

Recording Requested By:
937 PROFESSIONAL CENTER OWNERS ASSOCIATION

When Recorded Return To:



**RESTATED DECLARATION of COVENANTS, CONDITIONS AND
RESTRICTIONS**

of

LA CASA DE SANTA MARIA

RECITALS

THIS DECLARATION, made on the date set forth in this instrument by Declarants, is made with reference to the following facts:

A. *Location of the Property.* Declarants are all Owners of a certain piece of real property (the "Property") located in the City of Santa Maria, County of Santa Barbara, State of California, more particularly described as Lot 1 of La Casa de Santa Maria of Commercial Tract 5318 on that certain Map, filed for record in the Office of the Recorder of Santa Barbara County, California in Book 126, pages 40 to 41 inclusive, more commonly known as 937 East Main Street, Santa Maria, California.

B. *Intention.* Declarants intend for this Declaration to supercede all previous Declaration(s) for the Property. Declarants are making this Declaration to more accurately reflect the provisions of the Davis-Stirling Common Interest Development Act (the "Act") of 1985 and its amendments, and to clarify any ambiguities in previous Declaration(s).

C. *Owner's Interest.* The development shall be referred to as the "Project" as defined in paragraph 1.28 of this Declaration. The Project was developed in one phase and is complete.

Each Owner of a Condominium received a separate interest in an individual

Condominium Unit and an undivided one-sixteenth (1/16) in common in the Common Area. Each Condominium shall have appurtenant to it a membership in the 937 PROFESSIONAL CENTER OWNERS ASSOCIATION, an unincorporated association.

D. Mutually Beneficial Restrictions. Declarants intend by this document to impose upon the Project mutually beneficial restrictions under the general plan of improvement for the benefit of all Owners of Condominiums.

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

ARTICLE I

DEFINITIONS

1.1 *Articles.* “Articles” means the Articles of Association of 937 PROFESSIONAL CENTER OWNERS ASSOCIATION, as amended from time to time.

1.2 *Assessment.* “Assessment” means that portion of the cost of maintaining, improving, repairing, operating, and managing the Project that is to be paid by each Owner as determined by the Association, and includes regular and special assessments.

1.3 *Association.* “Association” means the owners association which shall be 937 PROFESSIONAL CENTER OWNERS ASSOCIATION, an unincorporated association, the Members of which shall be Owners of the Condominiums of the Project.

1.4 *Board of Directors.* “Board of Directors” means the governing body of the Association.

1.5 *Bylaws.* “Bylaws” means the bylaws of the Association, as amended from time to time.

1.6 *Common Area.* “Common Area” means all of the Project excepting all the Condominiums therein granted.

1.7 *Common Facilities.* “Common Facilities” means any improvements constructed in the Common Area.

1.8. *Common Expenses*. “Common Expenses” means any actual and estimated expenses of maintaining, repairing, operating and replacing the Common Area for that purpose as determined by the Board of Directors, and all sums designated Common Expenses by or pursuant to the Condominium Documents. No reserves are required as set forth in paragraph 5.3.A. of this Declaration.

1.9. *Common Interest*. “Common Interest” means the proportionate undivided interest in the Common Area that is part of each Condominium as set forth in this Declaration.

1.10. *Condominium*. “Condominium” means an estate in real property as defined in California Civil Code sections 783 and 1351(f), consisting of an undivided interest in common in a portion of the Project and a separate interest in space called a Unit.

1.11. *Condominium Documents*. “Condominium Documents” means the same as the “Project Documents”.

1.12. *Condominium Plan*. “Condominium Plan” means the recorded plan of the Condominiums built on the Property of the Project, which plan identifies the Common Area and each separate interest pursuant to California Civil Code section 1351. A copy of this plan was recorded in Book 134, Pages 68 through 73, inclusive, of Condominium Maps in the Office of the Recorder of Santa Barbara County.

1.13. *Declarants*. “Declarants” means the same as “Owners”.

1.14. *Declaration*. “Declaration” means this Restated Declaration, as amended or supplemented from time to time.

1.15. *Eligible Holder Mortgages*. “Eligible Holder Mortgages” means mortgages held by “Eligible Mortgage Holders”.

1.16. *Eligible Insurer or Guarantor*. “Eligible Insurer or Guarantor” means an insurer or governmental guarantor of a First Mortgage who has requested notice of certain matters from the Association in accordance with paragraph 9.5.C. of this Declaration.

1.17. *Eligible Mortgage Holder*. “Eligible Mortgage Holder” means a First Lender who has requested notice of certain matters from the Association in accordance with paragraph 9.5.C. of this Declaration.

1.18. *First Lender*. “First Lender” means any person, entity, bank, savings and loan institution, insurance company, or financial institution holding a recorded First Mortgage on any Condominium.

1.19. *First Mortgage*. “First Mortgage” means any recorded mortgage made in good faith and for value on a Condominium with first priority over other mortgages on that Condominium.

1.20. *Foreclosure*. “Foreclosure” means the legal process by which the mortgage property of a borrower in default under a mortgage is sold, and the borrower’s interest in that property is sold, pursuant to California Civil Code section 2924 et seq., or sale by the court pursuant to California Code of Civil Procedure section 725a et seq., and any other applicable law.

1.21. *Map*. “Map” means that Parcel Map filed in Book 126 of Maps at pages 40 to 41 inclusive, in the records of the Santa Barbara County.

1.22. *Member*. “Member” means a person entitled to membership in the Association as provided by this Declaration.

1.23. *Mortgage*. A deed of trust as well as a mortgage, both of which are security for the performance of an obligation.

1.24. *Mortgagee*. “Mortgagee” includes a beneficiary or a holder of a deed of trust as well as a mortgagee.

1.25. *Mortgagor*. “Mortgagor” includes the trustor of a deed of trust as well as a mortgagor.

1.26. *Owner*. “Owner” means the record holder of title to a Condominium in the Property. This includes any person having fee simple title to any Condominium, but excludes persons, entities or trusts having any interest merely as security for the performance of an obligation. If a Condominium is sold under a contract of sale and the contract of sale is recorded, the purchaser, rather than the fee owner, shall be considered the Owner from the date the Association receives written notice of the recorded contract.

1.27. *Person*. “Person” means a natural person, a corporation, a partnership, a trust, or other legal entity

1.28. *Project*. “Project” means all of the real property subject to this Declaration as described on the Map and all improvements on the real property.

1.29. *Project Documents*. “Project Documents” means this Declaration, as amended from time to time, together with the other basic documents used to create and govern the Project, including the Map, the Articles, the Bylaws, and the Condominium Plan (but excluding unrecorded Rules adopted by the Board of Directors or the Association).

1.30. *Restricted Common Area*. “Restricted Common Area” means those portions of the Common Area set aside for exclusive use of a Unit Owner or Owners.

1.31. *Rules*. “Rules” means the rules adopted from time to time by the Association pursuant to paragraph 6.2D of this Declaration.

1.32. *Unit*. "Unit" means the elements of the Condominium, as defined in paragraph 2.2A of this Declaration that are not owned in common with the Owners of other Condominiums in the Property.

Each Unit is identified by separate number on the Condominium Plan.

ARTICLE II

DESCRIPTION OF LAND AND IMPROVEMENTS, DIVISION OF PROPERTY, AND CREATION OF PROPERTY RIGHTS

2.1. *Description of Property*. The Project is a Condominium Project consisting of a rectangular parcel of land improved by one (1) office building, the Condominiums totaling sixteen (16) in number, and all other improvements located on the land.

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

A. *Units*. The boundaries of each of the Units shall be as separately shown and as set forth in the Condominium Plan on file for the property in the Condominium Plan as recorded in Book 134, Pages 68 through 73, inclusive, of Condominium Maps in the Office of the Recorder of Santa Barbara County.

B. *Common Area*. Each Condominium Owner shall have, as appurtenant to his or her Unit, an equal undivided one-sixteenth (1/16) interest in the Common Area which consists of the entire Project excepting the Condominiums. The Common Interest appurtenant to each Unit is declared to be permanent in character and cannot be altered without the consent of all the Owners, as expressed in an amended Declaration. The undivided Common Interest cannot be separated from the Unit, and any conveyance or transfer of the Unit shall include the undivided Common Interest, the Owner's membership in the Association, and any other benefits or burdens appurtenant to that Owner's Condominium.

C. *Restricted Common Area*. There shall be no Common Area set aside and allocated for the exclusive use of any Owner of any Condominium.

2.3 *Exclusive Ownership and Possession by Owner*. Each Owner shall be entitled to exclusive ownership and possession of his or her Condominium. An Owner shall not be deemed to own the undecorated and/or upper top story ceilings, windows, and doors bounding an individual Condominium. An Owner shall be deemed to own the utilities running through the Common Area structure surrounding the Owner's Condominium which serves said Condominium and be responsible for the maintenance for such utilities in accordance with paragraph 9.6 of this Declaration.

2.4. *Easement of Enjoyment*. Every Owner and Member shall have the right and easement of enjoyment and use of the Common Area.

2.5. *Delegation of Use.* Any Member may delegate his or her right of enjoyment to the Common Area facilities to persons who are actually occupying that Owner's Condominium and who are members of that Owner's staff, or that Owner's invitees, guests, tenants or contract purchasers. The guests of a legal or equitable Owner of lessees shall be entitled to use of the Common Area, subject to such Rules as the Board of Directors may adopt.

2.6. *Encroachments.* Each Condominium is hereby declared to have an easement over the Common Area for the purpose of accommodating any encroachment due to engineering or surveying errors, errors in overhangs and projections in original construction, or for any causes not due to willful misconduct of an Owner or Owners. There shall be, in addition, valid and appropriate easements for the maintenance of such encroachments.

2.7. *Association's Easement and Grant of Easements.* The Association shall have an easement over, under and through the Common Area and each Condominium where necessary for any construction, maintenance, repair or other functions required of the Association by this Declaration. The Association shall have the right to grant exclusive and non-exclusive, and specific as well as blanket, easements in, on, over, under, and through the Common Area for all utility services and purposes.

2.8. *Parking.* All Common Area parking spaces shall remain permanently available to Owners, tenants, clients, patients and employees with the exception of handicap parking spaces which shall be provided according to the City of Santa Maria ordinance. All handicapped parking spaces shall remain permanently available to handicapped Owners, tenants, clients, patients, and employees. "Handicapped" is defined by the Americans Disabilities Act.

The Board of Directors may adopt Rules which may designate parking spaces for non-handicapped Unit Owners, tenants and their employees.

2.9. *Street Business Signs.* There shall be a sign facing Main Street which identifies the building as "937 Professional Center". The design, shape, color and style of the street business signs shall be addressed in paragraph 13.4 of the Bylaws.

2.10. *Common Area Signs.* There shall be no advertising signs, billboards or unsightly objects placed upon the building, in windows, or in the Common Area with the exception of conforming signs identifying businesses on Condominium doors, or painted logos in neutral colors, as determined by the Board of Directors, in Condominium windows. Only one standard size "For Sale", "For Rent" or "For Exchange" sign no larger than two feet by three feet shall be allowed per Condominium.

2.11. *Rights of Entry and Use.* The Units and Common Area shall be subject to the following rights of entry and use:

A. The access rights of the Association to maintain, repair, or replace improvements or property located in the Common Area as described in paragraph 6.2.E.

of this Declaration.

B. The rights of the Owners and the Association to install, maintain, repair, or replace utilities as described in Article VII of this Declaration

C. The encroachment easements described in paragraph 2.6 of this Declaration.

D. The rights of Owners to make improvements or alterations authorized by California Civil Code section 1360(a)(2), subject to the provisions of paragraph 6.2.J. of this Declaration to the extent applicable.

2.12. *Partition Prohibited.* The Common Area shall remain undivided as set forth in paragraph 2.2.B. of this Declaration. Except as provided by California Civil Code section 1359 or authorized under paragraphs 8.3 of this Declaration, no Owner shall bring any action for partition of the Common Area, it being agreed that this restriction is necessary in order to preserve the rights of the Owners with respect to the operation and management of the Project. Judicial partition by sale of a single Condominium owned by two or more persons and division of the sale proceeds is not prohibited by this paragraph 2.12.

ARTICLE III

USES OF THE PROPERTY

3.1. *Office Use and Obligation to Rebuild.* The Project is hereby restricted to office use as specified in paragraph 3.2.A. of this Declaration. No buildings or structures shall be erected or placed, temporarily or permanently, upon the Project other than office condominiums substantially the same as those originally erected thereon and the Common Facilities used in connection therewith.

In the event of damage or destruction of one or more Condominiums by fire or other casualty, or any Common Facility used in connection therewith, unless prohibited by law, the Association shall reconstruct the same substantially in accordance with the original plans and specifications to the end that the exterior appearance resembles that obtaining prior to such damage or destruction in accordance with the provisions of paragraph 8.2 of this Declaration.

3.2. *Restriction on Use.* The property shall be subject to the following restrictions:

A. Each Condominium shall be used as an office in compliance with applicable zoning regulations. Such use, however, shall be restrictive to professional purposes such as lawyers, architects, interviewers, surveyors, counselors, doctors, dentists, and similar professions and occupations. Use for retail sales, light or heavy manufacturing, or shop purposes is hereby prohibited.

B. No animals, livestock or poultry of any kind shall be raised, bred or kept on any portion of the Project.

C. No illegal activity of any kind shall be carried on upon any portion of the Project or in any Condominium. No obnoxious or offensive activity shall be carried on upon any portion of the Project, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood or which shall increase the rate of insurance on an adjacent Condominium or in connection with the Common Facility.

D. All rubbish, trash or refuse shall be deposited at a location designated by the Association.

E. All streets, driveways, sidewalks, entries and passages outside of each Condominium shall remain unobstructed and shall not be used for purposes other than ingress and egress to and from Condominiums. Signs in accordance with Vehicle Code section 22658 shall be posted and maintained. Vehicles in violation shall be removed at the owner's expense.

F. No combustible material or any other material which would increase the risk of fire shall be stored on the Project.

G. No boats, trucks, trailers or other recreational vehicles (except for passenger vehicles in running order) shall be kept upon the Project. No vehicle of any kind of any Owner and/or tenant and their employees shall be parked in the Common Area with "For Sale" signs, even if it is used as daily transportation to and from work and moved at night.

H. No fences, statuary or structures of any kind shall be installed or erected in any Common Area without the written consent of the Board of Directors.

I. No plants or other improvements other than those installed and maintained by the Association shall be planted, installed or maintained in the Common Area.

J. No awnings, sunshades, or screen doors shall be installed without the written approval of the Association. All window coverings shall be beige, cream or white, as seen from the exterior, and may be wooden shutters, thin-slat metal louvered blinds, wooden blinds, or draperies.

K. In order to reduce sound transmission, all Units that are above other Units shall have all floor areas except kitchen break areas, laboratories and bathrooms covered with carpet or other material that provides equivalent insulation against sound transmission.

ARTICLE IV

ASSOCIATION, ADMINISTRATION, MEMBERSHIP AND VOTING RIGHTS

4.1. *Notice.* The recordation of this Declaration shall be deemed proper notice of this Declaration and the provisions thereof. Each Owner shall be provided a final copy of this Declaration by the Association, once signed by all Owners and recorded, and agrees to provide a copy of same to his or her successor in interest.

Each Owner, by signing this Declaration, agrees to the provisions thereof. By acceptance of a deed, successors in interest agree to be bound by the provisions of this Declaration. Failure to read or understand this Declaration does not obviate any Owner from his or her duties and obligations under this Declaration.

4.2. *Association to Manage Common Areas.* The management of the Common Area shall be vested in the Association—in accordance with its Bylaws. The Owners of all the Condominiums covenant and agree that the administration of the Property shall be in accordance with the provisions of this Declaration, the Articles, and the Bylaws. The Owners of all the Condominiums further covenant and agree that the Bylaws cannot conflict with this Declaration, the Articles or California statute.

4.3. *Powers Granted to a Nonprofit Mutual Benefit Corporation.* Pursuant to Civil Code section 1363(c), the Association shall exercise powers granted to a nonprofit mutual benefit corporation, as enumerated in the Corporations Code section 7140, except that it may not adopt or use a corporate seal or issue membership certificates in accordance with Corporations Code section 7313.

4.4. *Membership.* The Owner of a Condominium, upon becoming the Owner, shall automatically become a Member of the Association until the ownership ceases for any reason, at which time the membership in the Association shall automatically cease. Membership shall be held in accordance with the Articles and Bylaws.

4.5. *Transferred Membership.* Membership in the Association shall not be transferred, encumbered, pledged, or alienated in any way, except upon the sale or encumbrance of the Condominium to which it is appurtenant, and then only to the purchaser, in the case of a sale, or mortgagee, in the case of an encumbrance of the Condominium. On any transfer of title to an Owner's Condominium, including a transfer on the death of an Owner, membership passes automatically with title to the transferee.

A mortgagee does not have membership rights until it obtains title to the Condominium by Foreclosure or a deed in lieu of Foreclosure. Any attempt to make a prohibited transfer is void. No Member may resign his or her membership while retaining ownership of a Condominium. On notice of a transfer, the Association shall record the transfer on its books.

4.6. *Membership and Voting Rights.* Membership and voting rights shall be set forth in

the Bylaws except that each Owner shall have a voting percentage equal to his or her apportionment of assessments as set forth in paragraph 5.6. of this Declaration.

4.7 *Agent for Process of Service.* The Secretary of the Association shall be the agent for process of service.

4.8 *Incorporation.* The Association may incorporate at any time upon a vote of the Members entitled to cast a majority of the votes of the entire membership entitled to vote at a duly called meeting giving no less than ten (10) days' notice. The vote must be by written ballot, and the vote may be in person or through proxy.

ARTICLE V

MAINTENANCE AND ASSESSMENTS

5.1 *Creation of the Lien and Personal Obligation of Assessments.* Each Owner of any Condominium by acceptance of a deed for that Condominium, whether or not it shall be expressed in that deed, covenants and agrees:

A. To pay the Association Annual Assessments or charges, and Special Assessments for purposes permitted in this Declaration, these Assessments to be established and collected as provided in this Declaration; and

B. To allow the Association to enforce any assessment lien established under this Declaration by non-judicial proceedings under a power of sale or by any other means authorized by law.

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

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

5.2. *Purpose of Assessments.* The Assessments levied by the Association shall be used exclusively to promote the economic interests, health, safety, and welfare of all the Owners of the Property, and to enable the Association to perform its obligations under this Declaration.

5.3. *Assessments.*

A. *Annual Assessments.* The Board of Directors shall establish and levy annual Assessments in an amount that the Board of Directors estimates will be sufficient to raise the funds needed to perform the duties of the Association during each fiscal year. There is no requirement that the Association maintain a reserve account to repair, replace, or maintain the Project.

B. *Special Assessments.* The Board of Directors may at any time levy a special Assessment in order to raise funds for unexpected operating or other costs, insufficient operating funds, or other purposes as the Board of Directors in its discretion considers appropriate. Special Assessments shall be allocated among the Units in the same manner as annual Assessments, provided that the Board of Directors may levy a special Assessment against a Member to reimburse the Association for costs incurred in bringing the Member and his or her Unit into compliance with the provisions of this Declaration.

5.4. *Restrictions on Increases in Annual or Special Assessments.* The Board of Directors may not impose on any Condominium an Annual Assessment that is more than twenty percent (20%) greater than the Annual Assessment for the immediately preceding fiscal year or levy a special Assessment to defray the cost of any action or undertaking on behalf of the Association that in the aggregate exceeds ten percent (10%) of the previous year's annual operating budget of the Association for that fiscal year without the votes at the meeting of the Association at which a quorum is present. For purposes of this paragraph 5.4, a "quorum" means Members constituting more than fifty percent (50%) of the voting power of the Association.

Any meeting of the Association for purposes of complying with this paragraph 5.4 shall be conducted in accordance with California Corporations Code section 7510 et seq. and California Corporations Code section 7613.

Notwithstanding the foregoing, the Board of Directors, without membership approval, may increase Annual Assessments or levy Special Assessments necessary for an emergency situation. For purposes of this paragraph, an emergency situation is one of the following:

- A. An extraordinary expense required by an order of a court;
- B. An extraordinary expense necessary to repair or maintain the Property or any part of it for which the Association is responsible when a threat to personal safety on the Property is discovered; or

C. An extraordinary expense necessary to repair or maintain the Property or any part of it for which the Association is responsible that could not have been reasonably foreseen by the Board of Directors in preparing and distributing the pro forma operating budget; provided, however, that prior to the imposition or collection of the Assessment, the Board of Directors shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process, and the resolution shall be distributed to the Members with the notice of Assessment.

The Association shall provide to the Owners by first-class mail notice of any increase in the regular or special Assessment of the Association not less than thirty (30) nor more than sixty (60) days prior to the increased Assessment becoming due.

5.5. *Notice and Quorum for Any Action Authorized under Paragraph 5.4.* Any action authorized under paragraph 5.4 of this Declaration that requires a vote of the membership shall be taken at a meeting called for that purpose, written notice of which shall be sent via first-class mail to all Members not less than ten (10) nor more than ninety (90) days in advance of the meeting specifying the place, day, and hour of the meeting, and, in the case of a special meeting, the nature of the business to be undertaken. The action may also be taken without a meeting, pursuant paragraph 4.3 of this Declaration and the provisions of Corporations Code section 7513.

5.6. *Division of Assessments.* Annual Assessments shall be collected on a monthly basis unless the Board of Directors directs otherwise. Special Assessments may be collected in one payment or periodically as the Board of Directors shall direct.

All Assessments, both annual and special, shall be levied and apportioned among the Units as follows:

| | |
|-----------------|----|
| Condominium 101 | 9% |
| Condominium 102 | 6% |
| Condominium 103 | 4% |
| Condominium 104 | 5% |
| Condominium 105 | 8% |
| Condominium 106 | 6% |
| Condominium 107 | 5% |
| Condominium 108 | 4% |
| Condominium 201 | 9% |
| Condominium 202 | 6% |
| Condominium 203 | 5% |
| Condominium 204 | 7% |
| Condominium 205 | 8% |
| Condominium 206 | 6% |
| Condominium 207 | 5% |
| Condominium 208 | 7% |

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

5.8. *Transfer of Condominium by Sale or Foreclosure.* Sale or transfer of any Condominium shall not effect the assessment lien. However, the sale of any Condominium pursuant to Foreclosure shall extinguish the lien of any Assessments on that Condominium (including attorney fees, late charges, or interest) as to payments that became due prior to that sale or transfer (except for assessment liens as to which a notice of delinquent Assessments has been recorded prior to the mortgage). No amendment of the preceding sentence may be made without the consent of Owners of Condominiums to which at least sixty-seven percent (67%) of the votes in the Association are allocated, and the consent of the Eligible Mortgage Holders holding First Mortgages on Condominiums comprising fifty-one percent (51%) of the Condominiums subject to First Mortgages.

No sale or transfer shall relieve a Condominiums from liability for an Assessments thereafter becoming due or from the lien of those Assessments. The unpaid share of those Assessments shall be deemed to be Common Expenses collectible from all of the Condominium Owners, including the acquirer and his or her successors or assigns.

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

5.9. *Priorities; Enforcement; Remedies.* If an Owner fails to pay an Assessment when due, the Association has the right to bring legal action against the Owner to enforce collection of the unpaid and past-due Assessment, or to impose a lien on the Unit owned by the Owner pursuant to the provisions of California Civil Code section 1367, or both. Suit to recover a money judgment for unpaid Assessments and attorney fees shall be maintainable without foreclosing or waiving a lien securing the paying of the Assessment. Before the Association may place a lien upon a Unit, pursuant to California Civil Code section 1367(a), the Association must notify the Owner in writing by certified mail of the fee and penalty procedures of the Association, provide an itemized statement of the charges owed by the Owner, including items on the statement that indicate the assessments owed, any late charges and the method of calculation, any attorneys' fees, and the collection practices used by the Association, including the right of the Association to the reasonable costs of collection. After compliance with the provisions of California Civil Code section 1367(a), the Association may record a notice of delinquent Assessment and establish a lien against the Condominium of the delinquent Owner prior

and superior to all other liens, except (1) taxes, bonds, Assessments, and other levies that, by law, would be superior, and (2) the lien or charge of any First Mortgage of record (meaning any recorded mortgage or deed of trust with first priority over other Mortgages or deeds of trust) made in good faith and for value. The notice of delinquent Assessment shall state the amount of the Assessment, collection costs, attorney fees, late charges, and interest, describe the Condominium against which the Assessment and other sums are levied, and set forth the name of the record Owner and the name and address of the trustee authorized by the Association to enforce the lien by sale. The notice shall be signed by any officer of the Association or any managing agent retained by the Association, and shall be mailed in the manner set forth in California Civil Code section 2942b to all record owners of the Unit no later than ten (10) days after recordation.

Thirty days after the recordation of the assessment lien, it may be enforced in any manner permitted by law, including sale by the court, sale by the trustee designated in the notice of delinquent Assessment, or sale by a trustee substituted pursuant to California Civil Code section 2934a. Any sale by the trustee shall be conducted in accordance with the provisions of California Civil Code sections 2924, 2924b, 2924c, 2924f, 2924g, 2924h, 2924i, and 2924j applicable to the exercise of powers of sale in mortgages and deeds of trust, including successor statutes, or in any manner permitted by law. Nothing in this Declaration shall preclude the Association from bringing an action directly against an Owner for breach of the personal obligation to pay Assessments.

The Association, acting on behalf of the Condominium Owners, shall have the power to bid for the Condominium at Foreclosure sale, and to acquire and hold, lease, mortgage, and convey the Condominium. If the purchase of a Condominium would result in a five percent (5%) or greater increase in Assessments, the purchase shall require the vote or written consent of a majority of the total voting power of the Association. During the period a Condominium is owned by the Association, following Foreclosure:

- A. No right to vote shall be exercised on behalf of the Condominium;
- B. No Assessment shall be levied on the Condominium; and
- C. Each other Condominium shall be charged, in addition to its usual Assessment, its share of the Assessment that would have been charged to the Condominium had it not been acquired by the Association as a result of Foreclosure.

After acquiring title to the condominium at Foreclosure sale following notice and publication, the Association may execute, acknowledge, and record a deed conveying title to the Condominium, which deed shall be binding upon the Owners, successors, and all other parties.

The Board of Directors may temporarily suspend the voting rights of a Member who is in default in payment of any Assessment, after notice and hearing, as provided in the Bylaws.

In conformity to Civil Code section 1367(c), fines and penalties imposed by the Association for violation of this Declaration as a disciplinary measure for failure of an Owner to comply with this Declaration or the Rules, except for late payments, are not "Assessments", and are not enforceable by assessment lien, but are enforceable by court proceedings; provided, however, pursuant to Civil Code section 1367(b), monetary penalties imposed by the Association to reimburse the Association for costs incurred for repair of damage to Common Area or facilities for which the Owner, or tenants of an Owner, were responsible may become the subject of a lien.

5.10. *Unallocated Taxes.* In the event that any taxes are assessed against the Common Area or the personal property of the Association, rather than against the Units, those taxes shall be included in the Assessments made under the provisions of paragraph 5.1 of this Declaration and, if necessary, a special Assessment may be levied against the Units in an amount equal to those taxes, to be paid in two installments, thirty (30) days prior to the due date of each tax installment.

ARTICLE VI

DUTIES AND POWERS OF THE ASSOCIATION

6.1. *Duties.* In addition to the duties enumerated in the Bylaws, or elsewhere provided in this Declaration, and without limiting the generality of those duties, the Association shall have the following duties:

A. *Maintenance.* The Association shall maintain, repair, replace (when necessary), restore, operate, and manage all of the Common Area and all facilities (including utility facilities to the extent described in paragraph 7.3 of this Declaration), improvements, equipment, and landscaping on the Common Area, and all property that may be acquired by the Association. Maintenance shall include, without limitation, painting, maintaining, cleaning, repairing, and replacing of all Common Areas, including exterior glass surfaces, landscaping, exterior doors, the elevator, exterior lighting, perimeter fencing, and parking areas. The responsibility of the Association for maintenance and repair shall not extend to repairs or replacements arising out of or caused by the willful or negligent act or omission of an Owner, or his or her tenant; except if the repair is covered by the insurance carried by the Association, the Association shall be responsible for making the repairs, and the responsible Owner shall pay any deductible pursuant to the insurance policy. If the Owner fails to make the payment, then the Association may make the payment and shall charge the responsible Owner, which charge shall bear interest at the rate of twelve percent (12%) per annum (or more allowed by law) until paid in full. Any repairs arising out of or caused by the willful or negligent act of an Owner, or his or her tenant, the cost of which is not covered by insurance carried by the Association, shall be made by the responsible Owner, provided the Board of Directors approves the person actually making the repairs and the method of repair. If the responsible Owner fails to take the necessary steps to make the repairs within a reasonable time under the circumstances, the Association shall make the repairs

and charge the cost to the responsible Owner, which cost shall bear interest at the rate of twelve percent (12%) per annum (or more authorized by law) until paid in full. If an Owner disputes his or her responsibility for the repairs, the Owner shall be entitled to notice and a hearing as provided in the Bylaws before any charge may be imposed.

The Association shall have the Common Area periodically inspected for wood-destroying pests and organisms and shall take appropriate corrective measures. The Association shall have the authority to require the temporary removal of occupants of a Unit as may be necessary in connection with the procedures described in California Civil Code section 1364(d) or any successor statute. The costs of any temporary relocation shall be borne by each Unit Owner who is required to relocate.

Landscaping shall include regular fertilization, irrigation, and other garden management practice to promote healthy, weed-free environment for optimum plant growth.

The Association shall be responsible for the periodic maintenance and testing of all fire fighting equipment on the Common Area.

The Association shall be responsible for the periodic maintenance of the elevator and any repairs.

B. Insurance. The Association shall maintain the policy or policies of insurance required by paragraph 8.1 of this Declaration.

C. Discharge of Liens. The Association shall discharge by payment, if necessary, any lien against the Common Area, and charge the cost to the Member or Members responsible for the existence of the lien (after notice and hearing, as provided in the Bylaws).

D. Assessments. The Association shall fix, levy, collect, and enforce Assessments as set forth in Article V of this Declaration.

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

F. Bank Accounts. The Association shall keep its operational funds in a separate bank account from its capital reserve accounts. These bank accounts shall employ the Association's federal tax identification number. Should any Association funds be placed in a bank account employing a Member's federal tax identification number, the Association shall impose a constructive trust over the funds and take appropriate and immediate legal action to seek the return of those funds.

G. Income Tax Returns. The Association shall file income tax returns and pay income taxes owed, if any, and if no income tax is owed, file informational tax returns in

order to commence the running of the statute of limitations. Income tax returns shall be filed with the Internal Revenue Service and the California Franchise Tax Board, and with any local taxing agencies should an income tax requirement be imposed in the future. Returns shall be prepared by an independent licensee of the California State Board of Accountancy and filed no later than March 15th for the preceding calendar year. The Secretary of the Association shall provide a copy of the income tax returns, along with a copy of the engagement letter between the Association and the certified public accountant, to each Owner each year.

H. *Other Taxation Filings.* The Association shall be in compliance of all federal and state income tax filing requirements, including, but not limited to the issuance of 1099s to all unincorporated vendors no later than January 31st for the preceding calendar year. These 1099s shall reflect the federal tax identification number of the Association. In no event shall 1099s reflect a Member's federal tax identification number unless that Member actually paid an unincorporated vendor who performed services for the Association and the Member was not reimbursed by the Association.

I. *Secretary of State Filings.* The Association shall file every two years, or as otherwise required by statute, with the California Secretary of State a Statement by Common Interest Development pursuant to California Civil Code section 1363.6. This statement is not to be confused with the registration which is required by mutual benefit nonprofit corporations.

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

The Association shall maintain and operate the Common Area of the Property in accordance with all applicable municipal, state and federal laws, statutes, and ordinances, as the case may be. The Association shall also, as a separate and distinct responsibility, ensure that third parties (including Owners and their tenants) utilize the Common Area in accordance with the aforementioned regulations. The Association shall, when it becomes aware of any violation of the aforementioned regulation, expeditiously correct the violations.

K. *Inspection and Maintenance Guidelines.* The Board of Directors shall adopt inspection and maintenance guidelines for the periodic inspection and maintenance of the Common Area improvements and landscaping, including, but not limited to, foundations, gutters, trim, roof, utility equipment, sanitary sewer and storm drainage facilities maintained by the Association, streets, parking areas, and the irrigation system.

The Board of Directors periodically, and at least once every three years, shall review and update inspection and maintenance guidelines. The Board of Directors shall take all appropriate steps to implement and comply with the inspection and maintenance.

6.2. *Powers.* In addition to the powers enumerated in the Articles and Bylaws or elsewhere provided for in this Declaration, and without limiting their generality, the Association shall have the following powers:

A. *Utility Service.* The Association shall have the authority to obtain, for the benefit of all of the Condominiums, all water, refuse collection, and janitorial cleaning service.

B. *Easements.* The Association shall have the authority, by document signed by the President and the Secretary, to grant permits, licenses, and easements in addition to those shown on the Map when necessary for roads, utilities, and sewer facilities over the Common Area to serve the Common Areas and the Condominiums, or when necessary to satisfy or achieve appropriate governmental purpose or request.

C. *Manager.* The Association may employ a manager or other persons and contract with independent contractors or managing agents to perform all or any part of the duties and responsibilities of the Association, except for the responsibility to levy fines, impose discipline, hold hearings, file suit, record or foreclose liens, or make capital expenditures, provided that any contract with a firm or person shall not exceed a one-year term and shall provide for the right of the Association to terminate the contract for cause on thirty (30) days' written notice, or terminate without cause or payment of a termination fee on ninety (90) days' written notice.

D. *Adoption of Rules.* The Board of Directors, or Members of the Association by majority vote, may adopt reasonable rules that are not inconsistent with this Declaration relating to the use of the Common Area and all its facilities and the conduct of Owners and their tenants with respect to the Property and other Owners. Written copies of the Rules and any schedule of fines and penalties adopted by the Board of Directors shall be furnished to Owners.

E. *Access.* For the purpose of performing construction, maintenance, or emergency repair for the benefit of the Common Area, the Association's agents or employees shall have the right, after reasonable notice (in no case less than 72 hours except in emergencies) to the Owner of the Unit, to enter that Unit at reasonable hours. Entry shall be made with as little inconvenience to the Owner as practicable, and any damage caused by that entry shall be repaired by the Board of Directors at the expense of the Association.

F. *Assessments, Liens, Penalties and Fines.* The Board of Directors shall have the power to levy and collect Assessments in accordance with the provisions of Article V of this Declaration.

G. *Enforcement.* The Board of Directors shall have the authority to enforce this Declaration as per paragraph 9.1 of this Declaration.

H. *Loans.* The Board of Directors shall have the power to borrow money and, only with the assent (by vote or written consent) of three-fourths (3/4) of the total voting power of the Association, to pledge personal property (as in a Special Assessment) as security for money borrowed or debts incurred.

I. *Service and Goods Contracts.* The Board of Directors shall have the power to contract for goods and services for the Common Areas or for the Association, subject to limitations set forth in the Bylaws or elsewhere in this Declaration.

J. *Construction Contracts.* The Board of Directors shall have the power to contract for construction contracts for the repair, maintenance and improvements to the Common Area subject to limitations set forth in the Bylaws or elsewhere in this Declaration. However, the Board of Directors shall not enter into any construction contracts in which the aggregate contract price for labor, materials and other items exceed five hundred dollars (\$500), or such other dollar amount set by California Business and Professions Code section 7048, unless construction performance is by a California licensed contractor in the specific trade hired.

No construction contracts shall be paid by the Association or its managing agent, if any, without signed labor and material releases relating to the job performed. All construction contracts shall remain in the Association's on-site office and shall be made available for inspection by any Owner during regular business hours.

K. *Delegation.* The Association and the Board of Directors shall have the power to delegate their authority and powers to committees, officers, or employees of the Association, or to a manager employed by the Association, provided that the Board of Directors shall not delegate its responsibility:

(1) To make expenditures for capital additions or improvements chargeable against reserve funds;

(2) To conduct hearings concerning compliance by an Owner or his or her tenant, with the Declaration, Bylaws, or Rules promulgated by the Board of Directors;

(3) To make a decision to levy monetary fines, impose Special Assessments against individual Condominiums, temporarily suspend an Owner's rights as a Member of the Association, or otherwise impose discipline;

(4) To make a decision to levy Annual or Special Assessments; or

(5) To make a decision to bring suit, record a claim of lien, or institute Foreclosure proceedings for default in payment of Assessments.

L. *Mailings.* The Board of Directors shall suspend the voting rights of any Member who is not a member of the Board of Directors, until a hearing and an appropriate fine is imposed according to the Bylaws, upon the mailing, or personal delivery, of any correspondence with the return address of the Association without first receiving prior approval of the entire Board of Directors. In the event that a Member mails, or personally delivers, correspondence with the return address of the Association without prior approval of the entire Board of Directors, the Board of Directors shall

immediately send, or personally deliver, correspondence to every known recipient of the unauthorized correspondence informing him or her that the correspondence was not authorized by the Association.

Any Member (or Members) who is not a member of the Board of Directors who mails, or hand delivers, any correspondence with the return address of the Association, or participates in such conduct, and without the prior approval of the entire Board of Directors, shall indemnify and defend the Association, the Board of Directors, and the nonparticipating Members in any litigation which may ensue by an aggrieved Member or third party as a result of the mailing or hand delivery of the unauthorized correspondence.

M. *Litigation.* The Association, subject to paragraph 9.9 of this Declaration, shall have the power to institute, defend, settle, or intervene in litigation, arbitration, mediation, or administrative proceedings on behalf of the Association pursuant to California Code of Civil Procedure section 383. The Board of Directors has authority to enter into a contingent fee contract with an attorney in a matter involving alleged design or construction defects in the Property only as to the facilities or improvements the Association is responsible for maintaining as provided in this Declaration, and then only after obtaining the vote at a duly noticed and properly held membership meeting of a majority of a quorum of the Members. The Board of Directors shall, not later than thirty (30) days prior to filing any civil action by the Association for alleged design or construction defects in the areas of the Property that it is obligated to maintain, notify the Members in the manner required by California Civil Code section 1368.4. In the event the Board of Directors files an action in advance of a meeting of the Members, in order to avoid the running of a statute of limitations, the Board of Directors shall call a special meeting of the Members within thirty (30) days after filing the action, for the purpose of discussing the action taken by the Board of Directors.

N. *Common Area Improvements.* The Association shall have the authority and power to demolish, remove, and reconstruct any and all improvements on or over or under the Common Area in a manner not inconsistent with this Declaration, and to construct, improve, and repair improvements that are appropriate for the use and benefit of the Members of the Association, and to charge for the use of those improvements, provided that the Association shall not include in any Assessment, annual or special, the cost of any new capital improvement that exceeds ten percent (10%) of the previous year's annual operating budget in cost to be expended in any one calendar year, unless fifty-one percent (51%) or more of the voting power of the Association previously shall have approved that expenditure.

(1) The replacement of the Common Area flooring of the second story hallway shall be covered with carpet or other material that provides equivalent insulation against sound transmission to the Common Area and Units below.

ARTICLE VII

UTILITIES

7.1 Owners' Rights and Duties. The rights and duties of the Owners of Condominiums within the Project with respect to sanitary sewer, water, drainage, electric, telephone equipment, elevators, elevator shafts, and heating and air conditioning facilities (collectively "utility facilities") shall be as follows:

A. Whenever utility facilities are installed within the Project, which utility facilities or any portion of those facilities lies in or upon Condominiums owned by other than the Owner of a Condominium served by those utility facilities, the Owners of any Condominium served by those utility facilities shall have the right of reasonable access for themselves or for utility companies to repair, replace, and generally maintain those utility facilities as and when necessary, due to failure or inability of the Board of Directors to take timely action to make repairs or perform maintenance on those utility facilities.

B. Whenever utility facilities serving more than one Condominium are installed within the Project, the Owner of each Condominium served by those utility facilities shall be entitled to full use and enjoyment of the portions of those utility facilities as service the Owner's Condominium.

C. In the event of a dispute between Owners with respect to repair or rebuilding of utility facilities, then, upon written request of one Owner addressed to the other Owners involved in the dispute, the matter shall be submitted first to the Board of Directors for mediation, and thereafter, if the dispute remains unresolved, to binding arbitration within sixty (60) days pursuant to the rules of the American Arbitration Association, or any successor rules, or to any generally recognized system of alternative dispute resolution. The decision of the arbitrator shall be final and conclusive on the parties, and judgment on the decision may be entered in any court having jurisdiction.

7.2 Easements for Utilities and Maintenance. Easements over, under, and through the Project, including soffits and utility chases within Units, if any, for the installation, repair, and maintenance of electric, telephone, water, and sanitary sewer lines and facilities, heating and air-conditioning facilities, drainage facilities, walkways and landscaping, as may be required or needed to serve the Project, are reserved by and for the benefit of the Association and its Members.

7.3 Association's Duties. The Association shall maintain all utility facilities located in the Common Area except those facilities maintained by utility companies, public, private, or municipal, and those maintained by the Owners as described in paragraph 9.6 of this Declaration. The Association shall pay all charges for utilities supplied to the Project except those metered or charged separately to the Condominiums.

ARTICLE VIII

INSURANCE; DAMAGE OR DESTRUCTION; CONDEMNATION

8.1 *Insurance.* The Association shall obtain and maintain as specified below:

A. *Liability Insurance.* Comprehensive general liability and property damage insurance shall be maintained and in force at all times, the premiums thereon to be paid out of the annual Assessment fund. The insurance shall be carried with reputable companies authorized to do business in the State of California and shall be in an amount which satisfies California Civil Code section 1365.9 unless, or until, the Association elects to incorporate.

Fifteen (15) days before the policy (or policies) is renewed, the Board of Directors shall authorize competent legal counsel, or such other competent person, to verify the threshold amount of insurance required in order to satisfy California Civil Code section 1365.9.

The policy or policies shall name as insured the Association and the "Unit Owners", and shall be the type of policy sold for commercial common interest developments. The policy or policies shall insure against loss arising from perils in the Common Area and shall include contractual exposure of the Association and the Board of Directors.

B. *Hazard Insurance.* Fire, extended coverage, vandalism, malicious mischief and other hazard insurance shall be maintained and in force at all times, the premiums to be paid out of the annual Assessment fund. The policy shall provide for the issuance of certificates or such endorsements evidencing the insurance as may be required by the respective mortgagees. The policy or policies shall insure against loss from perils therein covered to all the improvements in the Property except such as may be separately insured by the Association hereunder. The improvements to be insured under this clause shall contain an insured value, and the policies or policies shall contain a stipulated amount clause or determinable cash adjustments clause, or similar clause to permit a cash settlement covering specific value in the event of destruction and the inability to rebuild pursuant to paragraph 8.2 of this Declaration. The policy or policies shall name as insured the Association, the "Unit Owners", and any mortgagees of record. The policy or policies shall also cover personal property owned in common and shall further contain a waiver of subrogation rights by the carrier as to negligent Owners.

(1) *No Separate Hazard Insurance on Structures.* Except as expressed and provided in this Article VIII, no Owner shall separately insure his or her Condominium or any part thereof against loss by fire or other casualty. Should any Owner violate this provision, any diminution in insurance proceeds resulting from the existence of such other insurance shall be chargeable to the Owner who acquired such other insurance who shall be liable to the Association to the extent of any such diminution and/or loss of such proceeds.

(2) *Copies of Policies.* The Association shall provide every Owner a complete copy of all insurance policies, and if the policy is renewed the following years(s) every Owner shall be provided a copy of the renewal and any changes in the policy, to enable Members to insure their Units without duplicating insurance carried by the Association and inadvertently triggering a coinsurance clause referred to in paragraph 8.2B(1).

(3) *Owners Liability and Contents Insurance.* An Owner may carry such personal liability insurance in addition to that herein covered as s/he may desire. In addition, any improvements made by an Owner to the real property within a Condominium as well as the personal property of an Owner may be separately insured by such Owner, and the Association shall have no responsibility to secure any insurance thereof. Such insurance coverage would be limited for the type and nature of the coverage often referred to as “tenant’s improvement and betterment”. All such insurance separately carried shall contain a waiver of subrogation rights by the carriers as to negligent Owners.

C. *Endorsements.* The following endorsements should be included if applicable:

- (1) Changes in building codes, and demolition coverage (sometimes referred to as “ordinance or law endorsement”);
- (2) Inflation guard coverage;
- (3) “Agreed-amount” endorsement (to eliminate a coinsurance problems);
- (4) Replacement cost endorsement; and,
- (5) Primary coverage endorsement.

D. *Workers Compensation Insurance.* The Association shall obtain and maintain workers compensation insurance to the extent required by law (or such greater amount as the Board of Directors deems necessary). The Association shall obtain a Certificate of Insurance naming it as an additional insured in regard to workers compensation claims for any independent contractor who performs services for the Association.

Certificates of Insurance in regard to workers compensation shall remain in the on-site office of the Association and shall be made available to any Owner for inspection during regular business hours.

E. *Construction Contractors Insurance.* The Board of Directors shall obtain a copy of a Certificate of Insurance naming the Association as an additional insured in regard to any construction contract prior to the commencement of any construction. Any construction contractor, in any trade, shall not commence work on the Property unless s/he maintains a minimal amount of liability insurance to be determined by the Board of Directors pursuant to paragraph 6.2I of this Declaration.

Certificates of Insurance regarding contractors liability insurance shall remain in the on-site office of the Association and shall be made available to any Owner for inspection during regular business hours.

F. Performance of Construction by an Owner-Member. Any Owner or Member of the Association who makes any repairs to the Common Area, or makes any improvements to the Common Area, will indemnify and hold harmless the Association for any injury resulting in the performance of such activity.

G. Directors and Officers Liability Insurance. The Board of Directors shall maintain in force at the expense of the annual Assessment fund Directors and Officers Liability Insurance in the minimum amount of \$1 million.

H. Other Insurance Coverage. The Board of Directors may purchase and maintain in force at the expense of the annual Assessment fund debris removal insurance, fidelity bonds and other insurance and/or bonds that are necessary. The Board of Directors shall purchase and maintain workers compensation insurance to the extent of that required by law respecting employees of the Association. Any and all policies purchased pursuant hereto by the Association may be combined into one or more blanket or consolidated policy or policies.

I. Representation for Claims. Each Owner appoints the Association or an insurance trustee designated by the Association to act on behalf of the Owners in connection with all insurance matters arising from any insurance policy maintained by the Association, including without limitation, representing the Owners in any proceeding, negotiation, settlement, or agreement.

J. Waiver of Subrogation. Any insurance maintained by the Association shall contain "waiver of subrogation" as to the Association and its officers, directors and Members, the Owners and occupants of the Condominium and mortgagees, and, if obtainable, a cross-liability or severability of interest endorsement insuring each insured against liability to each other insured.

All individually owned insurance shall contain a waiver of subrogation as to the Association and its officers, directors and Members, the Owners and occupants of the Condominiums and mortgagees, and all Members are deemed to have waived subrogation rights as to the Association and/or other Members, whether or not their policies so provide.

K. Limitation on Liability. The Association and its directors and officers, shall have no liability to any Owner or mortgagee if, after a good faith effort, it is unable to obtain the insurance required hereunder, because the insurance is no longer available or, if available, can only be obtained at a cost that the Board of Directors in its sole discretion determines is unreasonable under the circumstances, or the Members fail to approve any Assessment increase needed to fund the insurance premiums. In such event,

the Board of Directors shall notify each Member and any mortgagee entitled to notice that the insurance will not be obtained or renewed.

8.2. *Damage or Destruction.* If Property improvements are damaged or destroyed by fire or other casualty, the improvements shall be repaired or reconstructed substantially in accordance with the original as-built plans and specifications, modified as may be required by applicable building codes and regulations in force at the time of repair or reconstruction and subject to alterations or upgrades as may be approved by the Architectural Control Committee, unless either of the following occurs: (1) the cost of repair or reconstruction is more than fifty percent (50%) of the current replacement costs of all Property improvements, available insurance proceeds are not sufficient to pay for at least eighty-five percent (85%) of the cost of those repairs or reconstruction, and three-fourths of the Members and their First Lenders vote against the repair and reconstruction; or (2) available insurance proceeds are not sufficient to substantially repair or reconstruct the improvements within a reasonable time as determined by the Board of Directors, a special Assessment levied to supplement the insurance fails to receive the requisite approval (if that approval is required) as provided in paragraph 5.4 of this Declaration, and the Board of Directors, without the requirement of approval of the Owners, is unable to supplement the insurance by borrowing on behalf of the Association sufficient moneys to enable the improvements to be substantially repaired or reconstructed within a reasonable time.

A. *Process for Repair or Reconstruction.* If the improvement is to be repaired or reconstructed and the cost for repair or reconstruction is in excess of twenty-five percent (25%) of the current replacement cost of all the Property improvements, the Board of Directors shall designate a construction consultant, a general contractor, and an architect for the repair or reconstruction. All insurance proceeds, Association moneys allocated for the repair or reconstruction, and any borrowings by the Association for the repair or reconstruction shall be deposited with a commercial lending institution experienced in the disbursement of construction loan funds (the "depository") as selected by the Board of Directors. Funds shall be disbursed in accordance with the normal construction loan practices of the depository, which practices must require as a minimum that the construction consultant, general contractor, and architect certify within ten (10) days prior to any disbursement the following:

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

(2) That the disbursement request represents moneys that either have been paid by or on behalf of the construction consultant, the general contractor, or the architect, or are justly due to contractors, subcontractors, materialmen, engineers, or other persons (whose names and addresses shall be stated) who have rendered or furnished certain services or materials for the work;

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

date of the certificate;

(4) That no part of the cost of the services and materials described in subparagraph 7.2A(2) above has been or is being made the basis for the disbursement of any funds in any previous or then-pending application; and

(5) That the amount held by the depository, after payment of the amount requested in the pending disbursement request, will be sufficient to pay in full the costs necessary to complete the repair or reconstruction.

The certificate also must give a brief description of the services and materials furnished for the work, their principal subdivisions or categories, and the respective amounts paid or due contractors, subcontractors, materialmen, engineers, or other persons in respect of those services, and must state the progress of the work up to the date of the certificate.

If the cost of repair or reconstruction is less than twenty-five percent (25%) of the current replacement cost of all the Property improvements, the Board of Directors shall disburse the available funds for the repair and reconstruction under procedures the Board of Directors deems appropriate under the circumstances.

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

B. Process If Repair or Reconstruction Not Undertaken. If the improvements are not required to be repaired or reconstructed in accordance with the foregoing, all available insurance proceeds shall be disbursed among Owners and their respective mortgagees in proportion to the respective fair market values of their Condominiums as of the date immediately preceding the date of the damage or destruction as determined by a qualified independent appraiser selected by the Board of Directors, after first applying the proceeds to the cost of mitigating hazardous conditions on the Property, making provision for the continuance of public liability insurance to protect the interests of the Owners until the Property is sold, and complying with all other applicable requirements of governmental agencies.

If the failure to repair or reconstruct results in a material alteration of the use of the Property from its use immediately preceding the damage or destruction as determined by the Board of Directors (a material alteration shall be conclusively presumed if repair or reconstruction costs exceed twenty-five percent (25%) of the current replacement cost of all Property improvements), the Property shall be sold in its entirety under terms and conditions the Board of Directors deems appropriate. If any Owner or First Lender disputes the Board of Director's determination as to a material alteration, the dispute shall

be submitted to arbitration pursuant to the rules of the American Arbitration Association, and the decision of the arbitrator shall be conclusive and binding on all Owners and their mortgagees.

If the Property is sold, the sales proceeds shall be distributed to all Owners and their respective mortgagees in proportion to the respective fair market value of their Condominiums as of the date immediately preceding the date of damage or destruction as determined by the independent appraisal procedure described above. For purposes of effecting a sale under this paragraph 8.2, each Owner grants to the Association an irrevocable power of attorney to the entire Property for the benefit of the Owners, to terminate the Declaration and to dissolve the Association. If the Association fails to take the necessary steps to sell the entire Property as required under this Article within sixty (60) days following the date of a determination by the Board of Directors or arbitrator of a material alteration, or if within 120 days following the date of damage or destruction the Board of Directors has failed to make a determination as to a material alteration, any Owner may file a partition action as to the entire Property under California Civil Code section 1359, or any successor statute, and the court shall order partition by sale of the entire Property and distribution of the sale proceeds as provided in this Declaration.

Notwithstanding anything in this Declaration to the contrary, any Owner or group of Owners shall have the right of first refusal to match the terms and conditions of any offer made to the Association in the event of a sale of the Property under this paragraph 7.2.B., provided the Owners exercise this right within ten (10) days of receipt of notice from the Association containing the terms and conditions of any offer the Association has received. If the Owner or group of Owners subsequently default on their offer to purchase, they shall be liable to the other Owners from the default. If more than one Owner or group elects to exercise this right, the Board of Directors shall accept what it determines to be the best offer.

8.3. *Condemnation.* The Association shall represent the Owners in any condemnation proceedings or in negotiations, settlements, and agreements with the condemning authority for acquisition of the Common Area or any part of the Common Area. In the event of a taking or an acquisition of part or all of the Common Area by a condemning authority, the award or proceeds of settlement shall be payable to the Association, or to any trustee appointed by the Association, for the use and benefit of the Owners and their mortgagees as their interests may appear.

If there is a substantial taking of the Property, the Owners may terminate the legal status of the Property and, if necessary, bring a partition action under California Civil Code section 1359 or any successor statute, on the election to terminate by fifty-one percent (51%) of the total voting power of the Association and the approval of Eligible Mortgage Holder Mortgages. The proceeds from the partition sale shall be distributed to the Owners and their respective mortgagees in proportion to the fair market values of their Condominium as determined under the method described in paragraph 7.2 of this Declaration.

ARTICLE IX

GENERAL PROVISIONS

9.1. *Enforcement.* The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration, the Articles, and the Bylaws, and in that action shall be entitled to recover reasonable attorney fees as are ordered by the Court. Failure by the Association or by any Owner to enforce any covenant or restriction contained in this Declaration shall in no event be deemed a waiver of the right to do so thereafter.

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

9.3. *Term.* The covenants and restrictions of this Declaration shall run with and bind the Property, and shall inure to the benefit of and shall be enforceable by the Association or the Owner of any property subject to this Declaration, their respective legal representatives, heirs, and successors and assigns, for a term of twenty-one (21) years from the date this Declaration is recorded, after which they shall be automatically extended for successive periods of ten (10) years, unless an instrument in writing, signed by a majority of the then Owners of the Condominiums, has been recorded within the year preceding the beginning of each successive period of ten (10) years, agreeing to change the covenants and restrictions in whole or in part, or to terminate same.

9.4. *Amendments.* This Declaration may be amended only by the affirmative vote (in person or by proxy) or written consent of Members representing a majority of the total voting power of the Association. However, the percentage of voting power necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. Any amendment must be certified in a writing executed and acknowledged by the President or Vice President of the Association and recorded in the Recorder's Office of the County of Santa Barbara.

9.5. *Rights of First Lenders.* No breach of any of the covenants, conditions, and restrictions contained in this Declaration, nor the enforcement of any of its lien provisions, shall render invalid the lien of any First Mortgage on any Condominium made in good faith and for value, but all of those covenants, conditions, and restrictions shall be binding upon and effective against any Owner whose title is derived through Foreclosure or trustee's sale, or otherwise. Documents to the contrary, First Lenders shall have the rights and protections set forth in the following paragraphs:

A. *Copies of Property Documents.* The Association shall make available to

Condominium Owners and First Lenders, and to holders, insurers, or guarantors of any First Mortgage, current copies of the Declaration, Bylaws, Articles, and other Rules concerning the Property, and the books, records, and financial statements of the Association. "Available" means available for inspection and copying, upon request, during normal business hours or under other reasonable circumstances. The Board of Directors may impose a fee for providing the requested documents, which fee may not exceed the reasonable cost to prepare and reproduce them.

B. Audited Statement. Any holder, insurer, or guarantor of a First Mortgage shall be entitled, upon written request, to an audited financial statement for the immediately preceding fiscal year, free of charge to the party so requesting. The statement shall be furnished within 120 days of the Association's fiscal year.

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

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

(2) Any default in performance of obligation under the Property Documents or delinquency in the payment of Assessments or charges owed by an Owner of a Condominium subject to a First Mortgage held, insured, or guaranteed by that Eligible Mortgage Holder or Eligible Insurer or Guarantor, which default remains incurred for a period of sixty (60) days;

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

(4) Any proposed action that would require the consent of a specific percentage of Eligible Mortgage Holders as specified in paragraph 9.5.D. of this Declaration.

The Association shall discharge its obligation to notify Eligible Mortgage Holders or Eligible Insurers or Guarantors by sending written notices required by this Declaration to them at the address given on the current request for notice in the manner prescribed by paragraph 9.8 of this Declaration.

D. Consent to Action.

(1) Each as provided by statute or by other provision of the Project Documents in case of substantial destruction or condemnation of the Project:

(a) The consent of Owners of Condominiums to which at least sixty-seven percent (67%) of the votes in the Association are allocated, and the approval of Eligible Mortgage Holder Mortgages, shall be required to terminate the legal status of the Project as a Condominium Project; provided however, that if termination is for reasons other than substantial destruction or condemnation, the agreement of Eligible Mortgage Holder representing at least sixty-seven percent (67%) of the votes of the mortgaged Units is required;

(b) The consent of Owners of Condominiums to which at least sixty-seven percent (67%) of the votes in the Association are allocated, and the approval of Eligible Mortgage Holders holding mortgages on Units that have at least fifty-one percent (51%) of the votes of the Condominiums subject to Eligible Holder Mortgages, shall be required to add or amend any material provisions of the Project Documents that establish, provide for, govern, or regulate any of the following: (i) voting rights; (ii) assessment liens, the priority of assessment liens, or increases in Assessments that raise the previously assessed amount by more than twenty-five percent (25%); (iii) responsibility for maintenance and repairs; (iv) reallocation of interests in the general Common Areas, or rights to their use; (v) convertibility of Units into Common Areas or vice-versa; (vi) expansion or contraction of the Project, or the addition, annexation, or withdrawal of property to or from the Project; (vii) hazard or fidelity insurance requirements; (viii) imposition of any restrictions on the leasing of Units; (ix) imposition of any restrictions on an Owner's right to sell or transfer his or her Unit; (x) restoration or repair of the Project (after damage or partial condemnation) in a manner other than that specified in the Project Documents; or (xi) any provisions that expressly benefit mortgage holders, insurers, or guarantors;

(c) An Eligible Mortgage Holder who receives a written request to approve additions or amendments without delivering or posting to the requesting party a negative response within thirty (30) days after the notice of the proposed addition or amendment shall be deemed to have approved that request, provided the notice has been delivered to the Eligible Mortgage Holder by certified or registered mail, return receipt requested.

(2) Except as provided by statute in case of condemnation or substantial loss to the Condominiums or common elements of the Project, unless the holders of at least two-thirds of the First Mortgages (based upon one vote for each First Mortgage owned) of the Owners of the individual Condominiums have given their prior written approval, the Association or the Owners shall not be entitled to:

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

(b) Change the pro rata interest or obligation of any individual Condominium for the purpose of: (i) levying Assessments or charges or allocating

distributions of hazard insurance proceeds or condemnation awards, or (ii) determining the pro rata share of ownership of each Condominium in the Common Area, provided that no Owner's undivided interest in the Common Area may be changed without the consent of that Owner;

(c) Partition or subdivide any Condominium;

(d) By act or omission, seek to abandon, partition, subdivided, encumber, sell, or transfer the Common Area. (The granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Area by the Condominium Project shall not be deemed a transfer with the meaning of this clause);

(e) Use hazard insurance proceeds for losses to any of the Project (whether to Condominiums or to Common area) for other than the repair, replacement, or reconstruction of the Project.

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

F. Contracts. Any agreement for professional management of the Project, or lease or any other contract providing for services may not exceed one year. Any agreement for professional management shall provide for termination by either party for cause on thirty (30) days' written notice, or without cause and without payment of a termination fee or penalty on ninety (90) days' written notice or less.

G. Distribution of Insurance or Condemnation Proceeds. No provision of the Condominium Documents gives an Owner or any other party priority over any rights of First Lenders in the case of a distribution to Owners of insurance proceeds or condemnation awards for losses to or taking of Condominiums or Common Areas.

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

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

9.6. Owner's Right and Obligation to Maintain and Repair. Except for those portions of the Project that the Association is required to maintain and repair, each Condominium Owner shall, at his or her sole cost and expense, maintain and repair the Unit, keeping the

same in good condition. Each Owner shall be responsible for and bear the cost of maintenance repair, and replacement of the following items with the Owner's Unit: interior surfaces of all perimeter and interior walls; ceilings and floors; hot water heaters; light fixtures; smoke detectors; heating and air conditioning for each Unit; interior doors, including all hardware on the doors; plumbing and other fixtures; and any furniture and furnishings. All electric utilities serving individual Units shall be separately metered and shall be the expense of each individual Owner. Electric utilities serving the general common elements shall be a common expense of the Association. Each Owner shall have the exclusive right to paint, plaster, panel, tile, wax, paper, or otherwise refinish and decorate the inner surfaces of the walls, ceiling, floors, and doors bounding his or her Unit. No Owner shall make repairs, paint, remodel, or otherwise make changes to his or her Unit during regular business hours which would create excessive noise or noxious fumes which may, or may not disturb other Owners and their employees, tenants, clients, or patients.

9.7. *Owners' Compliance.* Each Owner or Owner's tenant shall comply with the provisions of this Declaration and, to the extent they are not in conflict with the Declaration, with the Articles and bylaws, and the decisions and resolution of the Association or the Board of Directors, as lawfully amended from time to time. Failure to comply with any of these provisions, decisions, or resolutions shall be grounds for an action (1) to recover sums due, (2) for damages, (3) for injunctive relief, (4) for costs and attorney fees, or (5) any combination of the foregoing.

In the event of a violation of the Project Documents, the Association may, if permitted by applicable law, record a Notice of Violation against the Condominium of the noncomplying Owner. Upon recording a Notice of Violation, the Association shall have complete discretion in deciding whether, when, and how to proceed with enforcement, and any delay after recording a Notice of Violation shall not give rise to a defense of waiver or estoppel in favor of a noncomplying Owner. The Association may take action to enforce compliance against a subsequent Owner who acquires a Condominium with a recorded Notice of Violation. The right of the Association to record a Notice of Violation shall be in addition to all other rights and remedies the Association may have at law or under the Project Documents.

All agreements and determinations lawfully made by the Association in accordance with the voting percentages established in this Declaration or in the Articles or the Bylaws shall be deemed to be binding on all Owners and their successor and assigns.

9.8. *Notice.* Any notice permitted or required by the Declaration or Bylaws may be delivered by mail and shall be deemed to have been delivered seventy-two (72) hours after a copy of the notice has been deposited in the United States mail, first class or registered, postage prepaid, addressed to the person to be notified at the current address given by that person to the Secretary of the Board of Directors or addressed.

9.9. *Alternative Dispute Resolution.* The Board of Directors is authorized to resolve any civil claim or action through alternative dispute resolution proceedings, such as

mediation, binding arbitration, or non-binding arbitration proceedings.

A. *Notice.* The Board of Directors may provide, or in good faith attempt to provide, 120 days' advance notice of the Board of Director's intent to initiate the prosecution of any civil action, stating the nature and basis of the claim, to every Member of the Association and every entity or person who is a prospective party to the civil action, provided this notice can be given more than 120 days prior to the expiration of any pertinent statute of limitation, and can be given without prejudice to the Association's right to enforce the Project Documents, and further provided that no notice of this need be given prior to the filing of an action in small claims court or an action solely to enforce Assessment obligations.

B. *Declaratory or Injunctive Relief.* Prior to initiating the prosecution of a civil action solely for declaratory relief or injunctive relief to enforce the Project Documents, or for declaratory relief or injunctive relief to enforce the Project Documents in conjunction with a claim for monetary damages, other than association assessments, not in excess of \$5,000, the Board of Directors shall endeavor to submit the matter to alternative dispute resolution in compliance with the provisions of California Civil Code section 1354(b).

C. *Conference; Authorization.* Immediately after initiating the prosecution or defense of any civil action, the Board of Directors shall make a reasonable effort, in good faith, to meet and confer with every party to find appropriate processes for resolving the civil action, including available alternative dispute resolution proceedings; for avoiding or reducing costs or losses by the parties associated with the action; for providing an opportunity to cure any alleged defect in the Common Area or facilities forming the basis for the action; and for providing for the scope of discovery, if any, to be conducted prior to the inception of any alternative dispute resolution procedure. The Board of Directors is authorized to consider diversion of the prosecution or defense of any civil action to alternative dispute resolution proceedings, such as mediation, non-binding arbitration, or binding arbitration, and is authorized to agree to participate and to participate fully and in good faith in the resolution of any civil action through any alternative dispute resolution proceedings, including, but not limited to mediation, non-binding arbitration, and binding arbitration, and paying costs reasonably incurred by the Association on account of those alternative dispute resolution proceedings.

D. *Summary of Civil Code section 1354.* The Board of Directors shall comply with the requirements of California Civil Code section 1354 (i) by providing Members of the Association annually with a summary of the provisions of California Civil Code section 1354, including the following language: "Failure by any Member of the Association to comply with the pre-filing requirements of Section 1354 of the California Civil Code may result in the loss of your rights to sue the Association or another Member of the Association regarding enforcement of the governing documents".

E. *Arbitration.* If the dispute is the subject of arbitration under this section 8.9, the following shall apply:

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

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

(3) Venue of the arbitration to be in the county where the subdivision is located, unless the parties agree to some other location;

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

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

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

(7) The arbitrators shall be authorized to provide all recognized remedies available in law or equity for any cause of action that is the basis of arbitration; provided, however, that there shall in no event be any award of punitive damages; and

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

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

IN WITNESS WHEREOF, the undersigned, being the Declarants, have executed this Declaration consisting of thirty-six (36) pages, including signatory pages, on this _____ day of _____, 2004.