearing, the Board shall determine whether there is Noncompliance and, if so, the nature thereof and the estimated cost of correcting or removing the same. If a Noncompliance exists, the Owner shall remedy or remove the same within a period of not more than forty-five (45) days after the date that notice of the Board ruling is given to the Owner. If the Owner does not comply with the Board ruling within that period, the Association may record a Notice of Noncompliance (if allowed by law), correct the Noncompliance and charge the Owner for the Association's costs, or commence an action for damages or injunctive relief, as appropriate, to remedy the Noncompliance.

5.8 **VARIANCES.** The Design Review Committee may authorize variances from compliance with any of the architectural provisions of this Declaration or the Design Guidelines including restrictions on height, size, or placement of structures, or similar restrictions, when circumstances such as hardship, aesthetic or environmental consideration require. Such variances must be evidenced in writing, approved by Declarant in writing (for so long as Declarant is entitled to appoint a majority of the Committee) and must be signed by at least a majority of the Design Review Committee, and become effective on Recordation. When Declarant is no longer entitled to appoint a majority of the Design Review Committee's members, the Board must approve any variance recommended by the Design Review Committee before the variance becomes effective. If variances are granted, no violation of the covenants, conditions and restrictions in this Declaration shall be deemed to have occurred with respect to the matter for which the variances were granted. The granting of a variance does not waive any of the provisions of this Declaration for any purpose except as to the

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particular property and particular provision of this Declaration covered by the variance, nor does it affect the Owner's obligation to comply with all laws affecting the use of his Condominium. The Committee's written variance shall be Recorded against the Applicant's Condominium in the Official Records. The cost of Recording the variance shall be borne solely by the Applicant.

5.9 **PRE-APPROVALS.** The Design Review Committee may authorize pre-approval of specified types of construction activities if, in the exercise of the Design Review Committee's judgment, such preapproval is appropriate in carrying out the purposes of the Governing Documents.

5.10 **APPEALS.** If a proposed Improvement is disapproved, the Applicant is entitled to reconsideration by the Board of Directors at an open meeting that satisfies the requirements of Civil Code Section 1363.05. This paragraph does not require reconsideration of a decision that is made by the Board, or the Design Review Committee if the Committee has the same membership as the Board.

**ARTICLE VI
PROPERTY EASEMENTS AND RIGHTS**

6.1 EASEMENTS.

6.1.1 **Maintenance and Repair.** Declarant reserves for the benefit of the Association and all Association agents, officers and employees, nonexclusive easements over the Common Area, the Units and the Exclusive Use Areas as necessary to fulfill the obligations and perform the duties of the Association.

6.1.2 **Utility Easements.** Declarant reserves nonexclusive easements for essential public and private utilities, and for access thereto, over the Common Property for the benefit of the Owners. Declarant reserves the right to grant additional easements and rights-of-way over the Properties to utility companies and public agencies, as necessary, for the proper development and disposal of the Properties. Such right of Declarant shall expire on Close of Escrow for the sale of the last Condominium in the Properties.

6.1.3 **Encroachments.** Declarant reserves, for its benefit and the benefit of the Owners, a reciprocal easement appurtenant to each Condominium over the other Units and the Common Property to accommodate (a) any existing encroachment of any wall or any other authorized Improvement, (b) authorized construction or repair, and (c) shifting, movement or natural settling of the Units or other Improvements. Use of the foregoing easements may not unreasonably interfere with each Owner's use and enjoyment of the burdened Units.

6.1.4 **Completion and Repair of Improvements.** Declarant reserves the right and easement to enter the Properties to complete any Improvement that Declarant considers desirable to implement Declarant's development plan. Declarant further reserves the right to enter the Properties as necessary to repair Improvements in the Properties under the Right to Repair Law and any warranties given to Owners or to the Association. Declarant or Declarant's contractors (as applicable) may, in the exercise of the foregoing rights, use and

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occupy such office space and storage/maintenance areas in the Building as are reasonably necessary to carry out the intent of this reservation.

6.1.5 Owners' Easements in Common Property. Declarant reserves, for the benefit of every Owner, his Family, tenants and guests, a nonexclusive easement for use of and access over the Common Property in connection with use and enjoyment of each Condominium in the Properties. This easement is appurtenant to and passes with title to every Condominium in the Properties, and it is subject to the restrictions, rights and other easements in the Governing Documents, including the Association's right to reasonably restrict access to portions of the Association Property, such as the roof of the Building, maintenance facilities, and other areas of the Association Property that may be designated by the Board.

6.1.6 Exclusive Use Area. Declarant reserves, for the benefit of specified Owners, exclusive easements over the Properties for use as an Exclusive Use Area, including for balcony purposes as shown and assigned on the Condominium Plan for the Properties. Declarant also reserves, for the benefit of the Association, the right to enter the Exclusive Use Areas as necessary to perform the obligations of the Association.

6.1.7 Access Easements. Declarant hereby reserves, for the benefit of the Association and its members, nonexclusive easements for access, ingress and egress over those portions of the Association Property as reasonably necessary to travel between each Owner's Condominium and a public right-of-way.

6.1.8 Emergency and Public Services Easement. Declarant hereby reserves easements over the Properties for public services of the local government agencies, including but not limited to, the right of law enforcement, medical and fire protection personnel to enter upon any part of the Properties for the purpose of carrying out their official duties, as otherwise permitted by law.

6.1.9 Telecommunications Easement. Declarant reserves blanket easements (collectively, "*Telecommunications Easements*") over the Properties for access and for purposes of constructing, installing, locating, altering, operating, maintaining, inspecting, upgrading, removing and enhancing Telecommunications Facilities (collectively, "*Telecommunications Purposes*") for the benefit of Declarant. Such easements are freely transferable by Declarant to any other Person and their successors and assigns (subject to other existing agreements or instruments of Record) No one, except for Declarant and Declarant's transferees may use the Properties for Telecommunications Purposes. All Telecommunications Facilities shall be owned, leased or licensed by Declarant, as determined by Declarant, in its sole discretion and business judgment. Transfer of the Properties does not imply transfer of any Telecommunications Easements or Telecommunications Facilities. The holders of the Telecommunications Easements may not exercise the rights reserved hereunder in any manner which will unreasonably interfere with the reasonable use and enjoyment of the Properties by any Owner. If the exercise of any Telecommunications Easement results in damage to the Properties, then the easement holder who caused the damage shall, within a reasonable period of time, repair such damage. If Declarant has not conveyed the Telecommunications Easements in the Properties to another Person before the last Close of

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Escrow in the Properties, then Declarant grants the Telecommunications Easements to the Association effective as of the last Close of Escrow in the Properties.

6.1.10 **For Master Association Manager.** Declarant reserves for the benefit of the Master Association's Manager and its assistant, nonexclusive easements to use and occupy office space in the Association Property for the provision of management, maintenance and repair services to the Properties.

6.1.11 **For Master Association Engineering Staff.** Declarant reserves, for the benefit of the Master Association's lead engineer and assistant engineers, nonexclusive easements for access and maintenance purposes over all Association Property in the Properties for the purpose of providing maintenance and repair services.

6.2 **RIGHT TO GRANT EASEMENTS.** In addition to the Exclusive Use Areas designated on the Condominium Plan, Declarant reserves the right to grant easements over the Association Property for exclusive use by the Master Association, the neighboring Subassociation (as defined in the Master Declaration) or other Persons as determined by the Board in its discretion. Any such easement may be conveyed by the Declarant before the last Close of Escrow for sale of a Condominium in the Properties. Such conveyance must be approved by the Board, which approval must not be unreasonably withheld. The purpose of the easement, the portion of the Association Property affected, the real property to which the easement is appurtenant, and any restrictions on use of the easement area shall be identified in a Recorded grant of easement.

6.3 **DELEGATION OF USE.** Any Owner may delegate his right to use the Common Property in writing to his tenants, contract purchasers or subtenants who reside in such Owner's Condominium, subject to regulation by the Board. An Owner who has delegated his rights to use the Recreational Facilities to another may not use the Recreational Facilities so long as such delegation remains in effect.

6.4 **RIGHT OF ENTRY.**

6.4.1 **Association.** The Association has the right to enter each Condominium to inspect the Properties, and may take whatever corrective action it determines to be necessary or proper. Entry into any Unit under this subsection may be made after at least three (3) days' advance written notice to the Owner except for emergency situations, which shall not require notice. Any damage to the Unit caused by entry under this subsection shall be repaired by the Association.

6.4.2 **Declarant.** The Declarant has the right to enter the Condominium and the Common Property (i) to inspect the Properties, (ii) to complete and repair any Improvements it determines necessary or proper, in its sole discretion, (iii) perform any warranty work it determines necessary or proper, (iv) to comply with requirements for the recordation of the Map or the grading or construction of the Properties, and (v) to comply with requirements of applicable governmental agencies. Declarant shall provide reasonable notice to Owner prior to entry into the Owner's Condominium under this subsection except for emergency situations, which shall not require prior notice, but shall require notice to the

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Owner within seven (7) days after such entry was made. Any damage caused by entry under this subsection shall be repaired by the Declarant. Unless otherwise specified in the initial grant deed of the Unit from the Declarant, this right of entry shall automatically expire twelve (12) years from the last Close of Escrow for the sale of a Condominium in the Properties.

6.4.3 **Owners.** Each Owner shall permit other Owners, and their representatives, to enter his Condominium to perform installations, alterations or repairs to the mechanical or electrical services to a Unit if (i) requests for entry are made in advance; (ii) entry is made at a time reasonably convenient to the Owner whose Condominium is to be entered; and (iii) the entered Condominium is left in substantially the same condition as existed immediately preceding such entry. Any damage to the Condominium caused by entry under this subsection shall be repaired by the entering Owner.

**ARTICLE VII
ASSOCIATION MAINTENANCE FUNDS AND ASSESSMENTS**

7.1 **PERSONAL OBLIGATION TO PAY ASSESSMENTS.** Each Owner shall pay to the Association all Assessments established and collected pursuant to this Declaration. The Association shall not levy or collect any Assessment that exceeds the amount necessary for the purpose for which it is levied. All Assessments, together with late payment penalties, interest, costs, and reasonable attorneys' fees for the collection thereof, are a charge and a continuing lien on the Condominium against which such Assessment is made. Each Assessment, together with late payment penalties, interest, costs and reasonable attorneys' fees, is also the personal obligation of the Person who was the Owner of the Condominium when the Assessment accrued. The personal obligation for delinquent Assessments may not pass to any new Owner ("**Purchaser**") unless expressly assumed by the Purchaser or unless the Purchaser has actual or constructive knowledge of such delinquent Assessments, whether by virtue of the Recordation of the Notice of Delinquent Assessment or receipt from the Association of a certificate pursuant to Section 1368(a)(4) of the California Civil Code.

7.2 **ASSOCIATION MAINTENANCE FUNDS.** The Association shall establish no fewer than two (2) separate Association Maintenance Fund accounts into which shall be deposited all money paid to the Association and from which disbursements shall be made, as provided in this Declaration. The Association Maintenance Funds may be established as trust accounts at a banking or savings institution and shall include: (a) an "Operating Fund" for current Common Expenses, (b) an adequate "Reserve Fund" for the portion of Common Expenses allocated to (i) reserves for Improvements which the Board does not expect to perform on an annual or more frequent basis, and (ii) payment of deductible amounts for insurance policies which the Association obtains, and (c) any other funds which the Association may establish.

7.3 **PURPOSE OF ASSESSMENTS.** The Assessments shall be used exclusively to (a) promote the Owners' recreation and welfare, (b) operate, improve and maintain the Common Property, and (c) discharge any other Association obligations under this Declaration. All amounts deposited into the Association Maintenance Funds must be used solely for the common benefit of all Owners for purposes authorized by this Declaration. Disbursements from the Operating Fund generally shall be made to discharge Association responsibilities

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which cannot be discharged by disbursements from the Reserve Fund. However, if the Board determines that the Operating Fund contains excess funds, the Board may transfer the excess funds to any other Association Maintenance Fund. Disbursements from the Reserve Fund shall be made by the Association only for the purposes specified in this Article and in Section 1365.5(c) of the California Civil Code.

7.4 WAIVER OF USE. No Owner may exempt himself from personal liability for Assessments duly levied by the Association, nor release such Owner's Condominium from the liens and charges thereof, by waiving use and enjoyment of the Common Property or by abandoning such Owner's Condominium.

7.5 LIMITS ON ANNUAL ASSESSMENT INCREASES.

7.5.1 Maximum Authorized Annual Assessment For Initial Year of Operations. During the Fiscal Year in which Annual Assessments commence, the Board may levy an Annual Assessment per Condominium in an amount which exceeds one hundred twenty percent (120%) of the amount of Annual Assessments disclosed for the Properties in the most current Budget filed with and approved by the DRE only if the Board first obtains the approval of Owners casting a majority of votes at a meeting or election of the Association in which more than fifty percent (50%) of the Condominiums are represented ("**Increase Election**"). This Section does not limit Annual Assessment increases necessary for addressing an "Emergency Situation" as defined in Section 7.5.4.

7.5.2 Maximum Authorized Annual Assessment For Subsequent Fiscal Years. During the Fiscal Years following the Fiscal Year in which Annual Assessments commence, the Board may levy Annual Assessments which exceed the Annual Assessments for the immediately preceding Fiscal Year only as follows:

(a) If the increase in Annual Assessments is less than or equal to twenty percent (20%) of the Annual Assessments for the immediately preceding Fiscal Year, then the Board must either (i) have distributed the Budget for the current Fiscal Year in accordance with Section 1365(a) of the California Civil Code, or (ii) obtain the approval of Owners casting a majority of votes in an Increase Election; or

(b) If the increase in Annual Assessments is greater than twenty percent (20%) of the Annual Assessments for the immediately preceding Fiscal Year, then the Board must obtain the approval of Owners casting a majority of votes in an Increase Election.

This Section does not limit Annual Assessment increases necessary for addressing an "Emergency Situation" as defined in Section 7.5.4.

7.5.3 Supplemental Annual Assessments. If the Board determines that the Association's essential functions may be properly funded by an Annual Assessment in an amount less than the maximum authorized Annual Assessment described above, it may levy such lesser Annual Assessment. If the Board determines that the estimate of total charges for the current year is or will become inadequate to meet all Common Expenses, it shall immediately determine the approximate amount of the inadequacy. Subject to the limits described in Sections 7.5.1, 7.5.2 and 7.5.4, the Board may levy a supplemental Annual

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Assessment reflecting a revision of the total charges to be assessed against each Condominium.

7.5.4 **Emergency Situations.** For purposes of Sections 7.5.1, 7.5.2 and 7.7, an "Emergency Situation" is any one of the following:

- (a) An extraordinary expense required by an order of a court;
- (b) An extraordinary expense necessary to maintain the portion of the Properties for which the Association is responsible where a threat to personal safety on the Properties is discovered; and
- (c) An extraordinary expense necessary to maintain the portion of the Properties for which the Association is responsible that could not have been reasonably foreseen by the Board when preparing the Budget, including substantial increases in insurance premiums covering the Properties. Before imposing or collecting an Assessment pursuant to this subparagraph (c), the Board shall adopt a resolution containing written findings regarding the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process. The resolution shall be distributed to the Owners with the notice of the assessment.

7.6 **ANNUAL ASSESSMENTS.**

7.6.1 **Commencement of Annual Assessments.** Annual Assessments shall commence on all Condominiums in the Properties on the first day of the first calendar month following the first Close of Escrow in the Properties. Annual Assessments for fractions of a month shall be prorated. Declarant shall pay its full pro rata share of the Annual Assessments on all unsold Condominiums for which Annual Assessments have commenced. The Board shall fix the amount of the Annual Assessment against each Condominium at least thirty (30) days in advance of each Annual Assessment period. However, unless otherwise established by the Board, the initial Annual Assessments shall be assessed in accordance with the most recent Budget on file with and approved by the DRE. Written notice of any change in the amount of any Annual Assessment, Capital Improvement Assessment or Reconstruction Assessment shall be sent via first-class mail to every Owner subject thereto not less than thirty (30) nor more than ninety (90) days before the increased Assessment becomes due.

7.6.2 **Apportionment of Annual Assessments Among Owners.** All Annual Assessments shall be assessed uniformly and equally against the Owners and their Condominiums based on the number of Condominiums owned by each Owner, except for that portion of the Annual Assessments attributable to those Common Expense items listed on *Exhibit D*, which shall be assessed against the Owners and their Condominiums in the same proportions as the relative interior floor areas of the Units (as shown on the Condominium Plan for the Properties); provided, however, that the Association has the right to place each Unit in a budget group with other Units of similar square footage to calculate and charge Annual Assessments. The Board may determine that funds in the Operating Fund at the end of the Fiscal Year be retained and used to reduce the following Fiscal Year's Annual Assessments. On dissolution of the Association incident to the abandonment or termination

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of the Properties as a condominium project, any amounts remaining in any of the Association Maintenance Funds shall be distributed to or for the benefit of the Owners in the same proportions as such money was collected from the Owners.

7.6.3 Payment of Annual Assessments. Each Owner shall pay Annual Assessments in installments at such frequency and in such amounts and by such methods as are established by the Board. If the Association incurs additional expenses because of a payment method selected by an Owner, the Association may charge that expense to the Owner. The Association does not have to apportion the expense among all Owners as a part of Annual Assessments. Each installment of Annual Assessments may be paid to the Association in one check or in separate checks as payments attributable to specified Association Maintenance Funds. If any payment of an Annual Assessment installment (1) is less than the amount assessed and (2) does not specify the Association Maintenance Fund or Funds into which it should be deposited, then the amount received shall be credited in order of priority first to the Operating Fund, until that portion of the Annual Assessment has been satisfied, then to the Reserve Fund, then to any other funds established by the Association.

7.7 CAPITAL IMPROVEMENT ASSESSMENTS. The Board may levy, in any Fiscal Year, a Capital Improvement Assessment or Reconstruction Assessment applicable to that Fiscal Year only to defray, in whole or in part, the cost of any construction, repair or replacement of a capital Improvement or other such addition to the Common Property. No Capital Improvement Assessments in any Fiscal Year which, if added to the Capital Improvement Assessments already levied during such Fiscal Year, exceed five percent (5%) of the Association's Budgeted gross expenses for such Fiscal Year, may be levied without the vote or written consent of Owners casting a majority of votes at an Increase Election. The Board may levy in any Fiscal Year, a Capital Improvement Assessment applicable to that Fiscal Year which exceeds five percent (5%) of the Association's Budgeted gross expenses for such Fiscal Year if such increase is necessary for addressing an Emergency Situation as defined in Section 7.5.4.

**ARTICLE VIII
INSURANCE**

8.1 DUTY TO OBTAIN INSURANCE; TYPES. The Association shall obtain and keep in effect at all times the following insurance coverages:

8.1.1 Public Liability. Adequate public liability insurance (including coverage for medical payments), with limits acceptable to Fannie Mae and as required by Section 1365.9 of the California Civil Code, insuring against liability for bodily injury, death and property damage arising from the activities of the Association and the Owners, with respect to the Common Property.

8.1.2 Fire and Casualty Insurance. Fire and casualty insurance with extended coverage, special form (if economically feasible), without deduction for depreciation, in an amount as near as possible to the full replacement value of the Common Property and those portions of the Units consisting of all fixtures, installations or additions comprising a part of the Buildings housing the Units and all built-in or set-in appliances,

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cabinets and floor coverings, in the amount designated by Declarant as the original replacement cost thereof based on the standard package of appliances, cabinets and floor coverings offered to all Owners before the Close of Escrow. The Association shall not purchase or pay for earthquake insurance unless the Board is directed to obtain earthquake coverage by a majority of the Association's voting power.

8.1.3 Fidelity Insurance. Fidelity insurance coverage for any Person handling funds of the Association, whether or not such persons are compensated for their services, in an amount not less than the estimated maximum of funds, including reserve funds, in the custody of the Person during the term of the insurance. The aggregate amount of the fidelity insurance coverage may not be less than the sum equal to one-fourth (1/4) of the Annual Assessments on all Condominiums in the Properties, plus reserve funds.

8.1.4 Insurance Required by Fannie Mae, Ginnie Mae and Freddie Mac. Casualty, flood, liability and fidelity insurance meeting the insurance requirements for condominium projects established by Fannie Mae, Ginnie Mae and Freddie Mac, so long as any of these entities is a Mortgagee or Owner of a Condominium in the Properties, except to the extent such coverage is not reasonably available or has been waived in writing by the entity requiring the insurance coverage.

8.1.5 Other Insurance. Such other insurance insuring other risks customarily insured by associations managing condominium projects similar in construction, location and use. Such additional insurance may include general liability insurance and director's and officer's liability insurance.

8.1.6 Beneficiaries. The Association's insurance shall be kept for the benefit of the Association, the Owners, and the Mortgagees, as their interests may appear, subject, however, to loss payment requirements established in this Declaration.

8.2 WAIVER OF CLAIM AGAINST ASSOCIATION. As to all policies of insurance kept by or for the benefit of the Association and the Owners, the Association and the Owners waive and release all claims against one another, the Board and Declarant, to the extent of the insurance proceeds available, whether or not the insurable damage or injury is caused by the negligence of or breach of any agreement by any of the Persons.

8.3 RIGHT AND DUTY OF OWNERS TO INSURE. Each Owner is responsible for insuring his personal property and all other property and Improvements in his Condominium for which the Association has not purchased insurance in accordance with Section 8.1. Nothing in this Declaration precludes any Owner from carrying any public liability insurance as he considers desirable, however, Owners' policies may not adversely affect or diminish any coverage under any of the Association's insurance policies. Duplicate copies of Owners' insurance policies shall be deposited with the Association on request. If any loss intended to be covered by the Association's insurance occurs and the proceeds payable are reduced due to insurance carried by any Owner, such Owner shall assign the proceeds of the Owner's insurance to the Association, to the extent of such reduction, for application to the same purposes as the reduced proceeds are to be applied.

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8.4 NOTICE OF EXPIRATION REQUIREMENTS. If available, each of the Association's insurance policies must contain a provision that the policy may not be canceled, terminated, materially modified or allowed to expire by its terms, without at least thirty (30) days' prior written notice to the Board and Declarant, and to each Owner and Mortgagee, insurer and guarantor of a first Mortgage who has filed a written request with the carrier for such notice and every other Person in interest who requests such notice of the insurer. In addition, fidelity insurance shall provide that it may not be canceled or substantially modified without at least thirty (30) days' prior written notice to any insurance trustee named pursuant to Section 8.6 and to each Fannie Mae servicer who has filed a written request with the carrier for such notice.

8.5 INSURANCE PREMIUMS. Premiums for insurance policies, whether obtained directly by the Association or obtained on the Association's behalf by the Master Association, are Common Expenses.

8.6 TRUSTEE FOR POLICIES. The Association is trustee of the interests of all named insureds under the Association's insurance policies. Unless an insurance policy provides for a different procedure for the filing of claims, all claims made under such policy must be sent to the insurance carrier or agent by certified mail and be clearly identified as a claim. The Association shall keep a record of all claims made. All insurance proceeds under any such policies provided for in Section 8.1 must be paid to the Board as trustees. The Board has the authority to negotiate loss settlements with insurance carriers, with participation, to the extent they desire, of first Mortgagees who have filed written requests within ten (10) days of receipt of notice of any damage or destruction as provided in Section 9.4. The Board is authorized to make a settlement with any insurer for less than full coverage for any damage, so long as the Board acts in accordance with the standard of care established in this Declaration. Any two (2) officers of the Association may sign a loss claim form and release form in connection with the settlement of a loss claim, and such signatures are binding on all the named insureds. A representative chosen by the Board may be named as an additional insured, including a trustee with whom the Association may enter into an insurance trust agreement and any successor to such trustee, who shall have exclusive authority to negotiate losses under any insurance policy and to perform such other functions necessary to accomplish this purpose.

8.7 ACTIONS AS TRUSTEE. Except as otherwise specifically provided in this Declaration, the Board has the exclusive right to bind the Association and the Owners in respect to all matters affecting insurance carried by the Association, the settlement of a loss claim, and the surrender, cancellation, and modification of all such insurance. Duplicate originals or certificates of all policies of fire and casualty insurance kept by the Association and of all renewals thereof, together with proof of payment of premiums, shall be delivered by the Association to all Owners and Mortgagees who requested them in writing.

8.8 ANNUAL INSURANCE REVIEW. The Board shall review the Association's insurance policies at least annually to determine the amount of the casualty and fire insurance referred to in Section 8.1. If economically feasible, the Board shall obtain a current appraisal of the full replacement value of the Improvements on the Properties except

for foundations and footings, without deduction for depreciation, from a qualified independent insurance appraiser, before each such annual review.

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8.9 REQUIRED WAIVER. All of the Association's insurance policies insuring against physical damage must provide, if reasonably possible, for waiver of:

8.9.1 Subrogation of claims against the Owners and tenants of the Owners;

8.9.2 Any defense based on coinsurance;

8.9.3 Any right of setoff, counterclaim, apportionment, proration or contribution due to other insurance not carried by the Association;

8.9.4 Any invalidity, other adverse effect or defense due to any breach of warranty or condition caused by the Association, any Owner or any tenant of any Owner, or arising from any act or omission of any named insured or the respective agents, contractors and employees of any insured;

8.9.5 Any right of the insurer to repair, rebuild or replace, and, if the Improvement is not repaired, rebuilt or replaced following loss, any right to pay under the insurance an amount less than the replacement value of the Improvements insured;

8.9.6 Notice of the assignment of any Owner of his interest in the insurance by virtue of a conveyance of any Condominium;

8.9.7 Any right to require any assignment of any Mortgage to the insurer;

8.9.8 Any denial of an Owner's claim because of negligent acts by the Association or other Owners; and

8.9.9 Prejudice of the insurance by any acts or omissions of Owners that are not under the Association's control.

**ARTICLE IX
DESTRUCTION OF IMPROVEMENTS**

9.1 RESTORATION OF THE PROPERTIES. Except as otherwise authorized by the Owners, if any portion of the Properties that the Association is responsible for maintaining is destroyed, the Association shall restore the same to its former condition as promptly as practical. The Association shall use the proceeds of its insurance for reconstruction or repair of the Properties unless otherwise authorized in this Master Declaration or by the Owners. The Board shall commence such reconstruction promptly. The Properties shall be reconstructed or rebuilt substantially in accordance with the original construction plans if they are available, unless changes recommended by the Design Review Committee have been approved by a majority of the Owners. If the insurance proceeds amount to at least ninety percent (90%) of the estimated cost of restoration and repair, the Board shall levy a Reconstruction Assessment to provide the additional funds necessary for

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such reconstruction. If the insurance proceeds amount to less than ninety percent (90%) of the estimated cost of restoration and repair, the Board may levy a Reconstruction Assessment and proceed with the restoration and repair only if both of the following conditions ("**Conditions to Reconstruction**") have been satisfied: (a) the levy of a Reconstruction Assessment to pay the costs of restoration and repair of the Properties is approved by a majority of the Owners, and (b) within one (1) year after the date on which the destruction occurred, the Board Records a certificate of the resolution authorizing the restoration and repair ("**Reconstruction Certificate**"). If either of the Conditions to Reconstruction does not occur following a destruction for which insurance proceeds available for restoration and repair are less than ninety percent (90%) of the estimated cost of restoration and repair, then the Board shall proceed as provided in Section 9.2.

9.2 SALE OF PROPERTIES AND RIGHT TO PARTITION. No Owner shall have the right to partition of his interest in the Condominium and there shall be no judicial partition of the Properties, or any part thereof, except as provided in Section 1359(b) of the California Civil Code. For purposes of subsection 4 of Section 1359(b), partition may occur only if all of the following conditions are satisfied: (a) either or both of the Conditions to Reconstruction described in Section 9.1 have failed to occur; (b) within six (6) months after the date on which destruction occurred, restoration or repair has not actually commenced; and (c) the Owners of at least sixty-seven percent (67%) of the Condominiums in the Properties approve the partition. In such event, the Association shall prepare, execute and Record, as promptly as practical, the certificate stating that a majority of the Board may properly exercise an irrevocable power of attorney to sell the Properties for the benefit of the Owners and execute such other documents and instruments as may be necessary for the Association to consummate the sale of the Properties at the highest and best price obtainable, either in its damaged condition, or after damaged structures have been razed. Such certificate shall be conclusive evidence of such authority for any Person relying thereon in good faith. The net proceeds of such sale and the proceeds of any insurance carried by the Association shall be divided proportionately among the Owners, such proportions to be determined in accordance with the relative appraised fair market valuation of the Condominiums as of a date immediately before such destruction (or condemnation), expressed as percentages, and computed by dividing such appraised valuation of each Condominium by the total of such appraised valuations of all Condominiums in the Properties. The Board is authorized to hire one (1) or more appraisers for such purpose and the cost of such appraisals shall be a Common Expense of the Association. However, the balance then due on any valid Mortgage of Record shall be first paid in order of priority before the distribution of any proceeds to an Owner whose Condominium is so encumbered. Nothing in this Declaration prevents partition of a cotenancy in any Condominium. Except as provided above, each Owner and the successors of each Owner, whether by deed, gift, devise, or by operation of law, for their own benefit and for the Condominiums and for the benefit of all other Owners, specifically waive and abandon all rights, interests and causes of action for a judicial partition of the tenancy in common ownership of the Properties and do further covenant that no action for such judicial partition shall be instituted, prosecuted or reduced to judgment.

9.3 INTERIOR DAMAGE. With the exception of any casualty or damage covered by insurance kept by the Association, restoration and repair of any damage to the interior of any individual Unit, including all fixtures, cabinets and improvements therein,

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together with restoration and repair of all interior paint, wall coverings and floor coverings, must be made by and at the individual expense of the Owner of the Unit so damaged. If a determination to rebuild the Properties after partial or total destruction is made, as provided in this Article, such interior repair and restoration shall be completed as promptly as practical and in a lawful and workmanlike manner, in accordance with plans approved by the Design Review Committee as provided in this Declaration.

9.4 **NOTICE TO OWNERS AND LISTED MORTGAGEES.** The Board, immediately on having knowledge of any damage or destruction affecting a Unit or a material portion of the Common Property, shall promptly notify all Owners and Mortgagees, insurers and guarantors of first Mortgages on Condominiums in the Properties who have filed a written request for such notice with the Board.

**ARTICLE X
EMINENT DOMAIN**

The term "taking" as used in this Article means inverse condemnation, condemnation by exercise of the power of eminent domain, or a sale under the threat of the exercise of the power of eminent domain. The Board shall represent the Owners in any proceedings, negotiations, settlements, or agreements regarding takings. All takings proceeds shall be payable to the Association for the benefit of the Owners and their Mortgagees, and shall be distributed to such Owners and Mortgagees as provided in this Article.

10.1 **PROPERTY CONDEMNATION.** If (a) there is a taking of an interest in all or part of the Properties such that the ownership, operation and use of the Properties in accordance with this Declaration is substantially and adversely affected, and (b) within one hundred twenty (120) days after the effective date of the taking the Owners of Units (i) not taken, or (ii) only partially taken but capable of being restored to at least ninety-five percent (95%) of their floor area and to substantially their condition before the taking (collectively, the "*Remaining Units*") do not by affirmative vote of at least one-third (1/3) of their voting power approve the continuation of the Properties and the repair, restoration and replacement to the extent feasible of the Association Property and the Remaining Units, then the Board shall proceed with the sale of that portion of the Properties which was not taken and distribute the net proceeds of such sale after deducting any incidental fees and expenses, in the same proportion and manner as provided in Section 9.2.

10.2 **CONDEMNATION OF COMMON PROPERTY.** If there is a taking of (a) the Common Area or any interest therein (other than the taking of an undivided interest therein taken as a result of the taking of a Condominium), or (b) the Association Property (other than Exclusive Use Area) or any interest therein, then the award in condemnation shall be paid to the Association and shall be deposited in the Operating Fund.

10.3 **CONDEMNATION OF EXCLUSIVE USE AREA.** If there is a taking of all or any portion of an Exclusive Use Area, the award in condemnation shall be paid to the Owner of the Condominium to which the taken Exclusive Use Area was appurtenant; however, such award shall first be applied to the balance then due on any Mortgages encumbering such Owner's Condominium, in order of priority.

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10.4 CONDEMNATION OF CONDOMINIUMS. If there is a taking of a Condominium, the award in condemnation shall be paid to the Owner of the Condominium; however, such award shall first be applied to the balance then due on any Mortgages encumbering such Owner's Condominium, in order of priority.

10.5 CONDEMNATION OF PORTIONS OF UNITS.

10.5.1 Minor Takings Within Limits. If (a) there is a taking of a portion of one or more Units that does not substantially and adversely affect the Units' ability to serve as residential dwellings, and (b) restoration of such Units can be accomplished at a cost less than or equal to the sum of (i) the amount of the condemnation awards for such takings plus (ii) any amounts the Owners of the taken Units wish to contribute to restoration plus (iii) an amount less than or equal to five percent (5%) of the Budgeted gross expenses of the Association for that Fiscal Year (collectively, the "*Allowable Cost*"), then the Board shall contract for such restoration and levy a Reconstruction Assessment in an amount equal to the Allowable Cost minus the amount of the condemnation awards and Owners' contributions, and the condemnation awards, Owners' contributions and Reconstruction Assessment shall be applied to such restoration. If the restoration is accomplished at a cost less than the amount of the condemnation awards, then that portion of the condemnation awards which exceeds the restoration costs shall be paid to the Owners of the partially taken Units in proportion to the decreases in the fair market values of their Condominiums; however, such awards shall first be applied to the balance then due on any Mortgages encumbering such Owners' Condominiums, in order of priority.

10.5.2 Minor Takings Exceeding Limits. If (a) there is a taking of a portion of one or more Units that does not substantially and adversely affect the Units' ability to serve as residential dwellings, and (b) restoration cannot be accomplished at a cost less than or equal to the Allowable Cost, then the Board shall call a Special Meeting of the Owners. If more than fifty percent (50%) of the voting power of the Association is represented at such Special Meeting, either in person or by proxy, and a majority of the votes cast at such Special Meeting are in favor of levying a Reconstruction Assessment in an amount equal to the restoration costs minus the sum of the amount of the condemnation awards and the amounts the Owners of the taken Units wish to contribute to such restoration, then the Board shall contract for such restoration and levy a Reconstruction Assessment, and the condemnation awards, Owners' contributions and Reconstruction Assessment shall be applied to such restoration.

10.5.3 Major Takings. If neither Section 10.5.1 nor Section 10.5.2 applies to a taking of a Unit, then the award in condemnation shall be paid to the Owners of the taken Units; however, such award shall first be applied to the balance then due on any Mortgages encumbering such Owner's Condominium, in order of priority. The Board shall have the remaining portions of the taken Units razed. The remaining portions of the taken Units and appurtenant Exclusive Use Areas shall become part of the Association Property, and the Owners of such taken Units in the Properties, by acceptance of the award allotted to them in taking proceedings, relinquish (a) to the other Owners in the Properties, on the basis of their relative ownership of the Common Area therein, such Owners' undivided interest in the Common Area, and (b) to the Association, the remaining portions of the Units and the

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appurtenant Exclusive Use Areas. Each Owner relinquishing his interest in the Common Area pursuant to this Section shall, at the Board's request and at the Association's expense, execute and acknowledge such deeds and other instruments that the Board considers necessary or convenient to evidence such relinquishment. Each Owner of a taken Unit is not liable for Assessments under this Declaration that accrue on or after the date such Owner accepts his condemnation award.

10.6 PORTIONS OF AWARDS IN CONDEMNATION NOT COMPENSATORY FOR VALUE OF REAL PROPERTY. Those portions of awards in condemnation that do not directly compensate Owners for takings of real property (e.g., awards for takings of personal property, relocation expenses, moving expenses, or other allowances of a similar nature intended to facilitate relocation) shall be paid to the Owners whose personal property is taken, or whose relocation is intended to be facilitated.

10.7 NOTICE TO OWNERS AND MORTGAGEES. The Board, on learning of any taking affecting a Unit or a material portion of the Properties, or any threat thereof, shall promptly notify all Owners and those Mortgagees, insurers and guarantors of Mortgagees on Condominiums in the Properties who have filed a written request for such notice with the Association.

**ARTICLE XI
RIGHTS OF MORTGAGEES**

11.1 GENERAL PROTECTIONS. No amendment or violation of this Declaration defeats or renders invalid the rights of the Mortgagee under any Mortgage encumbering one (1) or more Condominiums made in good faith and for value, provided that after the foreclosure of any such Mortgage such Condominium(s) will remain subject to this Declaration. For purposes of this Declaration, "first Mortgage" means a Mortgage with first priority over other Mortgages or Deeds of Trust on a Condominium, and "first Mortgagee" means the Mortgagee of a first Mortgage. For purposes of any provisions of the Governing Documents that require the vote or approval of a specified percentage of first Mortgagees, such vote or approval is determined based on one (1) vote for each Condominium encumbered by each such first Mortgage.

11.2 ADDITIONAL RIGHTS. To induce the VA, FHA, Freddie Mac, Ginnie Mae and Fannie Mae to participate in the financing of the sale of Condominiums, the following provisions are added hereto (and to the extent these added provisions conflict with any other provisions of this Declaration or any other of the Governing Documents, these added provisions control):

11.2.1 Notices. Each Mortgagee, insurer and guarantor of a Mortgage encumbering one (1) or more Condominiums, on filing a written request for notification with the Board, is entitled to written notice from the Association of: (a) any condemnation or casualty loss which affects either a material portion of the Properties or the Condominium(s) securing the Mortgage; (b) any delinquency of sixty (60) days or more in the performance of any obligation under the Governing Documents, including the payment of Assessments or charges owed by the Owner(s) of the Condominium(s) securing the first Mortgage, which

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notice each Owner consents to and authorizes; (c) a lapse, cancellation, or material modification of any insurance policy or fidelity bond kept by the Association; and (d) any proposed action of the Association which requires consent by a specified percentage of first Mortgagees who have submitted a written request to the Association for notice of such proposed action.

11.2.2 **Right of First Refusal.** Each Owner, including each Mortgagee of a first Mortgage encumbering any Condominium who obtains title to such Condominium pursuant to (a) the remedies provided in such first Mortgage, (b) foreclosure of the first Mortgage, or (c) deed or assignment in lieu of foreclosure, is exempt from any "right of first refusal" created or purported to be created by the Governing Documents.

11.2.3 **Unpaid Assessments.** Each first Mortgagee of a Mortgage encumbering any Condominium who obtains title to such Condominium pursuant to the remedies provided in such Mortgage or by foreclosure of such Mortgage shall take title to such Condominium free and clear of any claims for unpaid Assessments or charges against such Condominium which accrued before the time such Mortgagee acquires title to such Condominium.

11.2.4 **Approvals.** Unless at least sixty-seven percent (67%) of the first Mortgagees or sixty-seven percent (67%) of the Owners have given their prior written approval, the Association may not:

- (a) by act or omission seek to abandon or terminate the Properties; or
- (b) change the method of determining the obligations, Assessments, dues or other charges which may be levied against any Owner; or
- (c) partition or subdivide any Condominium; or
- (d) by act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the Common Property. (The granting of easements for public utilities or for other purposes consistent with the intended use of the Common Property under this Declaration, the granting of exclusive easements to Owners over the Common Property to conform the boundaries of the Common Property to the as-built location of authorized Improvements and any grant made in connection with any lawful lot line adjustment are not transfers within the meaning of this clause); or
- (e) by act or omission change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design, the exterior appearance or the maintenance of the Units or the Common Property, or
- (f) fail to keep Fire and Extended Coverage insurance on insurable Common Property as provided in and subject to the provisions of Article VIII; or
- (g) use hazard insurance proceeds for losses to any Condominium property (i.e., Improvements to the Units or Common Property) for other than

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the repair, replacement or reconstruction of such Condominium property, subject to the provisions of Article IX; or

(h) change the pro rata interest or obligations of any Condominium to levy Assessments or charges, allocate distributions of hazard insurance proceeds or condemnation awards or determine the pro rata share of ownership of each Condominium in the Common Area.

11.2.5 **Association Records.** All Mortgagees, insurers and guarantors of first Mortgages, on written request to the Association may:

(a) examine current copies of the Association's books, records and financial statements and the Governing Documents during normal business hours;

(b) require the Association to submit an annual audited financial statement for the preceding Fiscal Year if one is available, or have one prepared at the expense of the requesting entity if such statement is not otherwise prepared by the Association;

(c) receive written notice of all meetings of Owners; and

(d) designate in writing a representative authorized to attend all meetings of Owners.

11.2.6 **Material Changes** All Mortgagees, insurers and guarantors of first Mortgages, on written request, shall be given thirty (30) days' written notice before the effective date of (a) any proposed material amendment to the Governing Documents or Condominium Plan; (b) after the first Close of Escrow, any termination of an agreement for professional management of the Properties following any decision of the Owners to assume self-management of the Properties; and (c) any proposed termination of the Properties as a condominium project.

11.2.7 **Reserves.** The Reserve Fund described in Article VII must be funded by regular scheduled monthly, quarterly, semiannual or annual payments rather than by special Assessments.

11.2.8 **Fidelity Insurance.** The Board shall secure fidelity insurance for any person handling Association funds, including, but not limited to, employees of the professional Manager.

11.2.9 **Contracts.** The Board may enter into such contracts or agreements on behalf of the Association as are required to satisfy the guidelines of the VA, FHA, Freddie Mac, Fannie Mae or Ginnie Mae or any similar entity, so as to allow for the purchase, guaranty or insurance, as the case may be, by such entities of first Mortgages encumbering Condominiums. Each Owner agrees that it will benefit the Association and the Owners, as a class of potential Mortgage borrowers and potential sellers of their residential Condominiums, if such agencies approve the Properties as a qualifying subdivision under their respective

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policies, rules and regulations. Each Owner authorizes his Mortgagees to furnish information to the Board concerning the status of any Mortgage encumbering a Condominium.

11.2.10 Professional Management. When professional management has been required by a Mortgagee, insurer, or guarantor of a first Mortgage, any decision to establish self-management by the Association shall require the approval of at least sixty-seven percent (67%) of the voting power of the Association and the Mortgagees of at least fifty-one percent (51%) of the first Mortgages of Condominiums in the Properties.

11.2.11 Intended Improvements. All intended Improvements in the Properties must be substantially completed or the completion of such Improvements must be secured by a bond or other arrangement acceptable to the DRE before the first Close of Escrow in the Properties.

11.2.12 Payment of Taxes and Insurance. First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any Common Property and may pay any overdue premiums on hazard insurance policies, or secure new hazard insurance coverage to replace a policy that has lapsed, for Common Property, and the Association shall immediately reimburse first Mortgagees making such payments; provided, however that the Association shall not be responsible for reimbursing said Mortgagees for the purchase of any insurance that the Association is not obligated to carry under this Declaration or any optional insurance that the Association did not authorize prior to its purchase by the Mortgagee.

**ARTICLE XII
ENFORCEMENT**

12.1 ENFORCEMENT OF GOVERNING DOCUMENTS. All violations of the Governing Documents, other than those described in Sections 12.2 and 12.3, or violations leading to a dispute that is subject to the Right to Repair Law (and accordingly subject to Declarant's nonadversarial contractual provisions and alternative dispute resolution procedures commencing at Section 12.4 below), or those regulated by Civil Code Section 1375, *et seq.*, shall be resolved as follows.

12.1.1 Violations Identified by the Association. If the Board determines that there is a violation of the Governing Documents (other than nonpayment of Assessments), or the Design Review Committee determines that an Improvement which is the maintenance responsibility of an Owner needs installation, maintenance, repair, restoration or painting, then the Board shall give written notice to the responsible Owner identifying (a) the condition or violation complained of, and (b) the length of time the Owner has to remedy the violation including, if appropriate, the length of time the Owner has to submit plans to the Design Review Committee and the length of time the Owner has to complete the work proposed in the plans submitted to the Design Review Committee. If an Owner does not perform the required corrective action within the allotted time, the Board, after Notice and Hearing, may remedy such condition or violation complained of, and the cost thereof shall be charged to the Owner as a Special Assessment. If the violation involves nonpayment of any

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Assessment, then the Board may collect such delinquent Assessment pursuant to the procedures established in Section 12.2.

12.1.2 **Violations Identified by an Owner.** If an Owner alleges that another Person is violating the Governing Documents (other than nonpayment of any Assessment), the complaining Owner must first submit the matter to the Board for Notice and Hearing before the complaining Owner may resort to alternative dispute resolution, as required by Section 1369.510, *et seq.* of the California Civil Code, or litigation for relief.

12.1.3 **Legal Proceedings.** Failure to comply with any of the terms of the Governing Documents by any Person is grounds for relief which may include an action to recover damages, injunctive relief, foreclosure of any lien, or any combination thereof; however, the procedures established in Sections 1363.810, *et seq.*, and 1369.510, *et seq.* of the California Civil Code and in Sections 12.1.1, 12.1.2 and 12.4.2 must first be followed, if they apply.

12.1.4 **Additional Remedies.** After Notice and Hearing, the Board may impose any of the remedies provided for in the Bylaws. The Board may adopt a schedule of reasonable fines or penalties that, in its reasonable discretion, the Board may assess against a Person after Notice and Hearing for the failure of such Person to comply with the Governing Documents. Such fines or penalties may only be assessed after Notice and Hearing. After notice and hearing, the Board may direct the officers of the Association to Record a notice of noncompliance (if allowed by law) against the Condominium owned by any Owner who has violated any provision of this Declaration. The notice shall include a legal description of the Condominium and shall specify the provision of this Declaration that was violated, the violation committed, and the steps required to remedy the noncompliance. Once the noncompliance is remedied or the noncomplying Owner has taken such other steps as reasonably required by the Board, the Board shall direct the officers of the Association to Record a notice that the noncompliance has been remedied.

12.1.5 **No Waiver.** Failure to enforce any provision of this Declaration does not waive the right to enforce that provision, or any other provision of this Declaration.

12.1.6 **Right to Enforce.** The Board, the Association, Declarant, and any Owner may enforce the Governing Documents as described in this Article, subject to Sections 1363.810, *et seq.*, and 1369.510, *et seq.* of the California Civil Code. Each Owner has a right of action against the Association for the Association's failure to comply with the Governing Documents. Each remedy provided for in this Declaration is cumulative and not exclusive or exhaustive.

12.1.7 **Limit on Expenditures.** The Association may not incur litigation expenses, including attorneys' fees, or borrow money to fund litigation, where the Association initiates legal proceedings or is joined as a plaintiff in legal proceedings, unless the Association first obtains the consent of a majority of the Owners (excluding the voting power of any Owner who would be a defendant in such proceedings), and, if applicable, complies with the requirements of Sections 1363.810, *et seq.*, and 1369.510, *et seq.* of the California Civil Code. Such approval is not necessary if the legal proceedings are initiated (a) to enforce

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the use restrictions contained in Article II, (b) to enforce the architectural control provisions contained in Article V, (c) to collect any unpaid Assessments levied pursuant to the Governing Documents, (d) for a claim, the total value of which is less than five hundred thousand dollars (\$500,000), or (e) as a cross-complaint in litigation to which the Association is already a party. If the Association decides to use or transfer reserve funds or borrow funds to pay for any litigation, the Association must notify the Owners of the decision by mail. Such notice shall provide an explanation of why the litigation is being initiated or defended, why Operating Funds cannot be used, how and when the reserve funds will be replaced or the loan will be repaid, and a proposed budget for the litigation. The notice must state that the Owners have a right to review an accounting for the litigation that will be available at the Association's office. The accounting shall be updated monthly. If the Association's action to incur litigation expenses or borrow money to fund litigation concerns a Defect Claim, then the voting requirements of both Sections 4.5.2 and 12.1.7 must be met.

12.2 NONPAYMENT OF ASSESSMENTS.

12.2.1 Delinquency. Assessments are delinquent if not paid within fifteen (15) days after the due date established by the Association. Assessments not paid within thirty (30) days after the due date, plus all reasonable costs of collection (including attorneys' fees) and late charges bear interest at the maximum rate permitted by law commencing thirty (30) days after the due date until paid. The Association may also require the delinquent Owner to pay a late charge in accordance with California Civil Code Section 1366(d)(2). The Association need not accept any tender of a partial payment of an Assessment and all costs and attorneys' fees attributable thereto. Acceptance of any such tender does not waive the Association's right to demand and receive full payment.

12.2.2 Creation and Release of Lien.

(a) **Priority of Lien.** All liens levied in accordance with this Declaration shall be prior and superior to (i) any declaration of homestead Recorded after the Recordation of this Declaration, and (ii) all other liens, except (1) all taxes, bonds, Assessments and other levies which, by law, would be superior thereto, and (2) the lien or charge of any first Mortgage of Record (meaning any Recorded Mortgage with first priority or seniority over other Mortgages) made in good faith and for value and Recorded before the date on which the "Notice of Delinquent Assessment" (described in this Section) against the assessed Condominium was Recorded

(b) **Prerequisite to Creating Lien.** Before the Association may place a lien on a Owner's Condominium to collect a past due Assessment, the Association shall send written notice ("**Notice of Intent to Lien**"), at least thirty (30) days prior to recording of such lien, to the Owner by certified mail which contains the following information: (i) the fee and penalty procedure of the Association, (ii) an itemized statement of the charges owed by the Owner, including the principal owed, any late charges, any interest, and the method of calculation, any attorneys' fees, (iii) the collection practices used by the Association, (iv) a statement that the Association may recover reasonable costs of collecting past due Assessments, (v) a statement that the Owner has the right to inspect the Association's records, pursuant to California Corporations Code Section 8333, (vi) the following statement

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in 14-point boldface type or all capital letters: "IMPORTANT NOTICE: IF YOUR CONDOMINIUM IS PLACED IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR ASSESSMENTS, IT MAY BE SOLD WITHOUT COURT ACTION," (vii) a statement that the Owner shall not be liable to pay the charges, interest and costs of collection if it is determined the Assessment was paid on time to the Association, and (viii) a statement that the Owner has the right to request a meeting with the Board, as provided by California Civil Code Section 1367.1(c) and Section 12.2.2(d) below.

(c) **Dispute by Owner.** An Owner may dispute the Notice of Intent to Lien by submitting to the Board a written explanation of the reasons for the Owner's dispute. The Board shall respond in writing to the Owner within fifteen (15) days of the date of the postmark of the explanation, if the explanation is mailed within fifteen (15) days of the postmark of the Notice of Intent to Lien.

(d) **Owner's Right to Request Meeting.** An Owner may submit a written request to meet with the Board to discuss a payment plan for the debt noticed in Section 12.2.2(b) above. The Association shall provide the Owner with the standards for payment plans, if any exist. The Board shall meet with the Owner in executive session within forty-five (45) days of the postmark of the request, if the request is mailed within fifteen (15) days of the date of the postmark of the Notice of Intent to Lien, unless there is no regularly scheduled Board meeting within that period, in which case the Board may designate a committee of one or more members to meet with the Owner.

(e) **Notice of Delinquent Assessment.** The lien becomes effective on Recordation by the Board or its authorized agent of a Notice of Delinquent Assessment ("Notice of Delinquent Assessment") securing the payment of any Assessment or installment thereof levied by the Association against any Condominium Owner, as provided in Section 1367 or 1367.1 of the California Civil Code. The Notice of Delinquent Assessment must identify (i) the amount of the Assessment and other authorized charges and interest, including the cost of preparing and Recording the Notice of Delinquent Assessment, (ii) the amount of collection costs incurred, including reasonable attorneys' fees, (iii) a sufficient description of the Condominium that has been assessed, (iv) the Association's name and address, (v) the name of the Owner of the Condominium that has been assessed, and (vi) if the lien is to be enforced by nonjudicial foreclosure, the name and address of the trustee authorized by the Association to enforce the lien by sale. The Notice of Delinquent Assessment must be signed by an authorized Association officer or agent and must be mailed in the manner required by Section 2924b of the California Civil Code to the Owner of record of the Condominium no later than ten (10) calendar days after Recordation. The lien relates only to the individual Condominium against which the Assessment was levied and not to the Properties as a whole.

(f) **Exceptions.** Assessments described in Section 1367(e) of the California Civil Code and Section 2792.26(c) of the California Code of Regulations may not become a lien against an Owner's Condominium enforceable by the sale of the Condominium under Sections 2924, 2924(b) and 2924(c) of the California Civil Code.

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(g) **Release of Lien.** Within twenty-one (21) days of payment of the full amount claimed in the Notice of Delinquent Assessment, or other satisfaction thereof, the Board shall cause to be Recorded a Notice of Satisfaction and Release of Lien ("**Notice of Release**") stating the satisfaction and release of the amount claimed. The Association shall provide the Owner with a copy of the Notice of Release or any other notice that the full amount claimed in the Notice of Delinquent Assessment has been satisfied. The Board may require the Owner to pay a reasonable charge for preparing and Recording the Notice of Release. Any purchaser or encumbrancer who has acted in good faith and extended value may rely on the Notice of Release as conclusive evidence of the full satisfaction of the sums identified as owed in the Notice of Delinquent Assessment.

12.2.3 **Enforcement of Liens.** The Board shall enforce the collection of amounts due under this Declaration by one (1) or more of the alternative means of relief afforded by this Declaration. The lien on a Condominium may be enforced by foreclosure and sale of the Condominium after failure of the Owner to pay any Annual, Capital Improvement or Reconstruction Assessment, or installment thereof, as provided in this Declaration. The sale shall be conducted in accordance with the provisions of the California Civil Code applicable to the exercise of powers of sale in Mortgages, or in any manner permitted by law. The Association (or any Owner if the Association refuses to act) may sue to foreclose the lien if (a) at least thirty (30) days have elapsed since the date on which the Notice of Delinquent Assessment was Recorded and (b) at least ten (10) days have elapsed since a copy of the Notice of Delinquent Assessment was mailed to the Owner affected thereby. The Association may bid on the Condominium at foreclosure sale, and acquire and hold, lease, mortgage and convey the same. On completion of the foreclosure sale, the Association or the purchaser at the sale may file suit to secure occupancy of the defaulting Owner's Condominium, and the defaulting Owner shall be required to pay the reasonable rental value for the Condominium during any period of continued occupancy by the defaulting Owner or any persons claiming under the defaulting Owner. A suit to recover a money judgment for unpaid Assessments may be brought without foreclosing or waiving any lien securing the same, but this provision or any suit to recover a money judgment does not affirm the adequacy of money damages. Any recovery resulting from a suit at law or in equity initiated pursuant to this Section may include reasonable attorneys' fees as fixed by the court.

12.2.4 **Priority of Assessment Lien.** Mortgages Recorded before a Notice of Delinquent Assessment have lien priority over the Notice of Delinquent Assessment. Sale or transfer of any Condominium does not affect the Assessment lien, except that the sale or transfer of any Condominium pursuant to judicial or nonjudicial foreclosure of a first Mortgage extinguishes the lien of such Assessments as to payments which became due before such sale or transfer. No sale or transfer relieves such Condominium from liens for any Assessments thereafter becoming due. No Person who obtains title to a Condominium pursuant to a judicial or nonjudicial foreclosure of the first Mortgage is liable for the share of the Common Expenses or Assessments chargeable to such Condominium which became due before the acquisition of title to the Condominium by such Person. Such unpaid share of Common Expenses or Assessments is a Common Expense collectible from all Owners including such Person. The Association may take such action as is necessary to make any Assessment lien subordinate to the interests of the Department of Veterans Affairs of the State

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of California under its Cal-Vet loan contracts as if the Cal-Vet loan contracts were first Mortgages of record.

12.2.5 Alternative Dispute Resolution. An Owner may dispute the Assessments imposed by the Association if such Owner pays in full (a) the amount of the Assessment in dispute, (b) any late charges, (c) any interest, and (d) all reasonable fees and costs associated with preparing and filing a Notice of Delinquent Assessment (including mailing costs and reasonable attorneys' fees not to exceed the maximum amount allowed by law) and states by written notice that such amount is paid under protest, and the written notice is mailed by certified mail not more than thirty (30) days after Recording the Notice of Delinquent Assessment. On receipt of the written notice, the Association shall inform the Owner in writing that the dispute may be resolved through alternative dispute resolution as established in California Civil Code Sections 1363.810, *et seq.*, and 1369.510, *et seq.* The right of any Owner to use alternative dispute resolution under this Section may not be exercised more than two (2) times in any single calendar year, and not more than three (3) times within any five (5) calendar years unless the Owner and the Association mutually agree to use alternative dispute resolution when this limit is exceeded. An Owner may request and be awarded through alternative dispute resolution reasonable interest to be paid by the Association in the total amount paid under items (a) through (d) above, if it is determined that the Assessment levied by the Association was not correctly levied.

12.2.6 Receivers. In addition to the foreclosure and other remedies granted the Association in this Declaration, each Owner, by acceptance of a deed to such Owner's Condominium, conveys to the Association all of such Owner's right, title and interest in all rents, issues and profits derived from and appurtenant to such Condominium, subject to the right of the Association to collect and apply such rents, issues and profits to any delinquent Assessments owed by such Owner, reserving to the Owner the right, before any default by the Owner in the payment of Assessments, to collect and retain such rents, issues and profits as they may become due and payable. On any such default the Association may, on the expiration of thirty (30) days following delivery to the Owner of the "Notice of Delinquent Assessment" described in this Declaration, either in person, by agent or by receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness secured by the lien described in this Declaration, (a) enter in or on and take possession of the Condominium or any part thereof, (b) in the Association's name sue for or otherwise collect such rents, issues and profits, including those past due and unpaid, and (c) apply the same, less allowable expenses of operation, to any delinquencies of the Owner, and in such order as the Association may determine. The entering upon and taking possession of the Condominium, the collection of rents, issues and profits and the application thereof, shall not cure or waive any default or notice of default under this Declaration or invalidate any act done pursuant to such notice.

12.3 ENFORCEMENT OF CERTAIN BONDED OBLIGATIONS.

12.3.1 Consideration by the Board. If (a) the Common Property Improvements in the Properties are not completed before the issuance of a Final Subdivision Public Report for the Properties by the DRE, and (b) the Association is obligee under a bond or other arrangement ("**Bond**") required by the DRE to secure performance of Declarant's

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commitment to complete such Improvements, then the Board shall consider and vote on the question of action by the Association to enforce the obligations under the Bond with respect to any such Improvement for which a Notice of Completion has not been filed within sixty (60) days after the completion date specified for that Improvement in the Planned Construction Statement appended to the Bond. If the Association has given an extension in writing for the completion of any Common Property Improvement, then the Board shall be directed to consider and vote on the question if a Notice of Completion has not been filed within thirty (30) days after the expiration of the extension.

12.3.2 **Consideration by the Owners.** A special meeting of Owners for voting to override a decision by the Board not to initiate action to enforce the obligations under the Bond or the Board's failure to consider and vote on the question shall be held no fewer than thirty-five (35) nor more than forty-five (45) days after the Board receives a petition for such a meeting signed by Owners representing five percent (5%) of the Association's total voting power. A vote of a majority of the Association's voting power residing in Owners other than Declarant to take action to enforce the obligations under the Bond shall be deemed to be the decision of the Association, and the Board shall thereafter implement such decision by initiating and pursuing appropriate action in the Association's name.

12.4 **DISPUTE WITH DECLARANT PARTIES.** Any dispute between the Association or any Owners, on the one hand, and the Declarant, or any director, officer, partner, shareholder, member, employee, representative, contractor, subcontractor, design professional or agent of the Declarant (each, a "**Declarant Party**," and collectively the "**Declarant Parties**"), on the other hand, which dispute is not resolved under any written limited warranty provided by Declarant or a Declarant Party, and:

- (a) Either arises under this Declaration or otherwise relates to the Properties (including disputes regarding latent or patent construction defects); and
- (b) Involves neither Association Property completion bonds, nor the collection of delinquent Assessments from Declarant; and
- (c) Concerns an amount in controversy that is greater than Five Thousand Dollars (\$5,000),

shall be a "Dispute" for purposes of this Section 12.4. All Disputes shall be resolved in accordance with the alternative dispute resolution procedures set forth in this Section 12.4. In addition, Owners and the Association are advised that Sections 12.4.1, 12.4.2 and 12.4.3 are Declarant's alternative contractual non-adversarial procedures for the resolution of Disputes concerning matters governed by the Right to Repair Law. These procedures are different from and replace the "Prelitigation Procedure" described in Chapter 4 of the Right to Repair Law:

12.4.1 **Notice.** Any Person with a Dispute shall give written notice of the Dispute by personal or mail service as authorized by Code of Civil Procedure Sections 415.10, 415.20, 415.21, 415.30 or 415.40 to the party to whom the Dispute is directed

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(**“Respondent”**) describing the nature of the Dispute and any proposed remedy (the **“Dispute Notice”**).

12.4.2 **Right to Inspect and Correct.** Commencing on the date the Dispute Notice is delivered to the Respondent and continuing until the Dispute is resolved, the Respondent and its representatives have the right to (i) meet with the party alleging the Dispute at a reasonable time and place to discuss the Dispute, (ii) enter the Properties to inspect any areas that are subject to the Dispute, and (iii) conduct inspections and testing (including destructive or invasive testing) in a manner deemed appropriate by the Respondent. If Respondent elects to take any corrective action, Respondent and its representatives shall be provided full access to the Properties to take and complete the corrective action. Respondent is not obligated to take any corrective action. Respondent, with the consent of Declarant, has the right to select the corrective action Respondent believes is appropriate. The right to inspect and correct granted in this Section is in addition to the rights granted in California Civil Code Section 1375 (**“Calderon Act”**). The procedures established in the Calderon Act may be implemented, before, during or after the procedure in this Section is implemented.

12.4.3 **Mediation.** If the Dispute is not resolved within ninety (90) days after the Respondent receives the Dispute Notice, any party may submit the Dispute to mediation by delivering a request for mediation (**“Mediation Notice”**) in the same manner as allowed for delivery of the Dispute Notice. The Dispute shall be mediated pursuant to (i) the JAMS/Endispute (**“JAMS”**) mediation procedures in existence when the Dispute Notice is delivered, as modified by this Section, or (ii) the mediation procedures of any successor to the JAMS in existence when the Dispute Notice is delivered, as modified by this Section, or (iii) mediation procedures approved by the parties of any entity offering mediation services that is acceptable to the parties to the Dispute (**“Parties”**). Except as provided in Section 12.4.5, no Person shall commence litigation regarding a Dispute without complying with this Section 12.4.3.

(a) **Selection of Mediator.** The mediator shall be selected within sixty (60) days from delivery of the Mediation Notice. The mediator shall be selected by mutual agreement of the Parties. If the parties cannot agree on a mediator, the mediator shall be selected by the entity providing the mediation service. No Person shall serve as a mediator in any Dispute in which the Person has any financial or personal interest in the result of the mediation, except by the written consent of all Parties. Before accepting any appointment, the prospective mediator shall disclose any circumstances likely to create a presumption of bias or to prevent a prompt commencement of the mediation process.

(b) **Position Letter; Pre-Mediation Conference.** No later than sixty (60) days after selection of the mediator, each party to the Dispute shall submit a letter (**“Position Statement”**) containing (i) a description of the party’s position concerning the issues that need to be resolved, (ii) a detailed description of the defects allegedly at issue, and (iii) a suggested plan of repair, remediation or correction. The mediator may schedule a pre-mediation conference. All Parties shall attend unless otherwise mutually agreed. The mediation shall be commenced within twenty (20) days after submittal of all Position Statements and shall be concluded within fifteen (15) days after the mediation began unless either (a) the mediator extends the mediation period, or (b) the Parties mutually agree to

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extend the mediation period. The mediation shall be held in the County or another place mutually acceptable to the parties.

(c) **Conduct of Mediation.** The mediator has discretion to conduct the mediation in the manner in which the mediator believes is most appropriate to achieve the goal of settling the Dispute. The mediator is authorized to conduct joint and separate meetings with the Parties and to make oral and written recommendations for settlement. The mediator may also obtain expert advice concerning technical aspects of the Dispute, provided the Parties agree to and do assume the expenses of obtaining such advice. The mediator shall not have the authority to impose a settlement on the Parties.

(d) **Application of Evidence Code.** The provisions of California Evidence Code Sections 1115 through 1128 shall be applicable to the mediation process. Use and disclosure of statements, evidence and communications offered or made in the course of the mediation shall be governed by these sections, including the sections which preclude use of material in future proceedings and the sections which provide for confidentiality of material.

(e) **Parties Permitted at Mediation.** Persons other than the Parties, their liability insurers, Declarant, attorneys for the Parties, the liability insurers and Declarant and the mediator may attend mediation sessions only with the permission of the Parties and the consent of the mediator. Declarant has the right to attend the mediation session even if Declarant is not one of the Parties.

(f) **Record.** There shall be no stenographic, video or audio record of the mediation process.

(g) **Expenses.** Each Party shall bear its own attorneys' fees and costs incurred in connection with the mediation. All other expenses of the mediation including the fees charged by the mediator and the cost of any proof or expert advice requested by the mediator, shall be borne equally by each of Declarant and the Declarant Parties to whom the Dispute is directed, unless the Parties agree otherwise. This provision does not modify any provision of a contract between Declarant and any Declarant Party requiring indemnification or establishing a different allocation of costs between the Declarant and the Declarant Party.

12.4.4 Judicial Reference. If a Dispute remains unresolved after the nonadversarial procedures required under Sections 12.4.2 and 12.4.3 are completed, any of the Parties may file a lawsuit, provided that the Association must obtain the vote or written consent of Owners other than Declarant who represent not less than sixty-seven percent (67%) of the Association's voting power (excluding the voting power of Declarant) prior to filing a lawsuit in a Dispute with Declarant or a Declarant Party. All lawsuits regarding Disputes must be resolved by general judicial reference pursuant to California Code of Civil Procedure Sections 638 and 641 through 645.1, as modified by this Section 12.4.4. The Parties shall cooperate in good faith to ensure that all necessary and appropriate parties are included in the judicial reference proceeding. No party shall be required to participate in the judicial reference proceeding if all parties against whom such party would have necessary or

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permissive cross-claims or counterclaims will not or cannot be joined in the judicial reference proceeding. The general referee shall have the authority to try all issues of fact and law and to report a statement of decision to the court. The referee shall be the only trier of fact and law in the reference proceeding, and shall have no authority to further refer any issues of fact or law to any other Person unless (a) all parties to the judicial reference proceeding consent, or (b) the referee determines that a conflict of interest or similar situation has arisen which would make it inappropriate for the referee to act as the trier of fact or law concerning an issue or matter. In the second alternative, an alternative judicial referee shall be selected in accordance with Section 12.4.4(b) solely for resolving or rendering a decision concerning the issue or matter involved in the conflict.

(a) **Place.** The proceedings shall be heard in the County.

(b) **Referee.** The referee shall be a retired judge who served on the Superior Court of the State of California in the County with substantial experience in the type of matter in dispute and without any relationship to the Parties or interest in the Properties, unless the Parties agree otherwise. The parties to the judicial reference proceeding shall meet to select the referee no later than thirty (30) days after service of the initial complaint on all defendants named in the complaint. Any dispute regarding selecting the referee shall be resolved by the court in which the complaint is filed.

(c) **Commencement and Timing of Proceeding.** The referee shall commence the proceeding at the earliest convenient date and shall conduct the proceeding without undue delay.

(d) **Pre-hearing Conferences.** The referee may require pre-hearing conferences.

(e) **Discovery.** The parties to the judicial reference proceeding shall be entitled only to limited discovery, consisting of the exchange of the following: (i) witness lists, (ii) expert witness designations, (iii) expert witness reports, (iv) exhibits, (v) reports of testing or inspections, and (vi) briefs. Any other discovery authorized in the California Code of Civil Procedure shall be permitted by the referee upon a showing of good cause or based on the consent of all parties to the judicial reference proceeding.

(f) **Motions.** The referee shall have the power to hear and dispose of motions, including motions relating to discovery, provisional remedies, demurrers, motions to dismiss, motions for judgment on the pleadings and summary judgment and/or adjudication motions, in the same manner as a trial court judge. The referee shall also have the power to adjudicate summarily issues of fact or law including the availability of remedies whether or not the issue adjudicated could dispose of an entire cause of action or defense.

(g) **Record.** A stenographic record of the hearing shall be made which shall remain confidential except as may be necessary for post-hearing motions and any appeals.

(h) **Statement of Decision.** The referee's statement of decision shall contain an explanation of the factual and legal basis for the decision pursuant to

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California Code of Civil Procedure Section 632. The decision of the referee shall stand as the decision of the court, and upon filing of the statement of decision with the clerk of the court, judgment may be entered thereon in the same manner as if the Dispute had been tried by the court.

(i) **Remedies.** The referee may grant all legal and equitable remedies and award damages in the judicial reference proceeding.

(j) **Post-hearing Motions.** The referee may rule on all post-hearing motions in the same manner as a trial judge.

(k) **Appeals.** The decision of the referee shall be subject to appeal in the same manner as if the Dispute had been tried by the court.

(l) **Expenses.** Each party shall bear its own attorneys' fees and cost incurred in connection with the judicial reference proceeding. All other fees and costs incurred in connection with the judicial reference proceeding, including the cost of the stenographic record, shall be advanced equally by each of Declarant and the Declarant Parties to whom the Dispute is directed. However, the referee shall have the power to reallocate such fees and costs among the Parties in the referee's final ruling. This provision does not modify any provision of a contract between Declarant and any Declarant Party requiring indemnification or establishing a different allocation of costs between Declarant and the Declarant Party.

12.4.5 Statutes of Limitation. Nothing in this Section 12.4 shall be considered to toll, stay, reduce or extend any applicable statute of limitations, provided, however, that Declarant, the Declarant Parties, the Association and any Owner may commence a legal action which in the good faith determination of that Person is necessary to preserve that Person's rights under any applicable statute of limitations so long as no further steps in processing the action are taken except those authorized in this Section 12.4.

12.4.6 Agreement to Dispute Resolution; Waivers of Jury Trial. DECLARANT, THE ASSOCIATION AND EACH OWNER AGREE TO USE THE PROCEDURES ESTABLISHED IN THIS SECTION 12.4 TO RESOLVE ALL DISPUTES AND WAIVE THEIR RIGHTS TO RESOLVE DISPUTES IN ANY OTHER MANNER. DECLARANT, THE ASSOCIATION, AND EACH OWNER ACKNOWLEDGE THAT BY AGREEING TO RESOLVE ALL DISPUTES AS PROVIDED IN THIS SECTION 12.4, THEY ARE GIVING UP THEIR RIGHT TO HAVE DISPUTES TRIED BEFORE A JURY. THIS SECTION 12.4 MAY NOT BE AMENDED WITHOUT DECLARANT'S PRIOR WRITTEN CONSENT.

12.4.7 Covenant Regarding Proceeds. If the Association or any Owner prevail in a Dispute, and the judgment thereon or settlement terms thereof includes a monetary award, then the proceeds of the award shall be first applied to the remediation of the condition that gave rise to the Dispute.

12.5 NO ENHANCED PROTECTION AGREEMENT. No language contained in this Declaration or any Supplemental Declaration shall constitute, or be interpreted to

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constitute, an "enhanced protection agreement" ("**EPA**"), as defined in Section 901 of the California Civil Code. Further, no express or implied representations or warranties made by Declarant in any other writing are intended to constitute, or to be interpreted to constitute, an EPA.

**ARTICLE XIII
DURATION AND AMENDMENT**

13.1 DURATION. This Declaration shall continue in full force unless a declaration of termination satisfying the requirements of an amendment to this Declaration established in Section 13.2 is Recorded.

13.2 TERMINATION AND AMENDMENT.

13.2.1 Amendment Approval. Notice of the subject matter of a proposed amendment to this Declaration in reasonably detailed form must be included in the notice of any Association meeting or election at which a proposed amendment is to be considered. To be effective, a proposed amendment must be adopted by the vote, in person or by proxy, or written consent of Owners representing not less than (i) sixty-seven percent (67%) of the voting power of each Class of the Association and (ii) sixty-seven percent (67%) of the Association's voting power represented by Owners other than Declarant, provided that the specified percentage of the Association's voting power necessary to amend a specific provision of this Declaration may not be less than the percentage of affirmative votes prescribed for action to be taken under the provision that is the subject of the proposed amendment.

13.2.2 Amendment of Defect Claims Provisions. Except for any amendment made by Declarant as authorized in Section 13.2.7, neither this Section 13.2.2 nor Sections 1.1.37, 4.5.2, 2.15.1, 2.15.4, 2.15.5, 12.1.7, 12.4, 12.5, or 15.7 may be amended without the prior written approval of Declarant, until the expiration of all applicable statutes of limitations or repose for the filing of a complaint or suit or other legal remedies against Declarant or its affiliates under the Right to Repair Law (including any tolling periods).

13.2.3 Mortgage Consent. In addition to the notices and consents required by Section 13.2.1, the Mortgagees of fifty-one percent (51%) of the first Mortgages on all the Condominiums in the Properties who have requested the Association to notify them of proposed action requiring the consent of a specified percentage of first Mortgagees must approve any amendment to this Declaration and any Supplemental Declaration which is of a material nature, as follows:

(a) Any amendment which affects or purports to affect the validity or priority of Mortgages or the rights or protection granted to Mortgagees, insurers or guarantors of first Mortgages.

(b) Any amendment which would require a Mortgagee after it has acquired a Condominium through foreclosure to pay more than its proportionate share of any unpaid Assessment or Assessments accruing before such foreclosure.

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(c) Any amendment which would or could result in a Mortgage being canceled by forfeiture, or in a Condominium not being separately assessed for tax purposes.

(d) Any amendment relating to (i) the insurance provisions in Article VIII, (ii) the application of insurance proceeds in Article IX, or (iii) the disposition of any money received in any taking under condemnation proceedings.

(e) Any amendment which restricts an Owner's right to sell or transfer his or her Condominium.

(f) Any amendment which would subject any Owner to a right of first refusal or other such restriction, if such Condominium is proposed to be transferred.

(g) Any amendment concerning:

(i) Voting rights;

(ii) Rights to use the Common Property;

(iii) Reductions in reserves for maintenance, repair and replacement of the Common Property;

(iv) Responsibility for maintenance and repairs;

(v) Redefinition of boundaries of any Unit;

(vi) Reallocation of interests in the Common Area or Exclusive Use Areas or rights to their use;

(vii) Convertibility of Common Property into Units or Units into Common Property;

(viii) Imposition of restrictions on leasing of Units;

(ix) Any provisions that expressly benefit a Mortgagee, insurer or guarantor;

(x) Establishment of self-management by the Association if professional management has been required by the Governing Documents or any Mortgagee of a first Mortgage;

(xi) Expansion or contraction of the Properties or addition, annexation or deannexation of real property to or from the Properties;

(xii) Increases in Assessments that raise the previously assessed amount by more than twenty percent (20%), Assessment liens, or the priority of such liens; or Restoration or repair of the Properties (after damage or partial condemnation) in a manner other than that specified in this Declaration.

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13.2.4 Termination Approval. Termination of this Declaration requires the approval of the Owners as required by Section 13.2.1, and until the expiration of all applicable statutes of limitation or repose for the filing of a complaint or suit or other legal remedies against Declarant or its affiliates under the Right to Repair Law (including tolling periods), the prior written approval of Declarant. No such termination is effective unless it is also approved in advance either by fifty-one percent (51%) of the Mortgagees of the first Mortgages on all Condominiums in the Properties who have submitted a written request to the Association that they be notified of proposed actions requiring the consent of a specified percentage of such Mortgagees (if termination is proposed due to substantial destruction or condemnation of the Properties) or by sixty-seven percent (67%) of such Mortgagees (if termination is for reasons other than such substantial destruction or condemnation).

13.2.5 Notice to Mortgagees. Each Mortgagee of a first Mortgage on a Condominium in the Properties which receives proper written notice of a proposed amendment or termination of this Declaration and any Supplemental Declaration with a return receipt requested is deemed to have approved the amendment or termination if the Mortgagee fails to submit a response to the notice within thirty (30) days after the Mortgagee receives the notice.

13.2.6 Certificate. A copy of each amendment must be certified by at least two (2) Association officers. The amendment becomes effective when a Certificate of Amendment is Recorded. The certificate, signed and sworn to by two (2) Association officers that the requisite number of Owners and Mortgagees have approved the amendment, when Recorded, is conclusive evidence of that fact. The Association shall keep in its files for at least four (4) years the record of all such approvals. The certificate reflecting any termination or amendment which requires the written consent of any of the Mortgagees of first Mortgages must include a certification that the requisite approval of such first Mortgagees was obtained.

13.2.7 Unilateral Amendment by Declarant. Notwithstanding any other provisions of this Section, at any time prior to the first Close of Escrow in the Properties, Declarant may unilaterally amend or terminate this Declaration by Recording a written instrument which effects the amendment or termination and is signed and acknowledged by Declarant. At any time prior to the Close of Escrow in any portion of the Properties, Declarant may unilaterally amend a Supplemental Declaration to the extent such instrument affects only real property on which escrow has not yet closed. Notwithstanding any other provisions of this Section, Declarant (for so long as Declarant owns any portion of the Properties) may unilaterally amend this Declaration or a Supplemental Declaration by Recording a written instrument signed by Declarant in order to (i) conform this Declaration or a Supplemental Declaration to the rules, regulations or requirements of VA, FHA, DRE, Fannie Mae, Ginnie Mae or Freddie Mac, (ii) amend the disclosures in Article III, (iii) amend, replace or substitute any exhibit for any purpose to the extent that the exhibit affects portions of the Properties that have not yet been conveyed to the Association or for which there has been no Close of Escrow, as applicable, (iv) amend, replace or substitute any exhibit to correct typographical or engineering errors, (v) include any exhibit that was inadvertently omitted from the Declaration or Supplemental Declaration at the time of Recording, (vi) comply with any City, County, State or Federal laws or regulations, (vii) correct any typographical errors, (viii) supplement this Declaration with provisions which pertain to rights

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and obligations of Declarant, the Association or Owners arising under the Right to Repair Law, and (ix) change any exhibit or portion of an exhibit to this Declaration, or to a Supplemental Declaration to conform to as-built conditions.

13.2.8 **Amendment by the Board.** Notwithstanding any other provisions of this Section, after the Declarant no longer own any portion of the Properties, the Board may amend this Declaration by Recording a written instrument signed by two officers of the Association certifying that the Board approved the amendment for the purposes described in Sections 13.2.7 (i), (iv), (v), (vi), (vii) and (ix) above. So long as Declarant owns any portion of the Properties, the Board must obtain Declarant's consent to any amendment the Board approves pursuant to Article XV, or pursuant to this Section.

**ARTICLE XIV
GENERAL PROVISIONS**

14.1 **MERGERS OR CONSOLIDATIONS.** In a merger or consolidation of the Association with another association, its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association or, alternatively, the properties, rights and obligations of another association may, by operation of law, be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer and enforce the covenants, conditions and restrictions established by this Declaration governing the Properties, together with the covenants and restrictions established on any other property, as one (1) plan.

14.2 **NO PUBLIC RIGHT OR DEDICATION.** Nothing in this Declaration is a gift or dedication of all or any part of the Properties to the public, or for any public use.

14.3 **NOTICES.** Except as otherwise provided in this Declaration, notice to be given to an Owner must be in writing and may be delivered personally to the Owner. Personal delivery of such notice to one (1) or more co-Owners, or any general partner of a partnership owning a Condominium, constitutes delivery to all Owners. Personal delivery of such notice to any officer or agent for the service of process on a corporation or limited liability company constitutes delivery to the corporation or limited liability company. Such notice may also be delivered by regular United States mail, postage prepaid, addressed to the Owner at the most recent address furnished by such Owner to the Association or, if no such address has been furnished, to the street address of such Owner's Condominium. Such notice is deemed delivered three (3) business days after the time of such mailing, except for notice of a meeting of Owners or of the Board, in which case the notice provisions of the Bylaws control. Any notice to be given to the Association may be delivered personally to any member of the Board, or sent by United States mail, postage prepaid, addressed to the Association at such address as may be fixed and circulated to all Owners.

14.4 **CONSTRUCTIVE NOTICE AND ACCEPTANCE.** Every Person who owns, occupies or acquires any right, title, estate or interest in or to any Condominium or other portion of the Properties consents and agrees to every limit, restriction, easement, reservation, condition and covenant contained in this Declaration, whether or not any

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reference to these restrictions is in the instrument by which such person acquired an interest in the Properties.

**ARTICLE XV
DECLARANT'S RIGHTS AND RESERVATIONS**

The Declarant shall have the rights described in this Article, and neither the Association nor any Owner shall interfere with the exercise thereof. If there is a conflict between any other portion of the Governing Documents and this Article, this Article shall control.

15.1 CONSTRUCTION RIGHTS. Declarant has the right to (a) subdivide or re-subdivide the Properties, (b) complete or modify Improvements to and on the Common Property or any portion of the Properties, owned or leased solely or partially by Declarant, (c) alter Improvements and Declarant's construction plans and designs, (d) modify Declarant's development plan for the Properties and neighboring lands, including constructing Condominiums of larger or smaller sizes, values, and of different types in the Properties, and (e) construct such additional Improvements as Declarant considers advisable in the course of development of the Properties so long as any Condominium in the Properties remains unsold. Declarant may temporarily erect barriers, close off and restrict access to portions of the Common Property as reasonably necessary to allow Declarant to exercise the rights reserved in this Section so long as an Owner's access to his Condominium is not eliminated.

15.2 SALES AND MARKETING RIGHTS. Declarant's rights under this Declaration include, but are not limited to, the right to install and maintain such structures, displays, signs, billboards, flags and sales offices as may be reasonably necessary to conduct Declarant's business of completing the work and disposing of the Condominiums by sale, resale, lease or otherwise. Declarant may use any Condominiums owned or leased by Declarant in the Properties as model home complexes, real estate sales offices or leasing offices.

15.3 CREATING ADDITIONAL EASEMENTS. At any time before acquisition of title to a Condominium in the Properties by a purchaser from Declarant, Declarant has the right to establish on that Condominium additional licenses, easements, reservations and rights-of-way to itself, to utility companies, or to others as Declarant determines are reasonably necessary to the Properties' proper development and disposal.

15.4 ARCHITECTURAL RIGHTS. Declarant and any Person to whom Declarant may assign all or a portion of its exemption under this Declaration need not seek or obtain Design Review Committee approval of any Improvements constructed anywhere on the Properties by Declarant or such Person. Declarant may exclude portions of the Properties from jurisdiction of the Design Review Committee in a Supplemental Declaration. Declarant, may, at its option, establish an additional design review committee for any area exempted from the jurisdiction of the Design Review Committee.

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15.5 **USE RESTRICTION EXEMPTION.** Declarant and any Person to whom Declarant may assign all or a portion of its exemption under this Declaration is exempt from the restrictions established in Article II.

15.6 **ASSIGNMENT OF RIGHTS.** Declarant may assign its rights under the Governing Documents to any successor in interest to any portion of Declarant's interest in the Properties by a Recorded written assignment.

15.7 **AMENDMENTS.** No amendment may be made to this Article nor to Sections 12.4, 12.5, 13.2.2 or 13.2.7, without the prior written approval of Declarant. Notwithstanding any other provision of this Declaration to the contrary, this Declaration shall not be terminated, "substantially" amended, or property deannexed from its coverage without the prior written consent of the City's Redevelopment Agency and the California Coastal Commission (or their successors). A proposed amendment shall be considered "substantial" if it affects the extent, use or maintenance of the Common Property as established under this Declaration.

15.8 **POWER OF ATTORNEY.** Each Owner, by accepting and recording a Grant Deed to a Condominium in the Properties, is deemed to constitute and irrevocably appoint Declarant, for so long as Declarant owns all or any portion of the Properties as Owner's Attorney-in-Fact, for Owner and for each of Owner's mortgagees, optionees, Owners, licensees, trustees, receivers, lessees, tenants, judgment creditors, heirs, legatees, devisees, administrators, executors, legal representatives, successors and assigns, whether voluntary or involuntary, and each Owner is deemed thereby to have conveyed to Declarant a special power of attorney coupled with an interest authorizing Declarant to act as each Owner's attorney in fact to prepare, execute, acknowledge and record any amendment to or restatement of a Condominium Plan, as Declarant deems to be reasonably necessary in order to correct errors, to conform to as-built conditions, or to bring the Plan into compliance with any City, County, State or Federal laws or regulations. The acceptance or creation of any Mortgage or other encumbrance, whether or not voluntary, created in good faith, or given for value, shall be deemed to be accepted or created subject to each of the terms and conditions of the Power of Attorney described in this Section.

15.9 **USE OF PROPERTIES.** Declarant and its prospective purchasers of Condominiums are entitled to the nonexclusive use of the Common Property without further cost for access, ingress, egress, use or enjoyment, to (a) show the Properties to prospective purchasers, (b) dispose of the Properties as provided in this Declaration, and (c) develop and sell the Condominium project on the neighboring land. Declarant and prospective purchasers are also entitled to the nonexclusive use of any portions of the Properties which are private streets, drives and walkways for ingress, egress and accommodating vehicular and pedestrian traffic to and from the Properties. The use of the Common Property by Declarant may not unreasonably interfere with the use thereof by the other Owners.

15.10 **PARTICIPATION IN ASSOCIATION.** The Association shall provide Declarant with written notice of the transfer of any Condominium and all notices and other documents to which a Mortgagee is entitled pursuant to this Declaration, provided that Declarant shall be provided such notices and other documents without making written request

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therefor. Commencing on the date on which Declarant no longer has an elected representative on the Board, the Association shall provide Declarant with written notice of all meetings of the Board as if Declarant were an Owner, and Declarant shall be entitled to have a representative present at all such Board meetings ("**Declarant's Representative**"). The Declarant's rights to receive written notice of meetings and to have a Declarant's Representative present at such meeting shall continue until the later of the date that is ten (10) years after the first Close of Escrow in the Properties, or the date of expiration of all applicable statutes of limitations or repose for the filing of a complaint or suit or other legal remedies against Declarant under the Right to Repair Law (including any tolling periods). The Declarant's Representative shall be entitled to receive copies of the minutes of all open meetings, but it shall be present in an advisory capacity only and shall not be a Board member or have any right to vote on matters coming before the Board.

15.11 DECLARANT APPROVAL OF ACTIONS.

15.11.1 **General Rights.** Until Declarant no longer owns a portion of the Properties, Declarant's prior written approval is required for any amendment to the Governing Documents which would impair or diminish Declarant's rights to complete the Properties or sell or lease dwellings therein.

15.11.2 **Limit on Actions.** Until Declarant no longer owns any Condominiums in the Properties, the following actions, before being undertaken by the Association, must first be approved in writing by Declarant:

- (a) Any amendment or action requiring the approval of first Mortgagees;
- (b) The levy of a Capital Improvement Assessment for the construction of new facilities not constructed on the Common Property by Declarant;
- (c) Any significant reduction of Association maintenance or other services; or
- (d) Any modification or termination of any provision of the Governing Documents benefiting Declarant.

15.12 **MARKETING NAME.** The Properties shall be marketed under the general name "Aqua 388." Declarant may change the marketing name of the Properties or designate a different marketing name at any time in Declarant's sole discretion. Declarant shall notify the DRE of any change in or addition to the marketing name or names of the Properties.

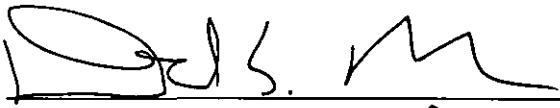
[SIGNATURES ON FOLLOWING PAGE]

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SUBORDINATION

Pursuant to that assignment recorded July 22, 2004 as Instrument No. 04-1873566, the undersigned is assignee of the interest of Beneficiary under the Deed of Trust recorded on March 1, 2002, as Instrument No. 02-488244 among 350 OCEAN TOWER I, L.L.C., a Delaware limited liability company, 350 OCEAN TOWER II, L.L.C., a Delaware limited liability company, and 350 OCEAN GARAGE, L.L.C., a Delaware limited liability company, collectively as Trustor, CHICAGO TITLE COMPANY, as Trustee, and PACIFIC LIFE INSURANCE COMPANY, a California corporation, as modified by instrument recorded July 22, 2004, as Instrument No. 04-1873567, all in the Official Records of Los Angeles County, California (as modified, the **"Deed of Trust"**). The undersigned hereby subordinates the Deed of Trust and its beneficial interest thereunder to the foregoing Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for Aqua 388, as amended or restated (the **"Declaration"**), any Supplemental Declaration, as amended or restated (**"Supplemental Declaration"**), and to all easements to be conveyed to the Association in accordance with the Declaration. By executing this Subordination, the undersigned agrees that if the undersigned acquires title to all or any portion of the Properties by foreclosure (whether judicial or nonjudicial), deed-in-lieu of foreclosure or any other remedy in or relating to the Deed of Trust, Beneficiary will acquire title subject to the provisions of the Declaration, any applicable Supplemental Declaration, and any applicable easements, all of which shall remain in effect.

Dated: 4-19-2005 BANK OF AMERICA, N.A.

By: 
 Its: Senior Vice President
 By: Donald S. Byerly
 Its: _____

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Sales · Leasing · Property Management

Texas

STATE OF CALIFORNIA)

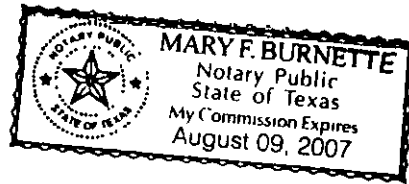
COUNTY OF Dallas) ss.

On April 19, 2005, before me, Mary F. Burnette, personally appeared Donald S. Byerly, Senior Vice President of Bank of America, N.A., a national banking association personally known to me (or 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.

WITNESS my hand and official seal.

Mary F. Burnette
Notary Public in and for said State

(SEAL)



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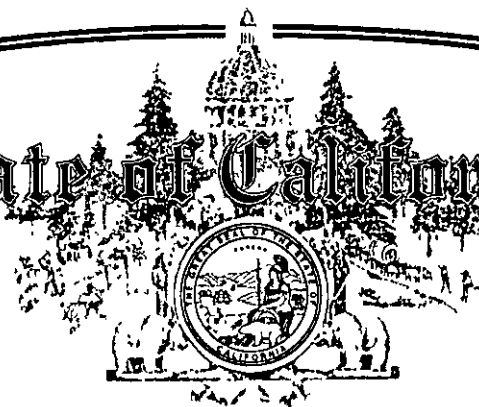
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EXHIBIT A
ARTICLES OF INCORPORATION

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State of California



SECRETARY OF STATE

I, *Kevin Shelley*, Secretary of State of the State of California, hereby certify:

That the attached transcript of 7 page(s) has been compared with the record on file in this office, of which it purports to be a copy, and that it is full, true and correct.

IN WITNESS WHEREOF, I execute this certificate and affix the Great Seal of the State of California this day of

JUL 29 2004



Kevin Shelley
Secretary of State

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JUL 16 2004

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**ARTICLES OF INCORPORATION
OF
AQUA 388 COMMUNITY ASSOCIATION**

KEVIN SHELLEY
Secretary of State

ONE: The name of this corporation is **AQUA 388 COMMUNITY ASSOCIATION** ("Corporation" herein).

TWO: The corporation is a nonprofit mutual benefit corporation organized under the Nonprofit Mutual Benefit Corporation Law. The purpose of this corporation is to engage in any lawful act or activity, other than credit union business, for which a corporation may be organized under such law.

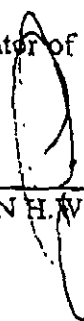
THREE: The Corporation's initial agent for service of process is George Medak, whose business address is c/o Affiliated Development Group, 6230 Majorca Circle, Long Beach, CA 90803.

FOUR: The Corporation shall have and exercise any and all powers, rights and privileges which a corporation organized under the Nonprofit Mutual Benefit Corporation Law may now or hereafter have or exercise, provided that the Corporation shall not, except to an insubstantial degree, engage in any activities or exercise any powers that are not in furtherance of the specific purpose of the Corporation, which is to operate a homeowners association within the meaning of Section 23701t of the California Revenue and Taxation Code and Section 528 of the Internal Revenue Code and to manage a common interest development under the Davis-Stirling Common Interest Development Act. The Corporation does not have a corporate office. The common interest development is near the intersection of Ocean Boulevard and Elm Avenue, Long Beach, California 90802-4805.

FIVE: The classes of Membership and the voting and other rights and privileges of members shall be as set forth in the Bylaws. So long as there are two classes of Membership, amendment of these Articles of Incorporation shall require the assent (by vote or written consent) of (i) a bare majority of the Board of Directors of the Corporation, and (ii) members representing a bare majority of the voting power of each class of members. After conversion of the Class B Membership to Class A Membership, amendment of these Articles of Incorporation shall require the assent (by vote or written consent) of (i) a bare majority of the Board of Directors of the Corporation, (ii) a bare majority of the total voting power of the members, and (iii) members representing a bare majority of the voting power of the members other than the subdivider of the common interest development.

SIX. The Corporation has no managing agent.

The undersigned, who is the incorporator of the Corporation, has executed these Articles of Incorporation on July 16, 2004.



GORDON H. W. IP, Incorporator



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EXHIBIT B

BYLAWS OF THE ASSOCIATION

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**BYLAWS
OF
AQUA 388 COMMUNITY ASSOCIATION**

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OF
AQUA 388 COMMUNITY ASSOCIATION**

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**BYLAWS
OF
AQUA 388 COMMUNITY ASSOCIATION**

**ARTICLE I
PLAN OF CONDOMINIUM OWNERSHIP**

1.1. **DEFINITIONS AND INTERPRETATION.** Unless otherwise provided in these Bylaws, the capitalized terms used in these Bylaws have the same meanings as in the Declaration (defined below). These Bylaws shall be interpreted in accordance with Section 1.2 of the Declaration

1.2. **NAME.** The name of the corporation is AQUA 388 COMMUNITY ASSOCIATION. The principal office of the Association, if any, shall be located in Los Angeles County, California

1.3. **APPLICATION.** These Bylaws apply to the residential condominium project known as Aqua 388, located in the County. All Persons who use the facilities of the Properties in any manner, are subject to the regulations in these Bylaws and in the Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for Aqua 388 ("**Declaration**"), Recorded in the Official Records of the County against the Properties. Use of any Condominium in the Properties signifies acceptance and ratification of these Bylaws.

**ARTICLE II
BOARD OF DIRECTORS**

2.1. **NUMBER.** Until the first annual meeting of the Owners, the Association's property, business and affairs shall be governed and managed by a Board of Directors composed of three (3) persons. Beginning with the first annual meeting of the Owners, the property, business and affairs of the Association shall be governed and managed by a Board of Directors composed of five (5) persons, each of whom, except for those appointed and serving as first Directors, must be either (a) an Owner, or (b) an agent of Declarant, for so long as Declarant owns a Condominium. The authorized number of Directors may be changed by a duly adopted amendment to these Bylaws.

2.2. **QUALIFICATIONS FOR HOLDING OFFICE.** Directors are encouraged to satisfy the following requirements while they serve in office:

- (a) Not be absent from three (3) consecutive meetings of the Board;
- (b) Attend at least seventy five percent (75%) of the Board meetings held each year and attend the entire meeting each time,

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(c) Exhibit respect, professionalism and courteous behavior to Owners, committee members, vendors, the Manager and its staff, and any other Persons associated with or retained by the Association; and

(d) For non-Declarant Board members, be an Owner in good standing.

2.3. ELECTION.

2.3.1. General Procedure At each annual meeting of the Owners, the Owners shall elect new Directors to fill vacancies on the Board. If an annual meeting is not held, or all positions on the Board are not filled at the annual meeting, the vacancies may be filled in accordance with the procedure set forth in Section 2.5 below.

2.3.2. Voting. Voting shall be by secret written ballot. An Owner may cumulate his votes for any candidate for the Board in any election in which more than two (2) Directors are to be elected if (a) the candidate's name has been placed in nomination before the voting, and (b) an Owner has given notice at the meeting before the voting of such Owner's intent to cumulate votes. If an Owner cumulates his votes, such Owner may cast a number of votes equal to the Owner's share of the voting power multiplied by the number of Directors to be elected.

2.3.3. Special Election Requirement. So long as either (a) Declarant is entitled to exercise a Class B vote or Class C Board appointment right, or (b) Declarant is entitled to exercise a majority of the Association's voting power, not less than twenty percent (20%) of the members of the Board must be elected solely by the votes of Owners other than Declarant.

2.4. TERM OF OFFICE Each Director shall hold office until the earlier to occur of (a) the end of the Director's term of office after a successor has been elected, or (b) his death, resignation, removal or judicial adjudication of mental incompetence. At the first annual meeting, the term of office of the three (3) Directors receiving the highest number of votes shall be three (3) years and the term of office of the two (2) Directors receiving the next highest number of votes shall be two (2) years. Directors appointed by Declarant with the Class C Board appointment right at the first annual meeting are deemed to receive the highest number of votes and so are given the longest term of office. The term of office of each Director elected to fill a vacancy created by expiration of a Director's fully completed term of office shall be two (2) years. The term of office of each Director elected or appointed to the Board for any other reason shall be the balance of the unserved term. Any person serving as a Director may be reelected. There is no limit on the number of terms which a Director may serve.

2.5. VACANCIES. A vacancy on the Board is deemed to exist in case of death, resignation, removal or judicial adjudication of mental incompetence of any Director or if the Owners fail to elect the full number of authorized Directors at any meeting at which a Directors election is to take place. Vacancies on the Board caused by any reason other than the removal of a Director may be filled by either (a) the vote of a majority of the remaining Directors, even though they may constitute less than a quorum, or (b) the vote of the Owners at a meeting. Any vacancy caused by the removal of a Director must be filled by a vote of the Owners. Until termination of the Class C Board appointment right, a vacancy in the office of a Director

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appointed by Declarant with the Class C Board appointment right shall be filled only by an appointee of Declarant. A Director may resign at any time by giving notice to the President, the Secretary or the Board. Any Director who ceases to be an Owner or an agent of Declarant is deemed to have resigned from the Board.

2.6 REMOVAL OF DIRECTORS. Any Director or the entire Board may be removed before the expiration of their terms of office with or without cause by a majority of a quorum of the Owners.

However, any Director elected to office solely by the votes of Owners other than Declarant pursuant to Section 2.3.3 may be removed only by the vote of at least a simple majority of the Association's voting power represented by Owners other than Declarant. If the entire Board is not removed as a group pursuant to a single vote, no individual Director may be removed if the number of votes cast against removal would be sufficient to elect such Director if voted cumulatively at an election at which the same total number of votes were cast and the entire number of Directors authorized at the time of the Director's most recent election were then being elected. Any Director elected to office solely by Declarant may only be removed by Declarant, and the vacancy filled only by a Director elected by Declarant. The Board, by majority vote of the Directors who meet all of the qualifications to be a Director, may declare vacant the office of any Director not appointed by Declarant who, while in office, fails to meet the qualification criteria set forth in Section 2.2. Any Director whose removal has been proposed by the Owners must be given an opportunity to be heard at the meeting. If any Directors are removed, new Directors may be elected at the same meeting.

2.7. COMPENSATION. Directors may not receive any compensation for their services as Directors unless such compensation is first approved by a majority of the Owners (excluding Declarant), representing a quorum of more than fifty percent (50%). However, nothing in these Bylaws precludes any Director from serving the Association in some other capacity and receiving compensation therefor, and any Director may be reimbursed for actual expenses incurred in performance of Association duties. In addition, no officer, employee or director of Declarant or any affiliate of Declarant may receive any compensation for service as a Director of the Association.

2.8 POWERS AND DUTIES. The Board has the powers and duties necessary to administer the Association's affairs. All the Association's powers shall be exercised by the Board except those powers specifically reserved to the Owners.

2.9. SPECIAL POWERS AND DUTIES. Without limiting the scope of the Board's general powers and duties, the Board is granted the following powers and duties:

2.9.1. Officers, Agents and Employees. The power and duty to select, appoint and remove all Association officers, agents and employees, to prescribe such powers and duties for them as may be consistent with law and with the Governing Documents, to fix their compensation, to require from them such security for faithful service as the Board considers advisable, and to contract to provide them with such indemnification as the Board determines is appropriate.

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2.9.2. **Contracts.** The power to enter into contracts. This includes contracts for: (i) maintenance, landscaping, and common utilities services, (ii) materials, supplies and other Common Expenses relating to the Condominiums; (iii) employing personnel necessary to manage the Properties, including legal and accounting services; and (iv) paying for Improvements on the Association Property. The Board may not enter into any contract with a term in excess of one (1) year, without the vote or written consent of a majority of the Owners (excluding Declarant), representing a quorum of more than fifty percent (50%), except for the following:

(a) a contract with a public utility company for a term that does not exceed the shortest term for which the public utility company will contract at the regulated rate if the rates charged for the materials or services are regulated by the California Public Utilities Commission;

(b) prepaid casualty or liability insurance policies of not more than three (3) years' duration provided that the policies permit short-term cancellation by the Association,

(c) agreements for telecommunications services and Telecommunications Facilities that meet the requirements of Section 2 9 13;

(d) contracts in which the Association enters into litigation or any alternative dispute resolution procedure when the Association's obligation to pay for services is set, in whole or in part, on a contingency basis, only if they are (i) contracts for collection of assessments or other accounts receivable; (ii) contracts involving evaluation of services; or (iii) contracts with a total amount to be paid by the Association not in excess of Forty Thousand Dollars (\$40,000 00);

(e) contracts with service providers benefiting the Properties to obtain trash removal, security, and other services;

(f) agreements for sale, lease or installation of burglar alarm and fire alarm equipment and related services with terms not in excess of five (5) years, provided that Declarant does not have a direct or indirect ownership interest in the supplier of such services or equipment equal to or greater than ten percent (10%);

(g) lease agreements for laundry room fixtures and equipment of not to exceed five years duration, provided that the lessor under the agreement is not an entity in which the Declarant has a direct or indirect ownership interest of ten percent (10%) or more;

(h) agreements for cable television services and equipment, satellite dish services and equipment, communication services and equipment, and comparable technology, services and equipment with terms not in excess of five (5) years, provided that Declarant does not have a direct or indirect ownership interest in the supplier of such services or equipment equal to or greater than ten percent (10%);

(i) a contract approved by the DRE; and

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(j) a contract for a term not to exceed three (3) years that is terminable by the Association after no longer than one (1) year without cause or penalty or other obligation on ninety (90) days written notice of termination to the other party.

2.9.3. **Enforcement.** The power to enforce the Governing Documents and any agreements entered into by the Association and to impose sanctions against Owners for violating the Governing Documents.

2.9.4. **Principal Office, Place of Meetings, Seal.** The power but not the duty to move the Association's principal office from one location to another in the County; to designate any place in the County for holding any meetings of Owners consistent with the provisions of Section 4.5; and to adopt and use a corporate seal and to alter the form of such seal.

2.9.5. **Assessments.** The power and duty to fix and levy Assessments and identify the due date for payment of Assessments. The Board may incur Common Expenses. The Association's funds shall be held in trust for the Owners.

2.9.6. **Insurance.** The power and duty to contract and pay for insurance in accordance with the Declaration, covering and protecting against such damages or injuries as the Board considers advisable (which coverage may include medical expenses of persons injured on the Association Property). The Board shall review, not less frequently than annually, all insurance policies and bonds obtained by the Board on the Association's behalf.

2 9 7 **Delegation** The power but not the duty to delegate its powers according to law.

2.9.8. **Bylaws** The power and duty to adopt these Bylaws.

2.9.9. **Records.** The power and duty to keep a complete record of Association acts and corporate affairs.

2.9.10. **Sale of Property.** The power but not the duty to sell property of the Association. Approval from seventy-five percent (75%) of the Owners (excluding Declarant), representing a quorum of more than fifty percent (50%), must be obtained before the Association sells, in any Fiscal Year, property having an aggregate fair market value greater than five percent (5%) of the Association's budgeted gross expenses for that Fiscal Year.

2.9.11. **Manager.** The power to engage a professional Manager for the Association at a compensation established by the Board to perform such duties and services as the Board authorizes.

2 9 12. **Agreements with Declarant.** The power but not the duty to negotiate and enter into agreements with Declarant.

2 9 13 **Telecommunications Contracts** The power to enter into, accept an assignment of, or otherwise cause the Association to comply with an exclusive Telecommunications Contract.

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2.9.14. **Capital Improvement Expenditures.** The power to incur expenditures for capital improvements to the Association Property. Approval from a majority of the Owners (excluding Declarant), representing a quorum of more than fifty percent (50%) must be obtained before the Association incurs, in any Fiscal Year, aggregate expenditures for capital improvements to the Association Property in excess of five percent (5%) of the Association's budgeted gross expenses for that Fiscal Year.

2.10. **DISTRIBUTION OF INFORMATION.** The Board shall distribute the following financial information to all Owners (and any Beneficiary, insurer and guarantor of a first Mortgage on request), regardless of the number of Owners or the amount of assets of the Association

2.10.1. **Budget.** A pro forma operating budget for each Fiscal Year consisting of at least the following information must be distributed not less than forty-five (45) nor more than sixty (60) days before the beginning of the Fiscal Year.

(a) Estimated revenue and Common Expenses computed on an accrual basis.

(b) A summary of the Association's reserves based on the most recent review or study conducted pursuant to Section 1365.5 of the California Civil Code, which must be printed in bold type and include all of the following:

(i) The current estimated replacement cost, estimated remaining life, and estimated useful life of each major component of the Association Property for which the Association is responsible.

(ii) As of the end of the Fiscal Year for which the study is prepared:

(A) The current estimate of the amount of cash reserves necessary to restore or maintain the major components of the Association Property for which the Association is responsible ("**Estimated Reserves**").

(B) The current amount of accumulated cash reserves actually set aside to restore or maintain the major components of the Association Property for which the Association is responsible ("**Actual Reserves**").

(iii) The percentage that the Actual Reserves is of the Estimated Reserves.

(c) A statement of whether the Board has determined or expects that the levy of one or more Capital Improvement or Reconstruction Assessments will be required to repair, replace, or restore any major component of the Association Property for which the Association is responsible or to provide adequate reserves therefor.

(d) A general statement setting forth the procedures used by the Board in calculating and establishing reserves to defray the costs of repair and replacement of, or

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additions to, major components of the Association Property and facilities for which the Association is responsible.

The Board may distribute a summary of the Budget instead of the Budget itself, so long as the Board complies with the provisions of Section 1365(c) of the California Civil Code.

2.10.2. Financial Report. A report consisting of the following must be distributed within one hundred twenty (120) days after the close of the Fiscal Year:

- (a) A balance sheet as of the end of the Fiscal Year;
- (b) An operating (income) statement for the Fiscal Year;
- (c) A statement of changes in financial position for the Fiscal Year;
- (d) Any information required to be reported under Section 8322 of the California Corporations Code;
- (e) For any Fiscal Year in which the Association's gross income exceeds \$75,000, a copy of a review of the annual report prepared in accordance with generally accepted accounting principles by a licensee of the California State Board of Accountancy; and
- (f) A statement of the place where the names and addresses of the current Owners are located.

If the report referred to in this Section is not prepared by an independent accountant, it must be accompanied by the certificate of an authorized Association officer stating that the statement was prepared from the Association's books and records without independent audit or review.

2.10.3. Insurance Information. The Association shall distribute to all Owners a summary of the Association's property, general liability, and earthquake and flood insurance policies within sixty (60) days before the beginning of the Fiscal Year, that includes all of the following information: (i) the name of the insurer; (ii) the type of insurance; (iii) the limits of coverage; and (iv) the amount of the deductibles, if any.

(a) The Association shall, as soon as reasonably practical, notify the Owners by first-class mail if any of the policies described above have lapsed, been canceled, and are not immediately renewed, restored, or replaced, or if there is a significant change, such as a reduction in coverage or limits or an increase in the deductible, for any of those policies. If the Association receives any notice of nonrenewal of a policy described above, the Association shall immediately notify the Owners if replacement coverage will not be in effect by the date the existing coverage will lapse.

(b) To the extent that any of the information required to be disclosed is specified in the insurance policy declaration page, the Association may meet its obligation to disclose that information by making copies of that page and distributing it to all Owners.

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(c) The summary distributed above shall contain, in at least 10-point boldface type, the following statement:

“This summary of the Association’s policies of insurance provides only certain information, as required by subdivision (e) of Section 1365 of the Civil Code, and should not be considered a substitute for the complete policy terms and conditions in the actual policies of insurance. Any Association member may, on request and provision of reasonable notice, review the Association’s insurance policies and, on request and payment of reasonable duplication charges, obtain copies of those policies. Although the Association keeps the policies of insurance specified in this summary, the Association’s policies of insurance may not cover your property, including personal property or, real property improvements to or around your dwelling, or personal injuries or other losses that occur in or around your dwelling. Even if a loss is covered, you may nevertheless be responsible for paying all or a portion of any deductible that applies. Association members should consult with their individual insurance broker or agent for appropriate additional coverage.”

2.10.4 Enforcement Policies. In addition to financial statements, the Board shall annually distribute within sixty (60) days before the beginning of the Fiscal Year a statement of the Association’s policies and practices in enforcing its remedies against Owners for defaults in the payment of Assessments, including the recording and foreclosing of liens against Condominiums.

2.10.5. Assessment and Foreclosure Notice.

(a) The Association shall distribute the written notice described in subsection (b) to each member of the Association during the sixty (60) day period immediately preceding the beginning of the Association’s Fiscal Year. The notice shall be printed in at least 12-point type.

(b) The notice required by this Section shall read as follows:

NOTICE

ASSESSMENTS AND FORECLOSURE

This notice outlines some of the rights and responsibilities of owners of property in common interest developments and the associations that manage them. Please refer to the sections of the Civil Code indicated for further information. A portion of the information in this notice applies only to liens recorded on or after January 1, 2003. You may wish to consult a lawyer if you dispute an assessment.

ASSESSMENTS AND NONJUDICIAL FORECLOSURE

The failure to pay association assessments may result in the loss of an owner’s property without court action, often referred to as

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nonjudicial foreclosure. When using nonjudicial foreclosure, the association records a lien on the owner's property. The owner's property may be sold to satisfy the lien if the lien is not paid. Assessments become delinquent 15 days after they are due, unless the governing documents of the association provide for a longer time (Sections 1366 and 1367.1 of the Civil Code)

In a nonjudicial foreclosure, the association may recover assessments, reasonable costs of collection, reasonable attorney's fees, late charges, and interest. The association may not use nonjudicial foreclosure to collect fines or penalties, except for costs to repair common areas damaged by a member or a member's guests, if the governing documents provide for this. (Sections 1366 and 1367.1 of the Civil Code)

The association must comply with the requirements of Section 1367.1 of the Civil Code when collecting delinquent assessments. If the association fails to follow these requirements, it may not record a lien on the owner's property until it has satisfied those requirements. Any additional costs that result from satisfying the requirements are the responsibility of the association (Section 1367.1 of the Civil Code)

At least 30 days prior to recording a lien on an owner's separate interest, the association must provide the owner of record with certain documents by certified mail. Among these documents, the association must send a description of its collection and lien enforcement procedures and the method of calculating the amount. It must also provide an itemized statement of the charges owed by the owner. An owner has a right to review the association's records to verify the debt. (Section 1367.1 of the Civil Code)

If a lien is recorded against an owner's property in error, the person who recorded the lien is required to record a lien release within 21 days, and to provide an owner certain documents in this regard. (Section 1367.1 of the Civil Code)

The collection practices of the association may be governed by state and federal laws regarding fair debt collection. Penalties can be imposed for debt collection practices that violate these laws.

PAYMENTS

When an owner makes a payment, he or she may request a receipt, and the association is required to provide it. On the receipt, the association must indicate the date of payment and the person who received it. The association must inform owners of a mailing

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address for overnight payments. (Sections 1367 and 1367.1 of the Civil Code)

An owner may dispute an assessment debt by giving the board of the association a written explanation, and the board must respond within 15 days if certain conditions are met. An owner may pay assessments that are in dispute in full under protest, and then request alternative dispute resolution. (Sections 1366.3 and 1367 1 of the Civil Code)

An owner is not liable for charges, interest and costs of collection, if it is established that the assessment was paid properly on time. (Section 1367.1 of the Civil Code)

MEETINGS AND PAYMENT PLANS

An owner of a separate interest that is not a time-share may request the association to consider a payment plan to satisfy a delinquent assessment. The association must inform owners of the standards for payment plans, if any exist. (Section 1367.1 of the Civil Code)

The board of the directors must meet with an owner who makes a proper written request for a meeting to discuss a payment plan when the owner has received a notice of a delinquent assessment. These payment plans must conform with the payment plan standards of the association, if they exist (Section 1367.1 of the Civil Code)

2.10.6 **Accounts.** On at least a quarterly basis, the Board shall: (a) cause to be completed and review a current reconciliation of the Association's operating and reserve accounts; (b) review the current Fiscal Year's actual reserve revenues and expenses compared to the Budget for the then current Fiscal Year; (c) review the income and expense statement for the Association's operating and reserve accounts; (d) review the most current account statements prepared by the financial institutions where the Association keeps its operating and reserve accounts; and (e) fulfill any additional duties established by Civil Code Section 1365.5. The signatures of either (i) two (2) Directors, or (ii) one (1) Director and one (1) Association officer (who is not also a Director) are required for the withdrawal of money from the Association's reserve accounts. As used in this Subsection, the term "reserve accounts" means Budgeted funds that the Board has designated for use to defray the future repair and replacement of, or additions to, those major components of the Association Property which the Association is obligated to maintain.

2.10.7. **Reserve Study.** The Board shall cause a study of the reserve account requirements of the Properties to be conducted in accordance with Section 1365.5(e) of the California Civil Code. As used in this Subsection, "reserve account requirements" means the estimated funds which the Board has determined are required to be available at a specified point

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in time to repair, replace or restore those major components of the Association Property which the Association is obligated to maintain.

2.11. MEETINGS.

2.11.1. Attendance. Any meeting of the Board may be held by conference telephone or through use of any other communication equipment, so long as the requirements for attendance at a meeting through the selected method established by the California Corporations Code are met. In these cases, all Directors will be deemed to be present in person at the meeting.

2.11.2 Organization Meeting. The first regular meeting of a newly elected Board must be held within ten (10) days of election of the Board, at such place as is fixed and announced by the Directors at the meeting at which such Directors were elected, to organize, elect officers and transact other business. No notice is necessary to the newly elected Directors to hold such meeting; provided that (a) a majority of the whole Board is present when the time and place are announced at the annual meeting and (b) the meeting is held on the same day and at the same place as the annual meeting of the Owners at which the newly constituted Board was elected.

2.11.3. Regular Meetings. Regular meetings may be held at such time and place in the Properties as is determined by a resolution adopted by a majority of a quorum of the Directors; however, regular meetings must be held no less frequently than quarterly. Notice of the time and place of regular meetings of the Board shall be given to each Director at least four (4) days before the date of the meeting. Notices may be given personally, by first-class mail, or by telephone, including a voice messaging system or other system or technology designed to record and communicate messages, facsimile, electronic mail, or other electronic means or posted at a prominent place or places in the Association Property.

2.11.4 Special Meetings. Special meetings may be called by the President or by any two (2) Directors by posting notice at least four (4) days before such meeting at a prominent place or places in the Association Property or on four (4) days' notice by first-class mail or forty-eight (48) hours' notice delivered personally or by telephone, including a voice messaging system or other system or technology designed to record and communicate messages, telegraph, facsimile, electronic mail, or other electronic means. The notice must state the time, place and the purpose of the meeting.

2.11.5. Executive Sessions. The Board may convene in executive session to discuss and vote upon personnel matters, litigation, matters relating to the formation of contracts with third parties, Owner discipline, or to meet with an Owner, upon the Owner's request regarding (a) the Owner's discipline, or (b) the Owner's payment of Assessments, as specified in Civil Code Sections 1367 or 1367.1. Any matter discussed in executive session must be generally noted in the minutes immediately following meeting that is open to the entire Membership. Except as expressly permitted in this Section, only Board members may attend executive sessions.

2.11.6. Emergency Meetings. If circumstances that could not have been reasonably foreseen require immediate attention and possible action by the Board, and such

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circumstances make it impractical to provide notice to the Owners, then an emergency meeting of the Board may be called by the President or by any two (2) members of the Board without providing notice to the Owners.

2 11 7 Other Meetings. Any congregation of a majority of the members of the Board at the same time and place to hear, discuss, or deliberate on any item of business scheduled to be heard by the Board, except those matters that may be discussed in executive session, shall constitute a meeting of the Board. All Owners shall have the right to attend any regular, special or other meeting of the Board, except an executive session. Owners who are not Directors may not participate in any deliberation or discussion at such meetings unless authorized by a vote of a majority of a quorum of the Board. However, at each Board meeting, except for executive sessions, the Board must set aside time for Owners to speak, subject to reasonable limits imposed by the Board.

2.11.8 Notice to Owners. Owners shall be given notice of the time and place of any meeting of the Board, except emergency meetings defined in this Section, at least four (4) days before the meeting. Notice required by this Section shall be given by posting the notice in a prominent place or places in the Association Property, and by mail to any Owner who had requested notification of Board meetings by mail, at the address requested by the Owner. Notice may also be given by mail or delivery of the notice to each Condominium in the Properties, or by newsletter or other similar means of communication. If there are circumstances that could not have been reasonably foreseen which require immediate attention and possible action by the Board and which of necessity make it impractical to provide notice to the Owners, then an emergency meeting of the Board may be called by the President or any two other members of the Board without providing notice to the Owners.

2 11.9. Waiver of Notice. Before or at any meeting of the Board, any Director may, in writing, waive personal notice of such meeting. Attendance by a Director at any Board meeting waives the requirement of personal notice. If all Directors are present at a Board meeting, no notice to Directors is required and any business may be transacted at such meeting. The transactions of any Board meeting, however called and noticed or wherever held, are valid as though conducted at a meeting duly held after regular call and notice, if (a) a quorum is present, (b) notice to the Owners of such meeting was posted as provided in Sections 2.11.2, 2.11.3 or 2.11.6, and (c) either before or after the meeting, each of the Directors not present signs a written waiver of notice, a consent to holding such meeting, or an approval of the minutes thereof. The Secretary shall file all such waivers, consents and approvals with the Association's records or make them a part of the minutes of the meeting.

2.12. ACTION WITHOUT MEETING. The Board may act without a meeting if all Directors consent in writing to such action. Written consents must be filed with the minutes of the Board. Each action by written consent has the same effect as a unanimous vote of such Directors. Within three (3) days after the written consents of all Directors have been obtained, an explanation of any action taken by unanimous written consent without a meeting must be either (a) posted by the Board in a prominent place or places in the Association Property, or (b) communicated to the Owners by other means the Board determines to be appropriate.

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2.13 **QUORUM AND ADJOURNMENT.** Except as otherwise expressly provided in these Bylaws, at all meetings of the Board, a majority of the Directors constitutes a quorum for the transaction of business, and the acts of a majority of the Directors present at a meeting at which a quorum is present, are the acts of the Board. At any meeting of the Board when less than a quorum is present, the majority of those present may adjourn the meeting to another time. At any such reconvened meeting, any business which might have been transacted at the meeting as originally called, may be transacted without further notice if a quorum is present.

2.14. **COMMITTEES.** The Board may by resolution establish such committees as it desires, and may establish the purposes and powers of each such committee created. The resolution establishing the committee must (a) provide for the appointment of its members and a chairman, (b) state the purposes of the committee, and (c) provide for reports, termination and other administrative matters as the Board considers appropriate.

**ARTICLE III
OFFICERS**

3.1 **DESIGNATION.** The Association's principal officers are a President, a Vice President, a Secretary, and a Treasurer, all elected by the Board. The Board may appoint an Assistant Treasurer, an Assistant Secretary and such other officers as it determines to be necessary. Officers other than the President need not be Directors. Any person may hold more than one office. The Board shall appoint an alternate Delegate to represent the Owners in affairs of the Master Association, as required by the Bylaws of the Master Association.

3.2. **ELECTION OF OFFICERS.** The Board shall annually elect the Association's officers at the new Board's organization meeting. Each officer shall hold his office at the pleasure of the Board, until he resigns or is removed, is otherwise disqualified to serve or a successor is elected and qualified to serve.

3.3 **REMOVAL OF OFFICERS.** On an affirmative vote of a majority of the entire Board, any officer may be removed, either with or without cause, and a successor elected at any meeting of the Board. Any officer may resign at any time by giving written notice to the Board or to the President or Secretary. Any such resignation is effective on the date of receipt of such notice or at any later time specified therein. Unless specified in the notice, acceptance of the resignation by the Board is not necessary to make it effective.

3.4. **COMPENSATION.** No officer may receive any compensation for services performed in the conduct of the Association's business unless such compensation is approved by the vote or written consent of a majority of the Owners (excluding Declarant), representing a quorum of more than fifty percent (50%). However, nothing in these Bylaws precludes any officer from serving the Association in some other capacity and receiving compensation therefor, and any officer may be reimbursed for actual expenses incurred in the performance of Association duties. Appointment of any officer does not create contractual rights of compensation for services performed by such officer. No officer, employee or director of Declarant or any affiliate of Declarant may receive any compensation for service as an officer of the Association

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3.5 **PRESIDENT** The President is the chief executive officer of the Association and shall: (a) preside at all Association and Board meetings; (b) have the general powers and duties which are usually vested in the office of the President of a corporation, including but not limited to, the power to appoint committees from among the Owners as the President decides is appropriate to assist in the conduct of the Association's affairs; and (c) subject to the control of the Board, have general supervision, direction and control of the Association's business. The President is ex officio a member of all standing committees and has such other powers and duties as may be prescribed by the Board or these Bylaws.

3.6. **VICE PRESIDENT** The Vice President shall take the President's place and perform the President's duties whenever the President is absent, disabled, fails or refuses to act. If neither the President nor the Vice President is available to perform the President's duties, the Board shall appoint another member of the Board to do so on an interim basis. The Vice President has such other powers and duties as may be prescribed by the Board or these Bylaws.

3.7. **SECRETARY.** The Secretary shall: (a) keep the minutes of all meetings of the Board and of the Association at the Association's principal office or at such other place as the Board may order; (b) keep the Association's seal in safe custody; (c) have charge of such books and papers as the Board may direct; (d) in general, perform the duties incident to the office of Secretary; (e) give, or cause to be given, notices of meetings of the Owners and of the Board required by these Bylaws or by law to be given; (f) keep a record book of Owners, listing the names, mailing addresses and telephone numbers of Owners, as furnished to the Association ("**Membership Register**"); and (g) record in the Membership Register the termination or transfer of ownership by any Owner, together with the date of the transfer. The Secretary has such other powers and duties as may be prescribed by the Board or these Bylaws.

3.8. **TREASURER.** The Treasurer is the Association's chief financial officer and is responsible for Association funds. The Treasurer shall: (a) keep, or cause to be kept, full and accurate accounts and tax and business records of the Association, including accounts of all assets, liabilities, receipts and disbursements; (b) be responsible for the deposit of all funds in the name of the Association in such depositories as the Board designates, (c) disburse the Association's funds as ordered by the Board; and (d) render to the President and Directors, on request, an account of all transactions as Treasurer and of the Association's financial condition. The Treasurer has such other powers and duties as may be prescribed by the Board or these Bylaws.

**ARTICLE IV
OWNERS**

4.1. VOTING RIGHTS.

4.1.1. **General Voting Rights.** The Association has three (3) classes of Membership, as described in the Declaration. The Class A and Class B Memberships are voting Memberships. The Class C Board appointment right exists solely to appoint Directors and is not a part of the voting power of the Association. Except as provided in Section 2.3.3 above and any provision herein which expressly excludes the votes of Declarant, any provision of the Bylaws which requires the vote or written consent of a specified percentage of the Association's voting

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power before action may be undertaken (i.e., other than actions requiring merely the vote or written consent of a majority of a quorum) requires the approval of such specified percentage of (a) the Class A Membership and the Class B Membership (so long as a Class B Membership exists), and (b) both the Association's total voting power and the Association's voting power represented by Owners other than Declarant. Whenever a reference is made in these Bylaws or the Declaration to the Association's voting power, it is a reference to the voting power of the Class A and Class B Memberships and not to the Class C Board appointment right.

4.1.2 Vote to Initiate Construction Defect Claims. Commencing on the date of the first annual meeting of Owners, Declarant relinquishes control over the Association's ability to decide whether to initiate a construction defect claim under the Right to Repair Law (a "Defect Claim"). This means that Declarant, current employees and agents of Declarant, Board members who are appointed by Declarant, Board members elected by a majority of votes cast by Declarant, and all other Persons whose vote or written consent is inconsistent with the intent of the preceding sentence, are prohibited from participating and voting in any decision of the Association or Owners to initiate a Defect Claim. This Section may not be amended without the vote or approval by written ballot of at least (a) ninety percent (90%) of members of the Association (excluding Declarant), and (b) ninety percent (90%) of the Mortgagees.

4.2. MAJORITY OF QUORUM. Unless otherwise provided in the Governing Documents, any action which may be taken by the Association may be taken by a majority of a quorum of the Association's voting power.

4.3 QUORUM. Except as otherwise provided in these Bylaws, the presence in person or by proxy of at least twenty-five percent (25%) of the Association's voting power constitutes a quorum of the Membership. Owners present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, despite the withdrawal of enough Owners to leave less than a quorum, if any action taken (other than adjournment) is approved by at least a majority of a quorum. If a meeting is actually attended, in person or by proxy, by Owners having less than one-third (1/3) of the Association's voting power, then no matter may be voted on except matters which were generally described in the notice of the meeting. No action by the Owners on any matter is effective if the votes cast in favor are fewer than the minimum number of votes required by the Governing Documents to approve the action.

4.4. PROXIES. Votes may be cast in person or by proxy. Proxies must be in writing and filed with the Secretary in advance of each meeting. Every proxy is revocable and automatically ceases after completion of the meeting for which the proxy was filed. Any form of proxy or written ballot distributed by any Person to the Owners must afford the opportunity to specify a choice between approval and disapproval of each matter or group of matters to be acted on, except it is not mandatory that a candidate for election to the Board be named in the proxy or written ballot. The proxy or written ballot must provide that, when the Owner specifies a choice, the vote shall be cast in accordance with that choice. The proxy must also identify the person authorized to exercise the proxy and the length of time it will be valid. No proxy is valid with respect to a vote on any matter described in Section 7613(g) of the California Corporations Code unless the general nature of the proposal was described in the proxy.

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4.5 PLACE OF MEETINGS OF OWNERS. Meetings of the Owners shall be held in the Properties, or such other suitable place as proximate thereto as practical and convenient to the Owners, as designated by the Board.

4.6. ANNUAL MEETINGS OF OWNERS. The first annual meeting of Owners shall be held upon the earlier to occur of (i) forty-five (45) days after the Close of Escrow for the sale of fifty-one percent (51%) of the Condominiums in the Properties, or (ii) six (6) months after the Close of Escrow for the sale of the first Condominium in the Properties. Thereafter, the annual meetings shall be held on or about the anniversary date of the first annual meeting. Each first Mortgagee may designate a representative to attend all annual meetings.

4.7 SPECIAL MEETINGS OF OWNERS. The Board shall call a special meeting of the Owners: (a) as directed by resolution of a majority of a quorum of the Board; (b) by request of the President of the Association; or (c) on receipt of a petition signed by Owners representing at least five percent (5%) of the Association's total voting power. The Secretary shall give notice of any special meeting within twenty (20) days after adoption of such resolution or receipt of such request or petition. The notice must state the date, time and place of the special meeting and the general nature of the business to be transacted. The special meeting must be held not less than thirty-five (35) nor more than ninety (90) days after adoption of such resolution or receipt of such request or petition. No business may be transacted at a special meeting except as stated in the notice. Each first Mortgagee may designate a representative to attend all special meetings.

4.8 NOTICE. The Secretary shall send to each Owner of record, and to each first Mortgagee (as defined in Section 11.1 of the Declaration) who has filed a written request for notice with the Secretary, a notice of each annual or special meeting. The notice must be sent by first-class mail, at least ten (10) but not more than thirty (30) days before the meeting. The notice must state the purpose for the meeting as well as the day, hour and place where it is to be held. The notice may establish time limits for speakers and nominating procedures for the meeting. The notice must specify those matters the Board intends to present for action by the Owners, but, except as otherwise provided by law, any proper matter may be presented for action at the meeting. The notice of any meeting at which Directors are to be elected must include the names of all nominees when the notice is given to the Owners. The mailing of a notice, postage prepaid, in the manner provided in this Section, shall be considered notice served, forty-eight (48) hours after the notice has been deposited in a regular depository of the United States mail. Such notice must be posted in a conspicuous place on the Association Property and is deemed served on an Owner on posting if no address for such Owner has been furnished to the Secretary.

Notwithstanding any other provision of these Bylaws, approval by the Owners of any of the following proposals, other than by unanimous approval of those Owners entitled to vote, is not valid unless the general nature of the proposal was stated in the notice or in any written waiver of the notice: (a) removing a Director without cause; (b) filling vacancies on the Board; (c) approving a contract or transaction between the Association and one or more Directors, or between the Association and any entity in which a Director has a material financial interest; (d) amendment of the Articles; or (e) electing to wind up and dissolve the Association.

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4.9. **RECORD DATES.** The Board may fix a date in the future as a record date for determining which Owners are entitled to notice of any meeting of Owners. The record date so fixed must be not less than ten (10) nor more than sixty (60) days before the date of the meeting. If the Board does not fix a record date for notice to Owners, the record date for notice is the close of business on the business day preceding the day on which notice is given. In addition, the Board may fix a date in the future as a record date for determining the Owners entitled to vote at any meeting of Owners. The record date so fixed must be not less than ten (10) nor more than sixty (60) days before the date of the meeting. If the Board does not fix a record date for determining Owners entitled to vote, Owners on the day of the meeting who are otherwise eligible to vote are entitled to vote at the meeting.

4.10. **ADJOURNED MEETINGS** If a quorum is not present at the time and place established for a meeting, a majority of the Owners who are present, either in person or by proxy, may adjourn the meeting to a time not less than five (5) nor more than thirty (30) days from the original meeting date, at which meeting the quorum requirement is the presence in person or by proxy of Owners holding at least twenty-five percent (25%) of the Association's voting power. Such an adjourned meeting may be held without the notice required by these Bylaws if notice thereof is given by announcement at the meeting at which such adjournment is taken.

4.11. **ORDER OF BUSINESS.** Meetings of Owners must be conducted in accordance with a recognized system of parliamentary procedure or such parliamentary procedures as the Association may adopt. The order of business at all meetings of the Owners is as follows: (a) roll call to determine the voting power represented at the meeting; (b) proof of notice of meeting or waiver of notice, (c) reading of minutes of preceding meeting; (d) reports of officers, (e) reports of committees, (f) election of inspector of election (at annual meetings or special meetings held for such purpose); (g) election of Directors (at annual meetings or special meetings held for such purpose); (h) unfinished business; and (i) new business.

4.12. **ACTION WITHOUT MEETING.** Except for election of Directors, any action which may be taken at a meeting of the Owners may be taken without a meeting by written ballot of the Owners. Ballots must be solicited in the same manner as provided in these Bylaws for giving of notice of meetings to Owners. Such solicitations must specify: (a) the number of responses needed to meet the quorum requirements; (b) the percentage of approvals necessary to approve the action; and (c) the time by which ballots must be received to be counted. The form of written ballot must afford an opportunity to specify a choice between approval and disapproval of each matter and must provide that, where the Owner specifies a choice, the vote shall be cast in accordance therewith. Receipt within the time period specified in the solicitation of (i) ballots which equal or exceed the quorum which would be required if the action were taken at a meeting, and (ii) approvals which equal or exceed the number of votes which would be required for approval if the action were taken at a meeting at which the total number of votes cast was the same as the total number of ballots cast, constitutes approval by written ballot.

4.13 **CONSENT OF ABSENTEES.** The actions taken at any meeting of Owners, however called and noticed, are valid as though taken at a meeting duly held after regular call and notice, if (a) a quorum is present either in person or by proxy, and (b) either before or after the meeting, each of the Owners not present in person or by proxy signs (i) a written waiver of notice, (ii) a consent to the holding of such meeting, or (iii) an approval of the minutes thereof.

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The Secretary shall file all such waivers, consents or approvals with the corporate records or make them a part of the minutes of the meeting.

4.14 **MINUTES, PRESUMPTION OF NOTICE.** Minutes or a similar record of the proceedings of meetings of Owners, when signed by the President or Secretary, shall be presumed truthfully to evidence the matters described therein. A recitation in the minutes executed by the Secretary that proper notice of the meeting was given constitutes prima facie evidence that such notice was given.

**ARTICLE V
AMENDMENTS**

These Bylaws may be amended by the vote or written consent of Owners representing at least (a) sixty-seven percent (67%) of the voting power of each class of the Owners, and (b) sixty-seven percent (67%) of the Association's voting power represented by Owners other than Declarant; provided that the specified percentage of each class of Owners necessary to amend a specific provision of these Bylaws may not be less than the percentage of affirmative votes prescribed for action to be taken under that provision. These Bylaws may be amended by a majority of the entire Board, (i) at any time before the Close of Escrow for the sale of the first Condominium, or (ii) if the amendment is within the Board's power to adopt without Owner approval pursuant to the California Corporations Code and either (a) the proposed amendment conforms the Bylaws to California law or the requirements of VA, FHA, DRE, Fannie Mae, Ginnie Mae or Freddie Mac, or (b) the proposed amendment corrects a typographical error in the Bylaws. Any amendment to these Bylaws which materially affects matters listed in Article XI or Section 13.2 of the Declaration must be approved by the Beneficiaries of that percentage of first Mortgages on the Condominiums which is specified in the affected provision of Article XI or Section 13.2 of the Declaration, respectively. If an amendment to these Bylaws materially affects matters listed in both Article XI and Section 13.2 of the Declaration, the amendment must be approved pursuant to the requirements of both Article XI and Section 13.2.

**ARTICLE VI
MISCELLANEOUS**

6.1. **CHECKS, DRAFTS AND DOCUMENTS.** All checks, drafts, orders for payment of money, notes and other evidences of indebtedness issued in the name of or payable to the Association must be signed or endorsed in the manner and by the person or persons the Board designates by resolution, subject to the requirements of Section 2.10.6 for withdrawing money from the Association's reserve accounts.

6.2. **CONFLICTS.** If any of these Bylaws conflict with any laws of the State of California, such conflicting Bylaws shall be void on final court determination to such effect, but all other Bylaws shall remain in full force. In case of any conflict between the Articles of Incorporation and these Bylaws, the Articles of Incorporation shall control. In case of any conflict between the Declaration and these Bylaws, the Declaration shall control.

6.3. **EXECUTION OF DOCUMENTS.** The Board may authorize any officer or agent to enter into any contract or execute any instrument in the name and on behalf of the

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Association. Such authority may be general or confined to specific instances. Unless so authorized by the Board, no officer, agent, committee member or employee may bind the Association by any contract, pledge the Association's credit, or render the Association liable for any purpose in any amount.

6.4. AVAILABILITY OF ASSOCIATION DOCUMENTS.

6.4.1. Records Maintenance. The Association shall keep at its principal office (or at such other place in or near the Properties as the Board may prescribe) the Governing Documents and the Association's books of account, minutes of meetings of Owners, the Board and committees, and the Membership Register (collectively, the "*Association Documents*"), each of which shall be made available for inspection and copying by any Owner or the Owner's duly appointed representative for a purpose reasonably related to the Owner's interest as an Owner.

6.4.2. Limits on Availability The Board may establish reasonable rules regarding (a) notice to be given to the custodian of the Association Documents by the Owner desiring to make the inspection, (b) hours and days of the week when such an inspection may be made, and (c) payment of the cost of copying any of the Association Documents requested by an Owner; provided that every Director may at any reasonable time inspect all Association Documents and the physical properties owned or controlled by the Association, and make extracts and copies of documents.

6.4.3. Time of Availability The minutes, a draft copy of the minutes proposed for adoption, or a summary of the minutes, of any meeting of the Board (other than an executive session) must be available to Owners within thirty (30) days of the meeting. The minutes, proposed minutes or summary minutes must be distributed to any Owner on request and on reimbursement of the Association's cost in making that distribution.

6.4.4. Distribution to Owners. No later than ten (10) days after the Association receives written request from any Owner, the Association shall provide to that Owner a copy of each of the documents listed in California Civil Code Section 1368(a) that have been requested by the Owner. Owners must be notified in writing when the budget required in Section 2.10.1 is distributed or at the time of any general mailing to the entire Association Membership of their right to have copies of the minutes of meetings of the Board and how and where those minutes may be obtained

6.5. FISCAL YEAR. The Board shall select the Association's Fiscal Year. The Fiscal Year is subject to change as the Board determines.

**ARTICLE VII
NOTICE AND HEARING PROCEDURE**

7.1. INITIAL COMPLAINT. Persons who believe a violation of the Governing Documents has occurred may file a complaint with a Person designated by the Board on a form approved by the Board. The Board will commence the enforcement process. In its discretion, the Board may issue one or two violation letters to the Person alleged to have committed the violation ("*respondent*") or set a hearing described in Section 7.2 below. The Board may direct

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the Manager to assist the Board in any of the steps the Board chooses to take in enforcing the Governing Documents except that decisions made at hearings must be made by the Board.

7.2. **SCHEDULING HEARINGS.** A hearing before the Board to determine whether a sanction should be imposed may be initiated by the Board after receipt of at least one complaint. To initiate a hearing, the Board must deliver to the respondent a notice which includes the following:

7.2.1 **Complaint.** A written statement setting forth in ordinary and concise language the acts or omissions with which the respondent is charged,

7.2.2. **Basis for Violation.** A reference to the specific provisions of the Governing Documents which the respondent is alleged to have violated,

7.2.3. **Hearing Schedule** The date, time and place of the scheduled hearing, and

7.2.4 **Sanctions** A list of sanctions which may be imposed at the hearing.

The date for the hearing may be no less than fifteen (15) days after the date the notice of hearing is mailed or delivered to the respondent. The respondent is entitled to attend the hearing, submit a statement of defense to the Board in advance of the hearing, or present a statement of defense and supporting witnesses at the hearing. If the respondent does not attend the hearing, the respondent waives these rights

7.3. **CONDUCT OF HEARING.** The Board shall conduct the hearing in executive session, affording the respondent a reasonable opportunity to be heard. Before a sanction is effective, proof of notice and the invitation to be heard must be placed in the minutes of the meeting. Such proof is adequate if a copy of the notice together with a statement of the date and manner of delivery is entered by the Association officer or Board member who mailed or delivered such notice. The record of the meeting must contain a written statement of the results of the hearing and the sanction, if any, imposed

7.4. **IMPOSITION OF SANCTIONS.** After affording the respondent an opportunity for a hearing before the Board, the Board may impose any one or more of the following sanctions: (a) levy a Special Assessment as authorized in the Declaration, (b) suspend or condition the right of any respondent who is not a Declarant to use any recreational facilities the Association owns, operates or maintains commencing on a date in the future selected by the Board; (c) suspend the voting privileges of any respondent who is not a Declarant, (d) enter upon a Condominium to perform maintenance which, according to the Declaration, is the responsibility of the respondent, or (e) record a notice of noncompliance if allowed by law. Any suspension of Membership privileges may not be for a period of more than thirty (30) days for any noncontinuing infraction, but in the case of a continuing infraction (including nonpayment of any assessment after the same becomes delinquent) may be imposed for so long as the violation continues. Written notice of any sanctions to be imposed must be delivered to the respondent personally, by any system or technology designed to record and communicate messages, facsimile, electronic mail, or other electronic means, via first class mail or certified mail return receipt requested, or any combination of the foregoing. No action against the respondent arising

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from the alleged violation may take effect less than five (5) days after the hearing. No sanction imposed on the Declarant may interfere with Declarant's exercise of the rights reserved in Article XV of the Declaration

7 5. **LIMITS ON REMEDIES.** The Board's failure to enforce the Governing Documents does not waive the right to enforce them. The remedies provided by the Governing Documents are cumulative and not exclusive. However, any individual Owner must exhaust all available internal Association remedies prescribed by the Governing Documents before that Owner may resort to a court of law for relief with respect to any alleged violation of the Governing Documents by another Owner

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CERTIFICATE OF SECRETARY

I, the undersigned, certify that:

1 I am the duly elected and acting Secretary of AQUA 388 COMMUNITY ASSOCIATION, a California nonprofit mutual benefit corporation ("*Association*"); and

2. The foregoing Bylaws comprising 22 pages including this page constitute the Bylaws of the Association duly adopted by Consent of Directors in Lieu of First Meeting dated July 16, 2004.

IN WITNESS WHEREOF, I have hereunto subscribed my hand and affixed the seal of the Association effective this 16th day of July, 2004.

Gloria Larkan, Secretary

(SEAL)

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EXHIBIT C**OWNER MAINTENANCE RESPONSIBILITIES**

ITEM	OWNER RESPONSIBILITY
UNIT OR BUILDING EXTERIOR	
Unit entry door	Maintain interior surfaces, and all hardware, glass and the handle and lock mechanism. Replace door as necessary. Owner maintenance obligations do not include responsibility for painting, staining or waterproofing exterior surface.
Exclusive Use Area – Air conditioning equipment serving a single Unit	Maintain and repair.
Exclusive Use Area Balcony	Sweep balcony clean and keep free of debris and trash. Replace lamps in exterior lighting fixtures on balcony. No Owner is responsible for the periodic structural repair, resurfacing, sealing, caulking, replacement or painting of the ceiling, floor or wall surfaces in the Exclusive Use Area balcony so long as the need for such painting, repair or replacement is not caused by the willful or negligent acts of the Owner or his Family, tenants or guests.
Sliding glass doors and screen doors	Maintain all portions, including weather proofing, sheathing, frame, and lock mechanism.
Mailbox	Owner is responsible for replacement of key and lock, in the event of lost key.
Windows	Maintain all glass, any screens and lock mechanism. The Association shall maintain frame, weather stripping and caulking. Association will wash window exteriors in accordance with its adopted Budget. Clean all accessible portions of the windows.
Forced-air unit	Maintain; provided, however, that Owner is obligated to hire Association, or to hire a contractor approved by the Association to perform any Maintenance of forced-air equipment that is located in the Association Property or the Exclusive Use Area balcony.

Exterior Building Lighting	Maintain light fixtures controlled by switches in Unit or separately metered to Unit. Replace light bulbs as necessary.
UNIT INTERIOR	
Unit interior	Maintain all interior doors, interior wall surfaces (including paint), drywall, cabinets, floor coverings, ceilings, permanent fixtures, appliances, toilets, smoke detectors, washing machine water hoses, door frames, and door hardware. However, no bearing walls, ceilings, floors or other structural or utility bearing portions of the buildings housing the Units may be pierced or otherwise altered or repaired without approval from the Design Review Committee. No Person may replace originally installed floor or wall coverings except with materials that have the same or better noise mitigation properties. The Committee shall review and approve such materials before installation, provided that the Committee's review shall be limited to the suitability of the materials for noise mitigation purposes.
Water, gas and sewer pipes, water pressure regulator, water heater, plumbing outlets and fixtures, ducts (HVAC, dryer, stove, oven), electrical, circuit breakers, electrical outlets and fixtures.	Maintain portions which are submetered to the Unit, or located within, or otherwise exclusively serve Unit (i.e., from the interior surface of the Unit's walls to the appliances, and kitchen and bathroom facilities within the Unit). An Owner may plunge blocked kitchen and bathroom facilities in his Unit, but may not use a snake, or cause a snake to be used, in any pipes unless instructed to do so by the Association. Owner is obligated to hire Association, or to hire a contractor approved by the Association to perform any maintenance of water, gas and sewer pipes located within the Unit.
UTILITIES	
Telephone Wiring	Maintain portions within or which exclusively serve Unit.
Gas, Telephone, Electric and Water Service	Owner responsible for obtaining and having serviced.

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EXHIBIT D

ITEMS OF COMMON EXPENSES WHICH SHALL NOT BE ASSESSED EQUALLY AMONG THE CONDOMINIUMS

The following Common Expenses will not be assessed equally among all the Condominiums

- All insurance premiums
- Reserves for roof repair and replacement
- Reserves for painting of building exteriors
- Common Gas
- Common Water
- Reserves for Hot Water Equipment

Variable Assessment: The variable Common Expense components of the Annual Assessment shall be allocated and assessed against all Condominiums in proportion to the Livable Square Footage of each Unit. The share of the variable Common Expenses allocated to each Unit (the "*Variable Assessment*") shall be determined as follows

- 1 Add the total of the budgeted annual variable Common Expenses described above to derive the total annual "Variable Cost;" then
- 2 Divide the total annual Variable Cost by the aggregate Livable Square Footage of all Units, to determine the annual "Variable Cost Factor;" then
- 3 To determine the Variable Assessment portion of the Annual Assessment for each Unit, multiply the Variable Cost Factor by the Livable Square Footage of each Unit.

Livable Square Footage: The Livable Square Footage of each Unit shall be the square footage stated below. The Unit Type Livable Square Footage is only an approximation of the actual interior area of each Unit. Actual square footage will vary from the Livable Square Footage, but any such variance shall not be considered in calculating the Variable Assessment.

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Plan	Livable Square Footage
1A	640
1B	746
1C	678
2A	1115
2B	1057
2C	1068
2D	1158
2E	1121
T1A	1445
T1B1	1647
T1B2	1683
T1B3	1587
T1C	1434
T2A	2259
T2B	2094
T2C	2285
T2D	2490
T2E	2504

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Pages:
0006

Recorded/Filed in Official Records
Recorder's Office, Los Angeles County,
California

11/10/14 AT 08:00AM

FEES:	30.00
TAXES:	0.00
OTHER:	0.00
PAID:	30.00



LEADSHEET



20141100110008

00009830185



006490255

SEQ:
07

DAR - Title Company (Hard Copy)



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2

RECORDING REQUESTED BY:

FIRST AMERICAN TITLE COMPANY

- ASD

WHEN RECORDED, MAIL TO:

JACKSON, DeMARCO, TIDUS &
PECKENPAUGH (JML)
2030 Main Street, Suite 1200
Irvine, CA 92614

4415367

(Space Above for Recorder's Use)

**FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS,
RESTRICTIONS AND RESERVATION OF EASEMENTS
FOR
AQUA 388**

THIS FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND RESERVATION OF EASEMENTS FOR AQUA 388 ("*First Amendment*") is entered into as of the date written below by **350 OCEAN TOWER I, L.L.C.**, a Delaware limited liability company ("*Declarant*").

RECITALS

A. Declarant is "Declarant" under that Declaration of Covenants, Conditions, Restrictions and Reservation of Easements for Aqua 388 (as further amended from time to time, collectively, the "Declaration") which was Recorded on July 20, 2005, as Instrument No. 2005-1708894 of Official Records of Los Angeles County, California.

B. The following real property ("Properties") located in the City of Long Beach, Los Angeles County, State of California, was annexed to the coverage of the Declaration:

Lot 1 of Tract No. 53405, as shown on a Map recorded in Book 1265, at Pages 83 to 86, inclusive, of Maps, in the Office of the Los Angeles County Recorder.

C. *Exhibit C* to the Declaration describes the division of maintenance responsibility for certain systems and other improvements in the Units and elsewhere in the Properties. The sections of *Exhibit C* which concern maintenance of Unit systems, utility fixtures and plumbing contain errors.

D. As of the date hereof, Declarant continues to own Units in the Properties. According to Section 13.2.7 of the Declaration, as long as Declarant owns any portion of the Properties, Declarant may unilaterally amend, replace or substitute any exhibit or portion thereof to correct errors, and Declarant now desires to amend *Exhibit C* to the Declaration make such corrections.

NOW, THEREFORE, Declarant declares as follows:

1. **EXHIBIT C TO DECLARATION.** *Exhibit C* to the Declaration is hereby deleted in its entirety and replaced with Exhibit C attached hereto in order to correct errors in and to clarify the

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existing discussion of the maintenance of water, gas and sewer pipes, water pressure regulator, water heater, plumbing outlets and fixtures, ducts (HVAC, dryer, stove, oven), electrical, circuit breakers, electrical outlets and fixtures.

2. **RATIFICATION.** Except as expressly modified herein, the capitalized terms used in this First Amendment shall have the meanings given them in the Declaration. Except as amended by this First Amendment, the Declaration is ratified and affirmed by Declarant.

This First Amendment is dated for identification purposes ~~May~~ Sept. 25, 2014.

350 OCEAN TOWER I, L.L.C.,
a Delaware limited liability company

By: _____

Print Name: Gordon Ip

An authorized signatory

Declarant

Texas
STATE OF ~~CALIFORNIA~~
COUNTY OF ~~LOS ANGELES~~ Dallas

*SEE
Attached*

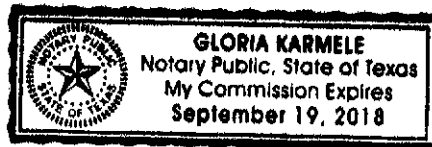
On Sept. 25, 2014, before me, Gordon Ip
(here insert name and title of the officer)

personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person 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.

Gloria Karmel
SIGNATURE



(SEAL)

✓

existing discussion of the maintenance of water, gas and sewer pipes, water pressure regulator, water heater, plumbing outlets and fixtures, ducts (HVAC, dryer, stove, oven), electrical, circuit breakers, electrical outlets and fixtures.

2. **RATIFICATION.** Except as expressly modified herein, the capitalized terms used in this First Amendment shall have the meanings given them in the Declaration. Except as amended by this First Amendment, the Declaration is ratified and affirmed by Declarant.

This First Amendment is dated for identification purposes August _____, 2014.

350 OCEAN TOWER I, L.L.C.,
a Delaware limited liability company

By: _____

Print Name: _____

An authorized signatory

Declarant

Texas
STATE OF ~~CALIFORNIA~~
COUNTY OF ~~LOS ANGELES~~ Dallas

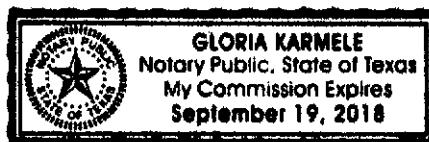
On Oct. 30, 2014, before me, Gloria Karnele, Notary Public,
(here insert name and title of the officer)

personally appeared Gordon Ip, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person 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.

Gloria Karnele
SIGNATURE



(SEAL)

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EXHIBIT C
OWNER MAINTENANCE RESPONSIBILITIES

ITEM	OWNER RESPONSIBILITY
UNIT OR BUILDING EXTERIOR:	
Unit entry door	Maintain interior surfaces, and all hardware, glass and the handle and lock mechanism. Replace door as necessary. Owner maintenance obligations do not include responsibility for painting, staining or waterproofing exterior surface.
Exclusive Use Area – Air conditioning equipment serving a single Unit	Maintain and repair.
Exclusive Use Area Balcony	Sweep balcony clean and keep free of debris and trash. Replace lamps in exterior lighting fixtures on balcony. No Owner is responsible for the periodic structural repair, resurfacing, sealing, caulking, replacement or painting of the ceiling, floor or wall surfaces in the Exclusive Use Area balcony so long as the need for such painting, repair or replacement is not caused by the willful or negligent acts of the Owner or his Family, tenants or guests.
Sliding glass doors and screen doors	Maintain all portions, including weather proofing, sheathing, frame, and lock mechanism.
Mailbox	Owner is responsible for replacement of key and lock, in the event of lost key.
Windows	Maintain all glass, any screens and lock mechanism. The Association shall maintain frame, weather stripping and caulking. Association will wash window exteriors in accordance with its adopted Budget. Clean all accessible portions of the windows.
Forced-air unit	Maintain; provided, however, that Owner is obligated to hire Association, or to hire a contractor approved by the Association to perform any Maintenance of forced-air equipment that is located in the Association Property or the Exclusive Use Area balcony.
Exterior Building Lighting	Maintain light fixtures controlled by switches in Unit or separately metered to Unit. Replace light bulbs as necessary.
UNIT INTERIOR:	
Unit interior	<p>Maintain all interior doors, interior wall surfaces (including paint), drywall, cabinets, floor coverings, ceilings, permanent fixtures, appliances, washing machine water hoses, door frames, and door hardware.</p> <p>However, no bearing walls, ceilings, floors or other structural or utility bearing portions of the buildings housing the Units may be pierced or otherwise altered or repaired without approval from the Design Review Committee.</p> <p>No Person may replace originally installed floor or wall coverings except with materials that have the same or better noise mitigation properties. The Committee shall review and approve such materials before installation; provided that the Committee's review shall be limited to the suitability of the materials for noise mitigation purposes.</p>
Unit Systems and Appliances	Maintain systems and appliances in the Owner's Unit, including (all as applicable) water pressure regulator, backflow valve, water heater, furnaces, ducts, built-in appliances (microwave, dishwasher, range, ovens), set-in appliances (refrigerator, dryer, washer)

ITEM	OWNER RESPONSIBILITY
Utility Service (Gas and Electric)	<p>Maintain portions of gas lines and valves in the Unit airspace, to extent not maintained by utility provider or Association. Maintain electrical panel, breakers, outlets, switches and in-wall wiring in the Unit airspace.</p> <p>Association responsible to maintain all gas lines and electrical service lines outside Unit airspace, and those serving Neighborhood Association Property or more than one Unit</p>
Plumbing (Fixtures in Unit, Domestic Water Service and Sewer Service)	<p>Immediately report water leaks, sewer backups and overflowing tubs and sinks to the Association. Maintain in-Unit plumbing fixtures, including sinks, toilets, bath, shower, faucets, sink hardware, and drain lines for washing machine and dishwasher and gas line and vent line (if any) for dryer.</p> <p>Owners and tenants must regularly inspect water supply lines/hoses connected to washing machine, toilets, faucets and dishwasher for leaks and replace when necessary at Owner's expense.</p> <p>Do not leave running faucets or toilets unattended.</p> <p>Owners are also responsible for removing blockages from all drains and sewer lines serving the Unit through laterals to the main line in the Building or as directed by the Association.</p> <p>Owners are responsible for damage to the Unit, to other Units and to Association Property to extent caused by Owner or tenant failure to prevent or stop leaks or overflows in the Unit and for damage caused by negligent plumbing repairs.</p> <p>Residents who plan to leave the Unit unoccupied for more than 24 hours should shut off water supplies to fixtures and appliances to prevent leaks during their absence.</p> <p>Plumbers hired by Owners must be approved by Association.</p> <p>Keep sources of direct heat away from fire sprinklers. Do not cover or disable fire sprinklers. Owners should report any leaking or malfunctioning fire sprinklers to the Association or to its fire sprinkler service provider if one has been designated.</p> <p>Association responsible to maintain pipes and other Association Property fixtures serving Neighborhood Association Property or more than one Unit.</p> <p>The Board has the right and power to promulgate Rules and Regulations to supplement or revise the foregoing requirements without having to amend this Declaration.</p>
UTILITIES	
Telephone Wiring	Maintain portions within or which exclusively serve Unit.
Gas, Telephone, Electric and Water Service	Owner responsible for obtaining and having serviced.

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06 0885016

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RECORDER'S OFFICE
LOS ANGELES COUNTY
CALIFORNIA**

04/24/06 AT 08:00am

TITLE(S) : _____



FEE

FEE \$19	M
DAF \$2	
C-20	5

D.T.T.

CODE

20

CODE

19

CODE

9 _____

Assessor's Identification Number (AIN)

To be completed by Examiner OR Title Company in black ink.

Number of AIN's Shown

✓

RECORDING REQUESTED BY:

06 0885016

FIRST AMERICAN TITLE INSURANCE
COMPANY OF LOS ANGELES

WHEN RECORDED, MAIL TO:

JACKSON, DeMARCO, TIDUS
& PECKENPAUGH (JML)
2030 Main Street, 12th Floor
Irvine, CA 92614

(Space Above for Recorder's Use)

**DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS
REGARDING HARD-SURFACE FLOORING**

AQUA 388

7278-17-42

04/24/06

SUPPLEMENTAL DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS REGARDING HARD-SURFACE FLOORING

AQUA 388

THIS SUPPLEMENTAL DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS REGARDING HARD-SURFACE FLOORING ("**Declaration**") is made by **350 OCEAN TOWER I, L.L.C.**, a Delaware limited liability company ("**Declarant**"), to be effective as of its recordation.

P R E A M B L E:

A. Declarant is the record owner of real property in the City of Long Beach, County of Los Angeles, State of California, described as follows:

Lot 1 of Tract No. 53405, as shown on a Subdivision Map, Recorded in Book 1265 at Pages 83 to 86, inclusive, of Maps, in the Office of the Los Angeles County Recorder (the "**Community**").

B. The Community is being developed as a planned residential development known as "Aqua 388."

C. Declarant is the "Declarant" under the Declaration of Covenants, Conditions, Restrictions and Reservation of Easements for Aqua 388, which was recorded against the Community on July 20, 2005, as Instrument No. 05-1708894, all in Official Records. Capitalized terms used in this Supplemental Declaration shall have the meanings given them in the Declaration, unless otherwise defined hereon.

D. This Supplemental Declaration is a "Supplemental Declaration" as defined in the Declaration. Pursuant to Section 1.1.59 of the Declaration, Declarant has elected to Record this Supplemental Declaration prior to the first Close of Escrow in the Community to supplement Sections 2.6.2 and 5.3.1 and Exhibit C of the Declaration with restrictions governing future replacements of hard-surface flooring materials and underlayments. The restrictions in this Supplemental Declaration are intended to apply to all Units in the Community.

DECLARANT HEREBY DECLARES AS FOLLOWS:

1. **SPECIFIED UNDERLAYMENT MATERIALS.** Declarant has installed in certain rooms of each Unit wood, ceramic or slate flooring, together with underlayment materials specified in *Exhibit A* ("**Specified Underlayments**"), with the goal of minimizing the transmission of noise between neighboring Units. After installation in test locations in the Building, the Specified Underlayments were field-tested by an independent testing agency and determined to provide acceptable noise mitigation when paired with the hard surface flooring originally installed by Declarant. Declarant hereby declares that the field test results stated in *Exhibit A* for the tested slate

and marble flooring/underlayment combinations as originally installed by Declarant (collectively, the “*Original Hard Surface Materials*”) establish a minimum performance standard that all Owner-installed hard surface flooring and underlayments must meet or exceed.

2. **RESTRICTIONS ON REPLACEMENT.** This Section 2 supplements Section 5.3.1 of the Declaration as it applies to Applications to replace Original Hard Surface Materials with new hard surface flooring and underlayment. Owners are advised to leave in place the Original Hard Surface Materials as originally installed by Declarant. No Owner or other Person may replace any of the components of the Original Hard Surface Materials unless the substitute hard surface flooring material and underlayment, when installed, provides noise mitigation that is as good as or better than the Original Hard Surface Materials. Therefore, each Owner agrees to comply with all of the following:

2.1. **Application Procedure for Hard Surface Flooring.** Before installation of replacement hard surface flooring materials, the Applicant shall include in the Application such information as the Design Review Committee deems necessary to evaluate the proposed flooring and underlayment, which may include written documentation from a licensed engineer, architect or other consultant with qualifications reasonably acceptable to the Committee that the stated noise-mitigating properties of the proposed hard surface flooring and underlayment are the same as or better than the Original Hard Surface Materials.

2.2. **Compliance with Minimum Performance Standards.** Each Owner, by accepting a deed to a Unit, accepts and agrees to comply with all of the following:

2.2.1. No Person may install in any Unit any hard surface floor material or underlayment in the place of the Original Hard Surface Combination if the substitute floor material/underlayment does not provide at least the same level of noise mitigation as that provided by the Original Hard Surface Materials.

2.2.2. Manufacturer’s ratings stated in flooring or underlayment packaging inserts or in other materials are not necessarily predictive of actual noise mitigation following installation in the Building. Therefore, only post-installation field testing by an independent testing agency is deemed to be conclusive of actual performance.

2.3. **Post-installation Testing.** If the Committee permits an Applicant to install substitute hard surface flooring in the Unit, the Applicant shall permit post-installation testing of the substitute flooring/underlayment assembly according to the test protocols specified on *Exhibit A*. The testing shall be conducted at the Owner’s sole expense by a qualified testing agency specified by the Committee. The test results shall be provided simultaneously to the Committee and to the Owner, and the results shall be deemed to be conclusive. If the post-installation testing discloses that the replacement

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flooring and underlayment as installed does not perform the same as, or better than the Original Hard Surface Materials, then the Committee may require that the materials be removed at the Owner's sole expense and replaced at the Owner's sole expense with materials identical to those installed by Declarant. If the identical materials are not available, the Committee shall have the power to require the installation of other materials that are substantially similar to, or (within reason) better than the materials originally installed by Declarant.

2.4. **No Waiver.** Declarant makes no representation or warranty that any of the Original Hard Surface Materials as installed in the Building will meet the standards described in *Exhibit A*. The failure of any particular Original Hard Surface Materials as originally installed by Declarant to meet any of the standards described in *Exhibit A* does not excuse any Owner from fully complying with the requirements of this Supplemental Declaration.

3. **COVENANT TO DISCLOSE TO RESALE BUYERS.** Declarant agrees to disclose to Buyers the hard-surface flooring requirements as described above.


4. **AMENDMENT AND DURATION.** This Supplemental Master Declaration may be amended or terminated only by complying with the applicable requirements of Articles XIII and XV of the Declaration. Unless amended or terminated, this Supplemental Declaration shall continue in full force and effect for so long as the Declaration remains in effect.

5. **MISCELLANEOUS.** The provisions of this Supplemental Declaration shall run with all of the Community, shall be binding upon all Persons having or acquiring any interest in the Community, or any part thereof, shall inure to the benefit of and burden every portion of the Community, and any interest therein, and shall inure to the benefit of, be binding upon, and may be enforced by any Owner, Declarant, each successor in interest of Declarant, the Association, and their successive owners and assigns. Except as supplemented hereby, the Declaration shall remain in full force and effect.

6. **EXHIBITS.** All exhibits to this Supplemental Declaration are incorporated herein by this reference..

Declarant has executed this Declaration on November 21, 2005.

350 OCEAN TOWER I, L.L.C.,
a Delaware limited liability company

By: 
Gordon H. W. Ip, its Sole Manager

04/24/06

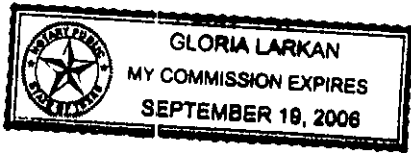
Declarant

STATE OF Texas)
~~CALIFORNIA~~)
COUNTY OF Dallas) ss.

On November 21, 2005, before me, Gloria Larkan ^{Notary Public}, personally appeared Gordon H.W. Ip, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Gloria Larkan
Notary Public in and for said State



04/24/06