



Planning & Transportation Commission

Staff Report (ID # 9366)

Report Type: Action Items **Meeting Date:** 6/13/2018

Summary Title: 2515-2585 El Camino Real: Vesting Tentative Map

Title: PUBLIC HEARING / QUASI-JUDICIAL. 2515-2585 El Camino Real [17PLN-00448]: Recommendation on Applicant's Request for Approval of a Vesting Tentative Map to Merge two Lots and Subdivide the Combined 39,953 Square Foot lot Into 13 Residential Condominiums and up to 13 Retail Commercial Units. The Subdivision map Would Facilitate Construction of the Previously Approved 39,858 Square Foot Mixed-use Development Project (15PLN-00170). Environmental Assessment: Reuse of a Previously Adopted Initial Study/Mitigated Negative Declaration Prepared for the Associated Development Application (15PLN-00170). Zoning District: Neighborhood Commercial (CN) and Community Commercial (CC) (2) Zoning District. For More Information Contact the Project Planner Margaret Netto at margaret.netto@cityofpaloalto.org

From: Jonathan Lait

Recommendation

Staff recommends the Planning and Transportation Commission (PTC) take the following action(s):

1. Recommend approval of the Vesting Tentative Map to the City Council based on findings and conditions.

Report Summary

The applicant proposes a Vesting Tentative Map to merge two lots into one combined 39,953 square foot lot for condominium purposes. The resulting lot would include 13 residential condominiums and up to 13 retail commercial condominium units. The subdivision map would facilitate the construction of the previously approved 39,858 square foot (sf) mixed-

use development project (File No. 15PLN-00170) located in the Neighborhood Commercial (CN) and Community Commercial (CC(2)) zoning district. The project would replace the recently demolished one-story 9,694 sf Olive Garden restaurant.

Draft findings and conditions are included with this report, Attachment B.

The Commission may continue the project or forward a recommendation to the City Council based on the draft findings and conditions, or as modified by the Commission.

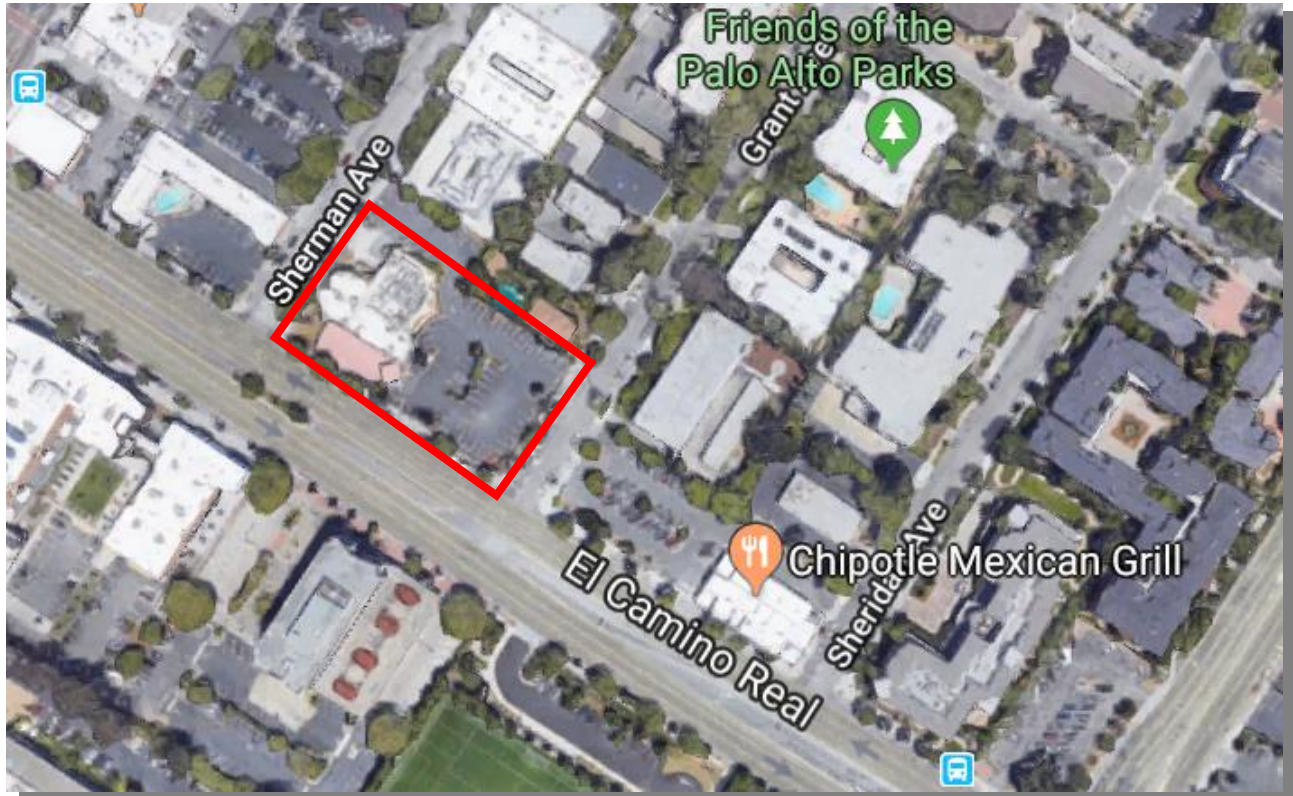
Background

Project Information

Owner:	Palo Alto Properties Investment, LLC
Architect:	Hayes Group Architects
Representative:	BKF Engineers
Legal Counsel:	John Hanna

Property Information

Address:	2515-2585 El Camino Real
Neighborhood:	Evergreen Park
Lot Dimensions & Area:	153' x 250' irregular shape (39,963 or 0.91 acres)
Housing Inventory Site:	Yes
Located w/in a Plume:	Yes; California-Olive-Emerson Superfund Site
Protected/Heritage Trees:	Yes; The approved project includes removal of all thirty-three (33) existing trees.
Historic Resource(s):	No
Existing Improvement(s):	Demolished single-story Olive Garden Restaurant
Existing Land Use(s):	Commercial
Adjacent Land Uses & Zoning:	North: CC(2) and RM-40 (offices and residential) West: CC(2) (Coronet Motel) East: CN (Chipotle restaurant parking lot) South: CS across El Camino Real (Mixed-use)
Special Setbacks:	No
Aerial View of Property:	



Source: Google Maps

Land Use Designation & Applicable Plans/Guidelines

Zoning Designation:	CN -Neighborhood Commercial, CC(2)-Community Commercial
Comp. Plan Designation:	Neighborhood Commercial, Regional/Community Commercial'
Context-Based Design:	Yes; PAMC Section 18.16.090
Downtown Urban Design:	Not Applicable
SOFA II CAP:	Not Applicable
Baylands Master Plan:	Not Applicable
ECR Guidelines ('76 / '02):	Yes; both the El Camino Real Guidelines and South El Camino Design Guidelines
Proximity to Residential Uses or Districts (150'):	Adjacent to residential
Located w/in AIA (Airport Influence Area):	Not Applicable

Prior City Reviews & Action

City Council:	The associated development project (15PLN-000170) was approved on May 23, 2016 https://www.cityofpaloalto.org/civicax/filebank/documents/52391
PTC:	March 9, 2016. https://www.cityofpaloalto.org/civicax/filebank/documents/51398

HRB:	None.
ARB:	March 3, 2016 https://www.cityofpaloalto.org/civicax/filebank/documents/51264 and March 17, 2016 https://www.cityofpaloalto.org/civicax/filebank/documents/51516

Project Description

The applicant proposes a Vesting Tentative Map to merge two lots and subdivide the combined 39,953 square foot lot into 13 residential condominiums and up to 13 retail commercial condominium units. The subdivision map would facilitate the construction of the previously approved (15PLN-00170) 39,858 sf mixed-use development project. As shown in Figure 1, the first floor would include retail condominium space and floors two and three would include residential condominium building area.

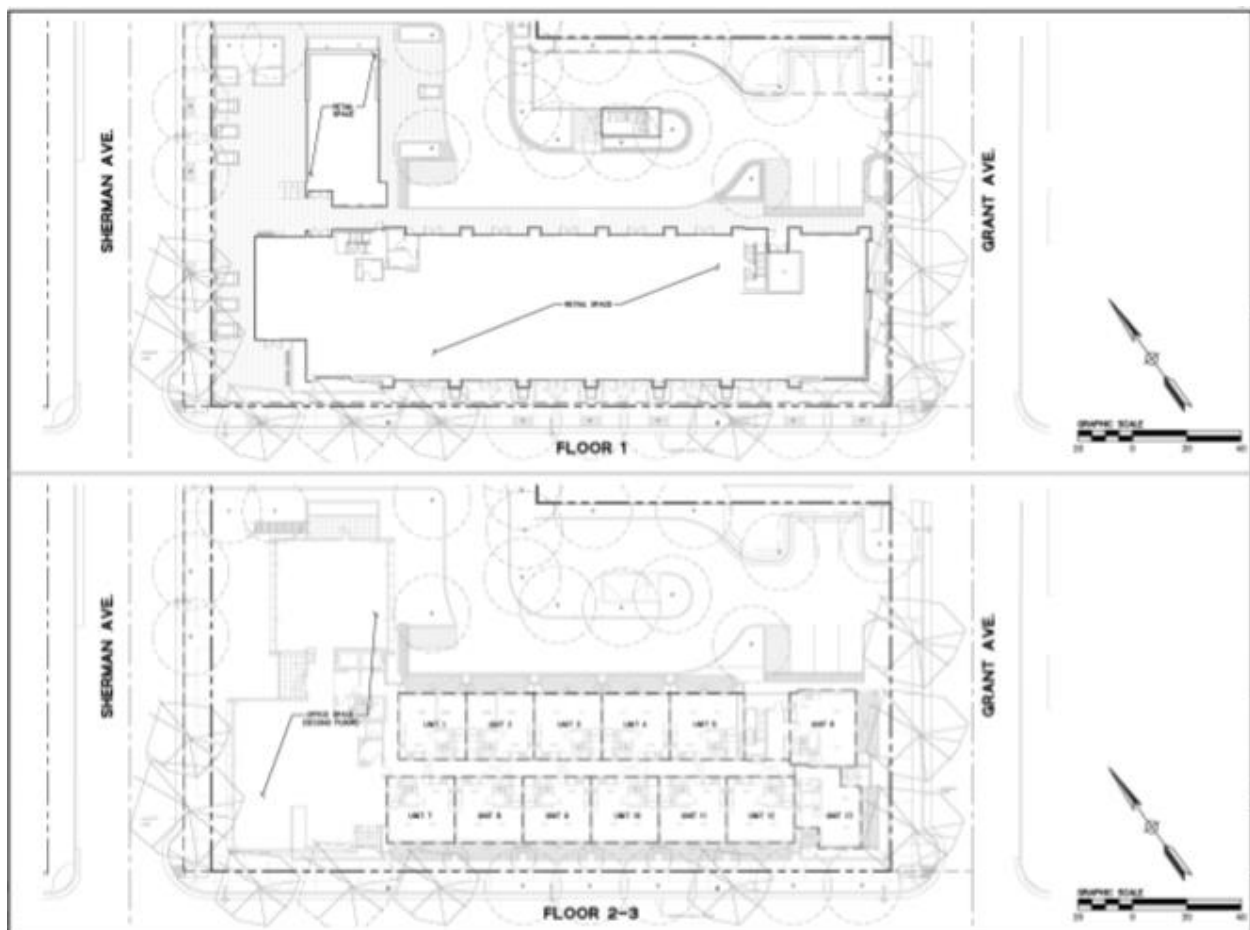


Figure 1: Floor Plan

Access to the underground and surface parking is from Grant and Sherman Avenue. No access will be provided from El Camino Real, the existing curb cut will be removed.

Short-term bicycle parking spaces are proposed near the main entrance of the building on Grant Avenue and long-term bicycle parking would be provided in two secured areas of the underground parking garage. The approved development provides 104 parking spaces. The project received a parking reduction of four spaces as provided in the code based on a shared parking analysis which allows a reduction of 20% of the total spaces required for the site.

The entire project with the exception of the individual condominium units, are to be held by all of the owners in common. The common area includes land; drive aisles, ramp, street easement area, parking garage, joint use utility facilities, elevator and stairs, trash room, and storm water treatment and access, surface parking, garage, structural support, and sewer and drainage are further defined in the draft Combined Condominium Declaration and Covenants, Conditions and Restrictions, provided in Attachment E.

Provided below is a summary table that corresponds to the floor plan on Figure 1 and further defines the approved building uses.

Table 1: Approved Building Use Organization

	Commercial (sf)	Residential (sf)	Office (sf)	Total
First Floor	13,573	None	None	13,573
Second/Third Floors	None	13 units (19,973)	6,312	26,285
Total	13,573	19,973	6,312	39,858

Requested Entitlements, Findings and Purview:

The following discretionary applications are being requested and subject to PTC purview:

- **Subdivision (Vesting Tentative Map):** The process for evaluating this type of application is set forth in Title 21 of the Palo Alto Municipal Code and Government Code (PAMC) Section 66474. Palo Alto Municipal Code Section 21.12.090 requires the Commission to review whether the proposed subdivision complies and is consistent with the Subdivision Map Act (in particular Government Code 66474), Title 21 of the Palo Alto Municipal Code, the Palo Alto Comprehensive Plan, and other applicable provisions of the Palo Alto Municipal Code and State law. The Commission's recommendation is forwarded to the City Council for final approval. The findings to approve a Vesting Tentative Map are provided in Attachment B.

Analysis¹

¹ The information provided in this section is based on analysis prepared by the report author prior to the public hearing. Planning and Transportation Commission in its review of the administrative record and based on public testimony may reach a different conclusion from that presented in this report and may choose to take an alternative action from the recommended action.

Consistency with Application Findings

The necessary findings for approval of the Vesting Tentative Map are contained in State law and incorporated into Title 21 of the Municipal Code. Under the Subdivision Map Act, the PTC must recommend and Council must make a series of “reverse” findings to justify approval. If the findings cannot be made, the subdivision must be approved. In particular, under Government Code Section 66474, the PTC shall recommend denying a Tentative Map if it makes any of the following findings:

- a) That the proposed map is not consistent with applicable general and specific plans.
- b) That the design or improvement of the proposed subdivision is not consistent with applicable general and specific plans.
- c) That the site is not physically suitable for the type of development.
- d) That the site is not physically suitable for the proposed density of development.
- e) That the designs of the subdivision or the proposed improvements are likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat.
- f) That the design of the subdivision or type of improvements is likely to cause serious public health problems.
- g) That the design of the subdivision or the type of improvements will conflict with easements, acquired by the public at large, for access through or use of, property within the proposed subdivision.

Some relevant factors are discussed below and a detailed review of the proposed project’s consistency with applicable Title 21 findings has been performed and can be found in Attachment B.

Neighborhood Setting and Character

The project site consists of two parcels located on the northeast side of El Camino Real, between Sherman and Grant Avenues (see location map, Attachment A). The project site, at 39,638 sf, was formally developed with the Olive Garden restaurant (on the 2515 El Camino Real parcel) and two, connected surface parking lots (on both parcels) supporting the restaurant.

The site has two zoning districts and two Comprehensive Plan Land Use designations. The restaurant and its parking lot are within the Neighborhood Commercial (CN) zone, and have a ‘Neighborhood Commercial’ Comprehensive Plan land use designation. A small portion of the 2515 El Camino Real parcel, a surface parking lot accessible from Sherman Avenue, is within the Community Commercial CC(2) zone and has a Comprehensive Plan land use designation of ‘Regional/Community Commercial’. The subject site is part of a developed and urbanized area along El Camino Real, which is a major arterial road and commercial corridor.

Zoning Compliance²

As noted in this report, the subdivision application is tied to a previously approved development application (15PLN-00170) that was deemed compliant with the applicable zoning regulations set forth in the CC(2) and CN zoning district. The approved project included a 3-story mixed use building including retail, office and 13 residential condominium units and one level of underground parking. The project included a Conditional Use Permit to exceed the 5,000 sf office for the site by approximately 4,835 sf. The project received a parking reduction of four spaces as provided in the code based on a shared parking analysis.

As such, the proposed subdivision application is consistent with the development standards of the CC(2) and CN zoning district. The CC(2) and CN district does not prescribe minimum lot width, depth, and area for parcels.

A detailed review of the proposed project's consistency with applicable zoning standards has been performed and summarized in a table provided in Attachment C.

Consistency with the Comprehensive Plan, Area Plans and Guidelines³

The proposed Vesting Tentative Map is consistent with the Comprehensive Plan, in that the site is designated as "Regional/Community Commercial" and "Neighborhood Commercial" and will be developed in a manner consistent with these land uses (i.e. multiple-family, retail, and office land uses).

The subdivision map will facilitate the redevelopment of a parcel within the City's urban service area which is consistent with many Policies, including Policy L-1.1 of the Comprehensive Plan. The associated mixed-use development to be constructed on the lot would create new residential units that add to the housing inventory, as well as retail and office space that provide multi-benefits in terms of employment opportunities and services for the community which is consistent with Policy L-1.5. Consistencies with other Comprehensive Plan policies are included in Attachment B of this report.

Multi-Modal Access

The applicant proposes a pedestrian path alongside the new building to connect Grant Avenue to Sherman Avenue. The Site Plan indicates a 12-foot wide public sidewalk along El Camino Real and a 10-foot wide sidewalk easement along Sherman Avenue. The project adheres to the Pedestrian and Bicycle Master Plan by improving and widening sidewalks on El Camino Real.

A public access easement will be dedicated with the proposed Final Map to the City for an additional 4.5 feet of sidewalk between the property line and back-of-walk along the El Camino Real frontage to provide the 12-foot wide sidewalk.

² The Palo Alto Zoning Code is available online: http://www.amlegal.com/codes/client/palo-alto_ca

³ The Palo Alto Comprehensive Plan is available online:
<http://www.cityofpaloalto.org/gov/topics/projects/landuse/compplan.asp>

Hexagon Transportation Consultants Inc. (Hexagon) prepared a Traffic Impact Analysis (TIA) for the project. The report noted there is good connectivity for pedestrians to and from the site, and the project would provide pedestrian paths to connect the sidewalks on El Camino Real, Grant Avenue, and Sherman Way to the project site. The project would not conflict with pedestrian facilities in the area.

There are numerous bicycle lanes in the vicinity of the project, including on Page Mill Road, California Avenue, and Park Boulevard. Bicycle trips resulting from the project would be accommodated by the existing facilities in the area, and the project would not adversely impact existing bicycle facilities in the area.

The project site would be accessed via two driveways, one located on Grant Avenue and on Sherman Avenue. The two-driveways would provide direct access to the proposed surface parking and underground parking garage. Based on the site configuration, most inbound and outbound project traffic from El Camino Real would be expected to access the project site via the full access driveway at Grant Avenue. The Sherman Avenue access would be expected to be used by drivers traveling to the north on El Camino Real and from the local area.

Environmental Review

The subject map was included as part of the project scope outlined in the Initial Study – Mitigated Negative Declaration (IS-MND) prepared for the associated development application (15PLN-000170) that was assessed in accordance with the authority and criteria contained in the California Environmental Quality Act (CEQA), the State CEQA Guidelines, and the environmental regulations of the City.

The IS-MND was circulated for public review beginning January 19, 2016, through February 18, 2016, and adopted by the Director of Planning and Community Environment on May 22, 2016. The Initial Study prepared for the project determined that there would be significant impacts that require mitigation measures to reduce them to a less than significant level. These include mitigations for construction noise and appropriate construction methodology to prevent soil vapor intrusion into the structure. The Final IS-MND is provided in Attachment D of this report. The development application and this vesting tentative map include conditions that will ensure implementation of these mitigation measures.

Public Notification, Outreach & Comments

The Palo Alto Municipal Code requires notice of this public hearing be published in a local paper and mailed to owners and occupants of property within 600 feet of the subject property at least ten days in advance. Notice of a public hearing for this project was published in the *Palo Alto Weekly* on June 1, 2018, which is 12 days in advance of the meeting. Postcard mailing occurred on May 30, 2018, which is 14 days in advance of the meeting.

Public Comments

As of the writing of this report, no project-related, public comments were received.

Alternative Actions

In addition to the recommended action, the Architectural Review Board may:

1. Approve the project with modified findings or conditions;
2. Continue the project to a date (un)certain; or
3. Recommend project denial based on revised findings.

Report Author & Contact Information

Margaret Netto, Contract Planner
(650) 796-5828
margaret.netto@cityofpaloalto.org

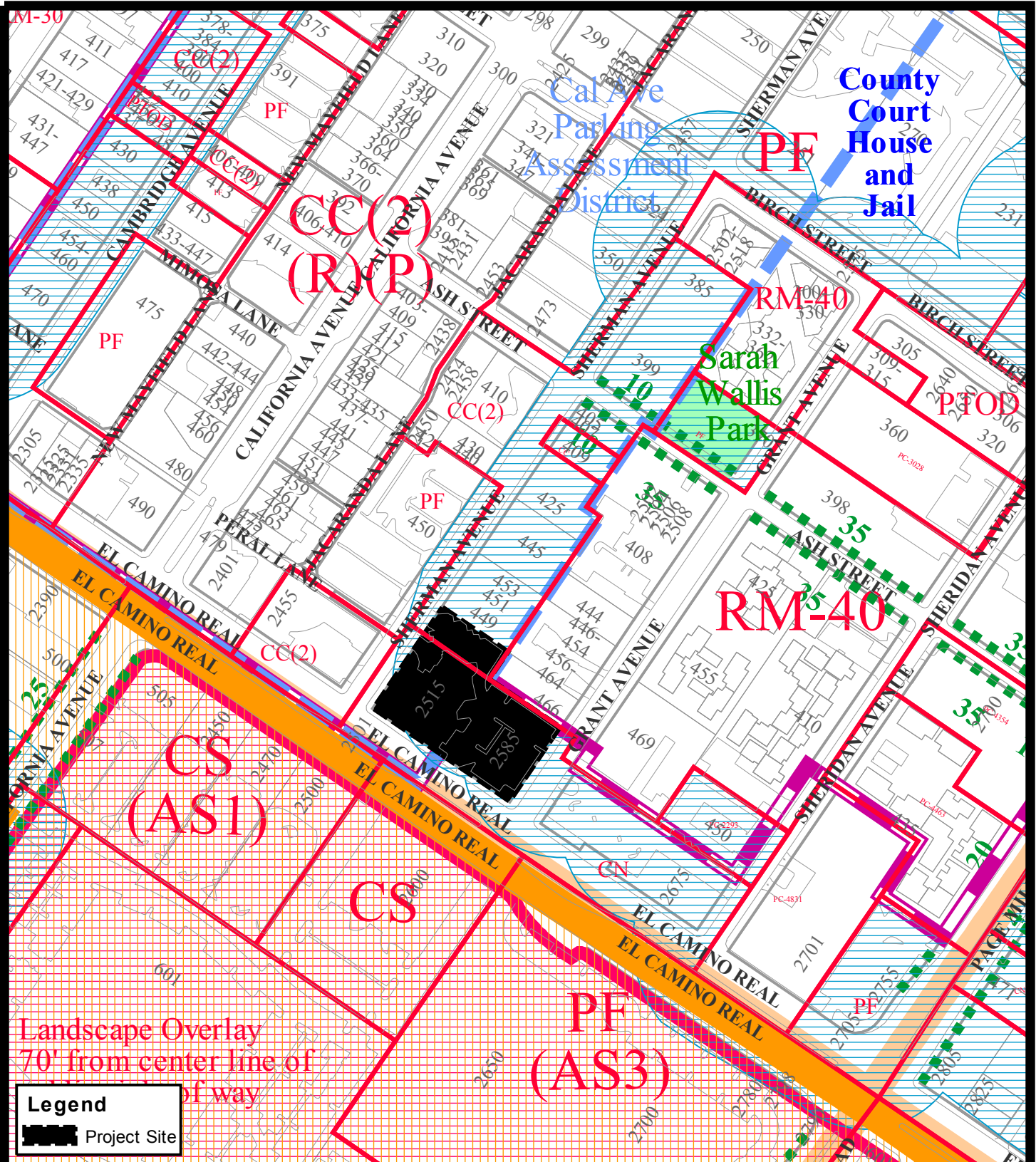
PTC⁴ Liaison & Contact Information

Jonathan Lait, AICP, Assistant Director
(650) 329-2679
jonathan.lait@cityofpaloalto.org

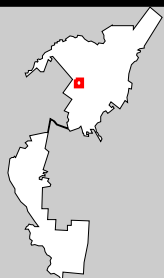
Attachments:

- Attachment A: Location Map (PDF)
- Attachment B: Draft Record of Land Use (DOCX)
- Attachment D: Initial Study/Mitigated Negative Declaration (DOCX)
- Attachment C: Zoning Compliance Table (DOC)
- Attachment E: Covenants Conditions and Restrictions (PDF)
- Attachment F: Vesting Tentative Map (DOCX)

⁴ Emails may be sent directly to the PTC using the following address: planning.commission@cityofpaloalto.org



The City of
Palo Alto



2515-2585 El Camino Real

This map is a product of the
City of Palo Alto GIS



0' 208'

ATTACHMENT B
ACTION NO. 2018-XX
RECORD OF THE COUNCIL OF THE CITY OF PALO ALTO LAND USE ACTION FOR
2515 and 2585 EL CAMINO REAL: VESTING TENTATIVE MAP, 17PLN-0448

At its meeting on _____, 2018, the City Council of the City of Palo Alto ("City Council") approved the Vesting Tentative Map for the development of 13 residential condominium units and up to 13 retail spaces, making the following findings, determinations and declarations:

SECTION 1. Background.

The City Council of the City of Palo Alto ("City Council") finds, determines, and declares as follows:

A. On November 21, 2017, Palo Alto Properties Investment, LLC applied for a Vesting Tentative Map for condominium purposes ("The Project").

B. The project site is comprised of two existing lots (APN No. 124-33-066 and 124-33-067) of approximately 39,953 square feet. The site contains one existing commercial structure. Residential and office land uses are located adjacent to the lot to the north, commercial use (restaurant and motel) to the west and east. To the project's south, across a major arterial road (El Camino Real), mixed-use.

C. Following staff review, the Planning and Transportation Commission reviewed the project and recommended approval on _____, 2018, subject to conditions of approval.

SECTION 2. Environmental Review.

The City as the lead agency for the Project has determined that the project is subject to environmental review under provisions of the California Environmental Quality Act (CEQA) under Guideline section 15070, Decision to Prepare an Initial Study-Mitigated Negative Declaration (IS-MND). An environmental impact assessment was prepared for the project and it has been determined that there is potential for significant impacts that would require mitigation measures to reduce them to a less than significant level. These include mitigations for protection for construction noise and appropriate construction methodology to prevent soil vapor intrusion into the structure. The IS-MND was made available for public review beginning January 19, 2016 through February 18, 2016, and approved by the Director of Planning and Community Environment on May 22, 2016. The Environmental Impact Assessment and Mitigated Negative Declaration are contained as Attachment E in the March 17, 2016, Architectural Review Board Staff Report (ID #6623).

SECTION 3. Vesting Tentative Map Findings.

A legislative body of a city shall deny approval of a Vesting Tentative Map, if it makes any of the following findings (California Government Code Section 66474). The City Council cannot make these findings for the following reasons:

1. *That the proposed map is not consistent with applicable general and specific plans as specified in Section 65451:* The site is consistent with the Comprehensive Plan as described below.

2. *That the design or improvement of the proposed subdivision is not consistent with applicable general and specific plans:* The Project is consistent with the following Comprehensive Plan policies: Policy L-1.1: Limit future urban development to currently developed lands within the urban service area [...] The Project site is located within the urban service area and the Project is consistent with this policy by continuing the reuse of land within this area; and Policy L-1.5: Encourage land uses that address the needs of the community and manage change and development to benefit the community. The Project would facilitate the construction of a mixed-use commercial, office and residential development that would create 13 new residential units, ground-floor retail and office space that maximizes the lot's utility to the benefit of the surrounding community; and Policy L-2.2: Enhance connections between commercial and mixed-use centers and the surrounding residential neighborhoods by promoting walkable and bikeable connections and a diverse range of retail and services that caters to the daily needs of residents. The Project provides a 4.5-foot public access easement along the El Camino Real street frontage to accommodate a 12-foot-wide sidewalk that will serve to enhance the pedestrian environment. Additionally, 8 short-term bicycle parking facilities are provided in on Sherman Avenue (an additional 18 long-term bike lockers are provided in the below-grade parking garage) which encourages active modes of transportation such as bicycling; and Policy L-4.2: Encourage street frontages that contribute to retail vitality in all Centers. Reinforce street corners in a way that enhances the pedestrian realm or that form corner plazas. Include trees and landscaping. The approved development project associated with the subdivision Project provides a highly visible and substantial open plaza with pedestrian-friendly amenities such as seating areas, decorative pavers and planters that will visually engage and promote activity within the development.

3. *That the site is not physically suitable for the type of development:* The Project site is suitable for mixed use development; it is comprised of two large relatively flat lots in a commercial corridor along a major arterial road (El Camino Real) in the Community Commercial (CC (2)) and Neighborhood Commercial (CN) zoning district. The lot would be subdivided into one parcel; for condominium purposes not to exceed thirteen (13) residential condominium units and thirteen (13) retail spaces. There is no required minimum site area, width, or depth for mixed-use developments in the CC (2) and CN zoning district. A public access easement will be dedicated with the Final Map to the provide an additional 4.5 feet of sidewalk between the front property line and back of walk along the El Camino Real frontage to

create a 12-foot effective sidewalk width. The Project site would allow for thirteen multi-family residential units as permitted for mixed-use developments in the CN and CC (2) zoning district.

4. *That the site is not physically suitable for the proposed density of development:* The project would create thirteen multi-family residential units which are compliant with the maximum allowable residential density as calculated for the total site area (15 DU/acre = 13 DU). See Palo Alto Municipal Code Section 18.16.060 – Table 4 (3).

5. *That the design of the subdivision or the proposed improvements are likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat:* As conditioned in the Final IS-MND approved by the Director of Planning and Community Environment on May 22, 2016, the Project will not cause environmental damage or injure fish, wildlife, or their habitat, in that the property is currently developed and not adjacent to sensitive habitat areas.

6. *That the design of the subdivision or type of improvements is likely to cause serious public health problems:* An environmental analysis identifies a few potentially significant impacts related to the associated development project's improvements that would require mitigation measures to reduce them to a less than significant level. These include mitigations for protection for construction noise and appropriate construction methodology to prevent soil vapor intrusion into the structure as reported in the Final IS-MND approved by the Director of Planning and Community Environment on May 22, 2016.

7. *That the design of the subdivision or the type of improvements will conflict with easements, acquired by the public at large, for access through or use of, property within the proposed subdivision. In this connection, the governing body may approve a map if it finds that alternate easements, for access or for use, will be provided, and that these will be substantially equivalent to ones previously acquired by the public. This subsection shall apply only to easements of record or to easements established by judgment of a court of competent jurisdiction and no authority is hereby granted to a legislative body to determine that the public at large has acquired easements for access through or use of property within the proposed subdivision.* The design of the subdivision will not conflict with any easements for access through or use of the property. A public access easement will be dedicated with the Final Map to provide an additional 4.5 feet of sidewalk between the front property line and back of walk along the El Camino Real frontage to create a 12-foot effective sidewalk width.

SECTION 4. Vesting Tentative Map Approval Granted.

Vesting Tentative Map Approval is filed and processed in accordance to PAMC Section 21.13.020 and granted by the City Council under PAMC Sections 21.12 and 21.20 and the California Government Code Section 66474, subject to the conditions of approval in Section 7 of this Record.

SECTION 5. Final Map.

The Final Map submitted for review and approval by the City Council shall be in substantial conformance with the Vesting Tentative Map prepared by John Koroyan titled "Vesting Tentative Map For Condominium Purposes," consisting of three (3) pages, stamped as received March 20, 2018, except as modified to incorporate the conditions of approval in Section 6. A copy of the Vesting Tentative Map is on file in the Department of Planning and Community Environment, Current Planning Division. Prior to the expiration of the Vesting Tentative Map approval, the subdivider shall cause the subdivision or any part thereof to be surveyed, and a Final Map, as specified in Chapter 21.08, to be prepared in conformance with the Vesting Tentative Map as conditionally approved, and in compliance with the provisions of the Subdivision Map Act and PAMC Title 21 and submitted to the City Engineer (PAMC Section 21.16.010[a]).

SECTION 6. Conditions of Approval

Planning Division

1. MITIGATION MONITORING AND REPORTING PROGRAM. Mitigation Monitoring and Reporting Program (MMRP), prepared for this project in compliance with the California Environmental Quality Act (CEQA), shall be incorporated by reference as conditions of approval. The applicant shall comply with all specified mitigation measures in the timelines outlined in the project's MMRP. Prior to requesting issuance of any related demolition and/or construction permits, the applicant shall meet with the Project Planner to review and ensure compliance with the MMRP, subject to the satisfaction of the Director of Planning of Planning and Community Environment.
2. ESTIMATED IMPACT FEE. Development Impact Fees, currently estimated in the amount of \$1,004,828.95 per PAMC 16.61.040, shall be paid prior to the issuance of the related building permit.

Building Division

3. All occupancy separations, rated shafts and easements shall be constructed and maintained per the draft of the COMBINED CONDOMINIUM DECLARATION AND COVENANTS, CONDITIONS AND RESTRICTIONS dated March 13, 2018.

Public Works Engineering Department

4. Off-site improvements such as curb and gutter, sidewalk replacement, street tree replacement and/or new street trees, street lights, utility upgrades or street resurfacing, striping are typically required with subdivisions. Since the proposed projects are part of subdivision, applicant(s) shall be aware that off-site improvements such as those listed above will be required. At a minimum plans provide an Off-site improvement Plan set that show new curb, gutter and sidewalk along the project

frontages to be removed and replaced, full street width resurfacing (grind and overlay) will be required, new street trees, striping, all off-site utility upgrades. Applicant shall meet with Urban Forestry to evaluate if a new street trees can be planted along the project frontages.

5. Subdivider shall prepare and submit documents per PAMC 21.16.020 along with the Final Map.
6. Provide closure calculations and cost estimate for the off-site improvements described above.
7. Subdivision Improvement Agreement is required to secure compliance with condition of approval and security of improvements onsite and offsite per PAMC Section 21.16.220.
8. The Final Map shall include CITY ENGINEER STATEMENT, CITY SURVEYOR STATEMENT, BENEFICIARY STATEMENT, DIRECTOR OF PLANNING AND COMMUNITY ENVIRONMENT STATEMENT and CITY CLERK.
9. The City of Palo Alto does not currently have a City Surveyor we have retained the services of Siegfried Engineering to review and provide approval on behalf of the City. Siegfried will be reviewing, signing and stamping the Final Map associated with your project.
In effort to employ the services of Siegfried Engineering, and as part of the City's cost recovery measures, the applicant is required to provide payment to cover the cost of Siegfried Engineering's review.
Our intent is to forward your Final Map to Siegfried for an initial preliminary review of the documents. Siegfried will then provide a review cost amount based on the complexity of the project and the information shown on the document. We will share this information with you once we receive it and ask that you return a copy acknowledging the amount. You may then provide a check for this amount as payment for the review cost. The City must receive payment prior to beginning the final review process.
10. Provide electronic copies of the documents provided.

PRIOR TO FINAL MAP RECORDATION.

11. Signed Subdivision Improvement Agreement and Security Bonds as described per PAMC 21.16.230.
12. The property owner shall provide a public access easement for the additional dimension of sidewalk between the property line and back of walk and/or building

edge to create a 12' free and clear sidewalk. Applicant shall plot and label the public access easement on the Final Map.

13. Submit wet signed and stamped mylar copy of the Final Map to Public Works for signature. Map shall be signed by Owner, Notary and Surveyor prior to formal submittal.

PRIOR TO ISSUANCE OF A BUILDING PERMIT OR GRADING AND EXCAVATION PERMIT

14. Subdivision Improvement Agreement is required to secure compliance with condition of approval and security of improvements onsite and offsite per PAMC Section 21.16.220.

15. Provide electronic copies of the documents provided.

PRIOR TO ISSUANCE OF A BUILDING PERMIT OR GRADING AND EXCAVATION PERMIT

16. Final Map shall be recorded with County Recorder.

Utilities Electrical Engineering

17. The applicant shall grant the City the easement to access the transformer that will serve the new building.

Housing/BMR

18. Below Market Rate (BMR) Housing Requirement: This project's total BMR requirement is 2 units.
19. All BMR units constructed under this condition shall be in conformance with the City's BMR Program rules and regulations. A BMR Agreement in a form acceptable to the City Attorney for the 2 BMR units shall be executed and recorded prior to final map approval or building permit issuance, whichever occurs first. Failure to comply with the timing of this condition and any adopted BMR Program rules and regulations shall not waive its later enforcement.
20. The applicant is hereby notified, as required by Government Code § 66020, that the approved plans, these conditions of approval, and the adopted City fee schedule set forth in Program H3.1.2 of the City of Palo Alto Comprehensive Plan constitute written notice of the description of the dedications, reservations, amount of fees and other exactions related to the project. As of the date of project approval, the 90 day period has begun in which the applicant may protest any dedications, reservations, fees or other exactions imposed by the City. Failure to file a protest in compliance with all of the requirements of Government Code § 66020 will result in a legal bar to challenging

the dedications, reservations, fees or other exactions.

Public Works Watershed Protection

The following comments are required to be addressed prior to any future related permit application such as a Building Permit, Excavation and Grading Permit, Certificate of Compliance, Street Work Permit, Encroachment Permit, etc. These comments are provided as a courtesy and are not required to be addressed prior to the Planning entitlement approval:

21. PAMC 16.09.170(c), 16.09.040(m) Discharge of Groundwater

Prior approval shall be obtained from the city engineer or designee to discharge water pumped from construction sites to the storm drain. The city engineer or designee may require gravity settling and filtration upon a determination that either or both would improve the water quality of the discharge. Contaminated ground water or water that exceeds state or federal requirements for discharge to navigable waters may not be discharged to the storm drain. Such water may be discharged to the sewer, provided that the requirements of Section 16.09.040 are met and the approval of the superintendent is obtained prior to discharge. The City shall be compensated for any costs it incurs in authorizing such discharge, at the rate set forth in the municipal fee schedule.

*The project is located in an area of suspected or known groundwater contamination with Volatile Organic Compounds (VOCs). If groundwater is encountered then the plans must include the following procedure for construction dewatering: **Review the guidelines listed in City of Palo Alto Municipal Code Chapter 16.28 prior to discharge of any water from construction dewatering.***

22. PAMC 16.09.055 Unpolluted Water

Unpolluted water shall not be discharged through direct or indirect connection to the sanitary sewer system.

And PAMC 16.09.175 (b) General prohibitions and practices

Exterior (outdoor) drains may be connected to the sanitary sewer system only if the area in which the drain is located is covered or protected from rainwater run-on by berms and/or grading, and appropriate wastewater treatment approved by the Superintendent is provided. For additional information regarding loading docks, see Section 16.09.175(k)

23. PAMC 16.09.180(b)(9) Covered Parking

If installed, parking garage floor drains on interior levels shall be connected to an oil/water separator prior to discharging to the sanitary sewer system. The oil/water separator shall be cleaned at a frequency of at least once every twelve months or more

frequently if recommended by the manufacturer or the superintendent. Oil/water separators shall have a minimum capacity of 100 gallons.

24. PAMC 16.09.180(b)(14) Architectural Copper

On and after January 1, 2003, copper metal roofing, copper metal gutters, copper metal down spouts, and copper granule containing asphalt shingles shall not be permitted for use on any residential, commercial or industrial building for which a building permit is required. Copper flashing for use under tiles or slates and small copper ornaments are exempt from this prohibition. Replacement roofing, gutters and downspouts on historic structures are exempt, provided that the roofing material used shall be prepatinated at the factory. For the purposes of this exemption, the definition of "historic" shall be limited to structures designated as Category 1 or Category 2 buildings in the current edition of the Palo Alto Historical and Architectural Resources Report and Inventory.

25. PAMC 16.09.180(b)(5) Condensate from HVAC

Condensate lines shall not be connected or allowed to drain to the storm drain system.

26. PAMC 16.09.205 Cooling Towers

No person shall discharge or add to the sanitary sewer system or storm drain system, or add to a cooling system, pool, spa, fountain, boiler or heat exchanger, any substance that contains any of the following:

- (1) Copper in excess of 2.0 mg/liter;
- (2) Any tri-butyl tin compound in excess of 0.10 mg/liter;
- (3) Chromium in excess of 2.0 mg/liter.
- (4) Zinc in excess of 2.0 mg/liter; or
- (5) Molybdenum in excess of 2.0 mg/liter.

The above limits shall apply to any of the above-listed substances prior to dilution with the cooling system, pool, spa or fountain water.

A flow meter shall be installed to measure the volume of blowdown water from the new cooling tower. Cooling systems discharging greater than 2,000 gallons per day are required to meet a copper discharge limit of 0.25 milligrams per liter.

27. PAMC 16.09.180(b)(b) Copper Piping

Copper, copper alloys, lead and lead alloys, including brass, shall not be used in sewer lines, connectors, or seals coming in contact with sewage except for domestic waste sink traps and short lengths of associated connecting pipes where alternate materials are not practical. The plans must specify that copper piping will not be used for wastewater plumbing.

28. 16.09.180(12) Mercury Switches

Mercury switches shall not be installed in sewer or storm drain sumps.

29. PAMC 16.09.205(a) Cooling Systems, Pools, Spas, Fountains, Boilers and Heat Exchangers

It shall be unlawful to discharge water from cooling systems, pools, spas, fountains boilers and heat exchangers to the storm drain system.

30. PAMC 16.09.165(h) Storm Drain Labeling

Storm drain inlets shall be clearly marked with the words "No dumping - Flows to Bay," or equivalent.

31. Undesignated Retail Space

Newly constructed or improved buildings with all or a portion of the space with undesignated tenants or future use will need to meet all requirements that would have been applicable during design and construction. If such undesignated retail space becomes a food service facility, see the departmental memo for requirements that must be met.

Fire Department

32. The following comments are provided as a courtesy and must be complied with at the Building Permit phase of this project (after the Planning entitlement approval):

- Upgrade the public fire hydrant at the intersection of El Camino Real and Sherman Ave to a Clow model 76 fire hydrant (two 2-1/2 and one 4-1/2). Contact CPA WGW 650-566-4501 to submit work order.

SECTION 7. Term of Approval.

1. Vesting Tentative Map. All conditions of approval of the Vesting Tentative Map shall be fulfilled prior to approval of a Final Map (PAMC Section 21.16.010[c]). Unless a Final Map is filed, and all conditions of approval are fulfilled within a two-year period from the date of Vesting Tentative Map approval, the Vesting Tentative Map shall expire and all proceedings shall terminate. An extension of time may be granted by the city council after recommendation of the planning commission, upon the written application of the subdivider, prior to the expiration of the Vesting Tentative Map approval, or any previous extension granted. Such extension(s) shall be subject to the maximum limitations set forth in the Subdivision Map Act.

PASSED:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

ATTEST:

APPROVED:

City Clerk

Director of Planning and
Community Environment

APPROVED AS TO FORM:

Deputy City Attorney

PLANS AND DRAWINGS REFERENCED:

Those plans prepared by John Koroyan titled "Vesting Tentative Map for Condominium Purposes," consisting of three pages, stamped March 20, 2018.

Attachment D

Initial Study – Mitigated Negative Declaration

Hardcopies of the initial study were provided to PTC members. The initial study is available to the public online and/or by visiting the Planning and Community Environmental Department on the 5th floor of City Hall at 250 Hamilton Avenue.

Directions to review Project plans online:

1. Go to: <http://bit.ly/PaloAltoPlanningProjects>
2. Scroll and click “View pending projects”
3. Then scroll to find “**2515-2585 El Camino Real**” and click the address link
4. On this project specific webpage you will find a link to the Initial Study – Mitigated Negative Declaration and other important information

ATTACHMENT C
ZONING COMPARISON TABLE

2515-2585 El Camino Real, File No. 17PLN-00448

Vesting Tentative Map

Table 1: COMPARISON WITH CHAPTER 18.16 (CN DISTRICT)			
Regulation	Required	Existing	Proposed
Minimum Site Area	none	39,953 sf (0.91 acres)	0.91 acres
Minimum Site Width **	none	153 feet	153 feet
Minimum Site Depth	none	250 feet	250 feet
Maximum Residential Density*	13 units	None	13 units
BMR units	None required	N/A	2

*There's no development proposed on the CC (2). The lot will contain surface parking for the project.

**Irregular shaped lot-average width

Recording Requested By:

When Recorded Return To:
Hanna & Van Atta
525 University Avenue, Suite 600
Palo Alto, California 94301

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR THE 2515-2585 EL CAMINO PALO ALTO MIXED USE CONDOMINIUM PROJECT

THIS DECLARATION CONTAINS A JUDICIAL REFERENCE PROVISION AND A BINDING ARBITRATION PROVISION IN ACCORDANCE WITH THE FEDERAL ARBITRATION ACT. ARBITRATION INCLUDES A WAIVER OF THE CONSTITUTIONAL RIGHT TO A JURY. YOU SHOULD READ THE JUDICIAL REFERENCE AND ARBITRATION PROVISIONS CAREFULLY AND SHOULD CONSULT LEGAL COUNSEL WITH ANY QUESTIONS.

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

[05.09.18]
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**MIXED USE RESIDENTIAL/COMMERCIAL CONDO [SINGLE ASSOCIATION] BRE
PROVISIONS - MMD #114435**

Law Offices of
Hanna & Van Atta
525 UNIVERSITY AVENUE, SUITE 600
PALO ALTO, CA 94301
TELEPHONE (650) 321-5700

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR THE 2515-2585 EL CAMINO PALO ALTO MIXED USE CONDOMINIUM PROJECT**

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EXHIBIT "B" COST CENTER ALLOCATIONS OF ASSESSMENT ITEMS
EXHIBIT "C" ALLOCATION OF ASSESSMENT ITEMS

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR THE 2515-2585 EL CAMINO PALO ALTO MIXED USE CONDOMINIUM PROJECT**

THIS DECLARATION, made on the date hereinafter set forth, by Palo Alto Properties Investment, LLC, a California limited liability company hereinafter referred to as "Declarant," is made with reference to the following facts:

A. Location of Property. Declarant is the Owner of certain real property (the "Property") located in the City of Palo Alto ("City"), County of Santa Clara ("County"), State of California, more particularly described as Tract No. _____ on that certain Map filed for record in the Office of the Recorder of Santa Clara County, California, on _____, 201__, in Book _____ of Maps, page(s) _____.

B. Description. Declarant intends to improve said real property by constructing thereon thirteen (13) residential condominium units, up to two (2) commercial office condominium units and up to thirteen (13) commercial retail units. Declarant intends to establish a Condominium Project under the provisions of the California Common Interest Development Act, providing for separate interests in a Condominium Unit and undivided common interests in the Common Area.

C. Intention. Declarant intends to create a "condominium project," as defined in Section 4125 of the California Civil Code and as defined in Section 783 of the California Civil Code and to impose mutually beneficial restrictions under a general plan of improvement for the benefit of all the Condominiums created pursuant to the Davis-Stirling Common Interest Development Act.

D. Owner's Interest. The development shall be referred to as the "Project" as defined in Section 1.57. The Owner of a Condominium will receive a separate interest in an individual Unit and an undivided interest in common in the Common Area as provided in Section 2.2.B. Each Condominium shall have appurtenant to it a membership in the 2515-2585 El Camino Owners Association, a nonprofit mutual benefit corporation, which shall manage the Common Area.

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

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

ARTICLE I. DEFINITIONS AND INTERPRETATIONS

1.1. "Architectural Control Committee": Architectural Control Committee created pursuant to Section 7.12.

1.2. "Articles": The Articles of Incorporation of the Association, as amended from time to time.

1.3. "Assessment": The cost of inspecting, maintaining, improving, repairing, operating and managing the Project, including Reserves, which is to be paid by each Owner as determined by the Association, and shall include Regular Assessments, Special Assessments, Reimbursement Charges, and Cost Center Assessments.

1.4. "Assessment Lien": A lien imposed by the Association on a Unit to collect a delinquent Assessment pursuant to California Civil Code Section 5675.

1.5. "Association": The 2515-2585 El Camino Owners Association, a California nonprofit mutual benefit corporation, the Members of which shall be the Owners of Condominiums in the Project.

1.6. "Board" or "Board of Directors": The governing body of the Association.

1.7. "Budget": A written, itemized estimate of the Association's income and Common Expenses prepared and adopted by the Association pursuant to the Bylaws.

1.8. "Building": The structure containing Units and the portions of the Common Area situated within the Building.

1.12. "Bylaws": The Bylaws of the Association, as amended from time to time.

1.9. "Cal BRE": The California Bureau of Real Estate and any department or agency of the California state government that succeeds to the Cal BRE's functions.

1.10. "City": The City of Palo Alto, a municipal corporation.

1.13. "Commercial Condominium": The Commercial Condominiums shown on the Condominium Plan as Commercial Retail Units and the Commercial Office Units.

1.14. "Commercial Office Unit": The Commercial Condominium Unit designated on the Condominium Plan as "CO-___".

1.15. "Commercial Owner": The Owner of a Commercial Condominium.

1.16. "Commercial Retail Unit": The Commercial Condominium Units designated on the Condominium Plan as "CR-___".

1.17. "Common Area": The entire Project with the exception of the individual Condominium Units, title to which is held by all of the Owners in common. The Common Area includes, without limitation, land; drive aisles, ramp, street easement area, parking garage, parking stalls, fire riser room, electrical room, lobby, elevators and elevator shafts, elevator enclosures, elevator control room, trash enclosure, stairwells, driveways, architectural features, shafts, demising walls, garbage chute[s], all airspace outside the building, control room, cable room, phone room, plumbing walls and basement, garage, parking, open spaces, parking and driveway areas; trash enclosures; exterior stairs, decks, balconies, patios and storage areas; decks, patios; bearing walls, columns, girders, ceiling joists, subfloors, unfinished floors, roofs, and foundations; central heating, water heaters, central air conditioning equipment, reservoirs, [smoke and/or carbon monoxide and/or heat detectors (including those located within the Units), fire sprinklers and extinguishers;] tanks, pumps, motors, ducts, flues and chutes; conduits, pipes, plumbing, wires and other utility installations (except the outlets thereof when located within the Unit), [and excepting utility installations located within a Unit], required to provide power, light, telephone, gas, water, sewerage, drainage, heat, air conditioning and elevator service; interior sprinklers, sprinkler pipes, and sprinkler heads which protrude into the airspace of a Condominium Unit; and other built-in fire protection devices and equipment; exterior sprinklers and sprinkler pipes; central television antenna or cable television installation.

1.18. "Common Expenses": Those expenses for which the Association is responsible under this Declaration, including, but not limited to, the following: (a) actual and estimated costs of inspecting, maintaining, managing and operating the Project; (b) unpaid Special Assessments, and amounts the Board determines are necessary to maintain and fully fund the Reserve Fund; (c) the costs of all utilities for the Common Area, or that are metered to more than one Condominium, and any other utilities or services (such as trash removal) that are billed to the Association for the benefit of the Project; (d) the cost of managing and administering the Association, including compensation for managers, accountants, attorneys, and employees; (e) inspection, maintenance, repair and replacement of Common Area improvements and facilities required by this Declaration and all other expenses

incurred by the Association for the common benefit of the Owners, including the cost of inspection and maintenance, janitorial services, (elevator maintenance) and other inspection and maintenance services that benefit the Project; (f) premiums for all insurance covering the Project and insurance policies for the directors, officers and agents of the Association, and bonding the Members of the Board; (g) taxes paid by the Association; and (h) amounts paid by the Association for discharge of any lien or encumbrance levied against the Project.

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

1.20. "Conditions of Approval": The "City Conditions of approval for 2515 & 2585 El Camino Real File # 15PLN170" for the Project on file with the City.

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

1.22. "Condominium Owner(s)": The record holder(s) of title to a Condominium Unit in the Project.

1.23. "Condominium Plan": The recorded three-dimensional plan of the Condominiums built or to be built on the property in the Project which identifies the Common Area and each Unit as a separate interest pursuant to California Civil Code §§ 4120 and 4285. The Condominium Plan was recorded on the ____ day of _____, 20__, in Book ____ of Maps, page ____, in the Official Records of the County.

1.24. "Condominium Unit": The elements of a Condominium, as defined in Sections 2.2.C, 2.2.D and 2.2.E.

1.25. "Cost Center": One (1) or more areas, improvements, or facilities, located within the Project, the use or maintenance of which is substantially restricted to Owners of certain Units, as specified in Section 4.3.B of this Declaration, where the expenses of operating, maintaining and replacing such areas, improvements or facilities are born solely or disproportionately by such specified Owners.

1.26. "Cost Center Assessment": The portion of Common Expenses, including operating and Reserve Funds, budgeted or allocated exclusively to any particular Cost Center.

1.27. "Cost Center Expense": Any cost or expense for undertaking the maintenance obligations and responsibility of a Cost Center as set forth in Section 4.3.B of this Declaration.

1.28. "County": The County of Santa Clara.

1.29. "Davis-Stirling Act": California Civil Code Sections 4000, et seq.

1.30. "Declarant": Palo Alto Properties Investment, LLC, a California limited liability company, and any successor or assign that expressly assumes the rights and duties of the Declarant under this Declaration, in a recorded written document.

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

1.32. "Demising Wall": A wall between contiguous Units, the space within which is Common Area.

1.33. "Design Guidelines": The rules or guidelines setting forth procedures and standards for submission of plans for Architectural Control Committee approval.

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

1.35. "Eligible Mortgage Holder": A holder, insurer, or guarantor of a First Mortgage on a Unit which has requested timely written notices from the Association, in a written request that includes the name and address of the Eligible Mortgage Holder, and the Unit number.

1.36. "Eligible Insurer or Guarantor": An insurer or governmental guarantor of a First Mortgage.

1.37. "Exclusive Use Common Area": Those portions of the Common Area set aside for exclusive use of an Owner pursuant to Section 2.2.C, and shall constitute "Exclusive Use Common Area" within the meaning of California Civil Code Section 4145.

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

1.39. "First Mortgage": Any Mortgage recorded in the County made in good faith and for value on a Condominium with first priority over other Mortgages encumbering the Condominium.

1.40. "Foreclosure": The legal process by which a Condominium owned by an Owner who is in default under a Mortgage is sold pursuant to California Civil Code § 2924a et seq. or sale by the Court pursuant to California Code of Civil Procedure § 725a et seq. and any other applicable laws.

1.41. "Governing Documents": This Declaration, as amended from time to time, the exhibits, if any, that are attached to the Declaration, together with the other basic documents used to create and govern the Project, including the Map, the Articles, the Bylaws, the Condominium Plan, the Rules, and any Design Guidelines adopted by the Architectural Control Committee, the Board or the Association.

1.42. "Hazardous Materials": Any substance, material or waste which is or becomes: (i) regulated by any local or regional Governmental authority of the State of California or the United States Government as a hazardous waste; (ii) is defined as a "solid waste," "sludge," "hazardous waste," "extremely hazardous waste," "restricted hazardous waste," "non-RCRA hazardous waste," "RCRA hazardous waste," or "recyclable material," under any federal, state or local statute, regulation, or ordinance, including, without limitation, Sections 25115, 25117.9, 25120.2, 25120.5 or 25122.7, 25140, 25141 of the California Health and Safety Code; (iii) defined as a "Hazardous Substance" under Section 25316 of the California Health and Safety Code; (iv) defined as a "Hazardous Material," "Hazardous Substance" or "Hazardous Waste" under Section 25501 of the California Health and Safety Code; (v) defined as a "Hazardous Substance" under Section 25281 of the California Health and Safety Code; (vi) asbestos; (vii) petroleum products, including, without limitation, petroleum, gasoline, used oil, crude oil, waste oil, and any fraction thereof, natural gas, natural gas liquefied, methane gas, natural gas, or synthetic fuels, (viii) materials defined as hazardous or extremely hazardous pursuant to the California Code of Regulations; (ix) pesticides, herbicides and fungicides; (x) polychlorinated biphenyls; (xi) defined as a "Hazardous Substance" pursuant to Section 311 of the Federal Water Pollution Control Act (33 U.S.C. Section 1251 et seq.); (xii) defined as a "Hazardous Waste" pursuant to Section 1004 of the Federal Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq.; (xiii) defined as a "Hazardous Substance" or "Mixed Waste" pursuant to Section 101 of the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. Section 9601 et seq., and regulations promulgated thereunder; (xiv) defined as a "Hazardous Substance") pursuant to Section 401.15 of the Clean Water Act, 40 C.F.R. 116; (xv) defined as an "Extremely Hazardous Substance" pursuant to Section 302 of the Superfund Amendments and Reauthorizations Act of 1986, 42 U.S.C. Section 11002 et seq.; or (xvi) defined as "medical waste" pursuant to Section 25023.2 of the California Health and Safety Code, Chapter 6.1 (Medical Waste Management Act).

1.43. "Major Components": Those elements of the Project, including, without limitation, structural elements, machinery and equipment, that the Association is obligated to maintain as provided in California Civil Code §§ 5300(b) and 5550.

1.44. "Map": The Map described above in Introductory Paragraph A.

1.45. "Member": A person entitled to membership in the Association as provided herein.

1.46. "Mortgage": A mortgage, deed of trust, assignment of rents, issues and profits or other proper instrument (including, without limitation, those instruments and estates created by sublease or assignment) given as security for the repayment of a loan or other financing which encumbers a Condominium, made in good faith and for value.

1.47. "Mortgagee": The holder of a Mortgage including the beneficiary of a deed of trust that constitutes a Mortgage.

1.48. "Mortgagor": A Person who encumbers his Condominium with a Mortgage, including a trustor of a deed of trust that constitutes a Mortgage.

1.49. "Notice of Delinquent Assessment": A Notice of Delinquent Assessment filed by the Association for a delinquent Assessment pursuant to Section 4.9.C.

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

1.51. "Owner" or "Owners": The record holder of fee simple title to a Condominium, including Declarant, expressly excluding Persons having any interest merely as security for the performance of an obligation until such person obtains fee title thereto, and those parties who have leasehold interests in a Condominium. If a Condominium is sold under a recorded installment contract of sale, the purchaser under the contract of sale, rather than the holder of the fee interest, shall be considered the "Owner" from and after the date the Association receives written notice of the recorded contract of sale.

1.52. "Owners Association Manual": Recommendations and directions for inspection and maintenance of Common Area improvements by the Association and/or the Board.

1.53. "Parking Management Plan": The plan for regulation of Project parking, including the rules for sharing of parking by the Residential Owners, the Commercial Owners and the Association and its Members. **The Parking Management Plan shall include provisions for compliance with the Transportation Demand Management Program established for the Project with the City. [City Condition 8]**

1.54. "Parking Space": A parking space located in the Project's garage or located elsewhere in the Project's Common Area as shown on the Condominium Plan or the Parking Management Plan.

1.55. "Person": A natural person, a corporation, a partnership, a limited liability company, a trust, or other legal entity.

1.56. "Project": All of the real property described on the Map and Condominium Plan, and all improvements on that real property subject to this Declaration.

1.57. "Property": The real property described in Recital Paragraph A of this Declaration.

1.58. "Public Report": The official document and permit issued pursuant to the Subdivided Lands Act, Business & Professions Code §§ 11000 et seq., by the State of California Bureau of Real Estate authorizing the offering of the Residential Units for sale to the public.

1.59. "Regular Assessments": A Regular Assessment determined and levied pursuant to Section 4.3.A of this Declaration.

1.60. "Reimbursement Charge": A charge levied by the Board against an Owner to reimburse the Association for costs and expenses incurred in bringing the Owner and/or his or her Unit and/or Occupant into compliance with the provisions of this Declaration, determined and levied pursuant to Sections 4.10 and 5.1.A of this Declaration.

1.61. "Reserves or Reserve Funds": That portion of the Common Expenses collected as part of the Regular Assessments levied against the Condominiums in the Project allocated (i) for the future repair and replacement of, or additions to, the Major Components which the Association is

obligated to maintain pursuant to this Declaration, including Reserves for replacement of structural elements and mechanical equipment or other facilities maintained by the Association; and (ii) to cover the deductible amounts of any insurance policies maintained by the Association.

1.62. "Reserve Study": The tri-annual study of Major Components of a Common Interest Development required by California Civil Code Sections 5550 and 5560.

1.63. "Residential Owner": The Owner of a Residential Unit.

1.64. "Residential Unit": One of the thirteen (13) Residential Units shown on the Condominium Plan as Unit R-1 through R-13.

1.65. "Right to Repair Law": Division 2, Part 2, Title 7 (commencing with Section 895) of the California Civil Code ("SB 800").

1.66. "Rules": The rules adopted from time to time by the Board or the Association pursuant to Section 5.2.D.

1.67. "SB 800": The "Right to Repair Law".

1.68. "Special Assessments": A Special Assessment levied by the Association pursuant to Section 4.3.B.

1.69. "Stormwater Maintenance and Operations Plan": The "Stormwater Maintenance and Operations Plan" for the Project required by City Conditions of Approval under the Storm Water Maintenance and Operations Agreement for the Project between Declarant and the City.

1.70. "Transportation Demand Management Program Plan": The "Transportation Demand Management Program" for the Project required by City Conditions of Approval for the Project. [City Condition 8]

1.71. "Unit": The elements of the Condominium, as defined in Section 2.2.A, and in Section 4125(b) of the California Civil Code, which are not owned in common with the Owners of other Condominiums in the Project. Each Unit is identified by separate letter and number on the Condominium Plan.

1.72. "Unit Owners' Manual": Recommendations and directions for inspection and maintenance of a Unit by the Unit Owner.

1.73. "Utility Facilities": Defined in Section 6.1.

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

2.1. Description of Project: The Project is a Condominium Project within the meaning of California Civil Code § 4125 consisting of the land, the Condominiums and all other improvements located thereon. Declarant has constructed or will construct on the Property which is a residential/commercial project containing thirteen (13) residential Condominium Units, up to two (2) Commercial Office Condominium Unit and up to thirteen (13) Commercial Retail Units. Reference is made to the Condominium Plan for further details.

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

A. Condominium Units: Each of the Units as separately shown, numbered and designated in the Condominium Plan, consists of the space bounded by and contained within the interior unfinished surfaces of the perimeter walls, floors, ceilings, windows, window frames, doors and door frames and trim, of each Unit, each of such spaces being defined and referred to herein as a "Unit". Bearing walls located within the interior of a Unit are Common Area, not part of the Unit, except for the finished surfaces thereof. Each Unit includes the utility installations located within its

boundaries that the Owner has exclusive use of, including, without limitation, water heaters, space heaters, lighting fixtures, and cabinetry which are located entirely within the Unit they serve. Each Unit includes both the portions of the Project so described and the airspace so encompassed. The Unit does not include those areas and those things which are defined as "Common Area" in Section 1.17. Each Unit is subject to such encroachments as are contained in the Building, whether the same now exist or may be later caused or created in any manner referred to in Section 9.5. In interpreting deeds and plans, the then existing physical boundaries of a Unit, when the boundaries of the Unit are contained the Building, or of a Unit reconstructed in substantial accordance with the original plans thereof shall be conclusively presumed to be its boundaries rather than the boundaries expressed in the deed or plans, or Condominium Plan, regardless of settling or lateral movement of the Building and regardless of minor variance between boundaries shown on the plan or deed, and those of the Building. Each Unit shall have appurtenant to it nonexclusive rights for ingress, egress and support through the Common Area subject to the rights of each Owner in the Exclusive Use Common Area appurtenant to that Owner's Condominium.

B. Common Area: Each Condominium Owner shall have, as appurtenant to its Unit an undivided interest in the Common Area in the percentage set forth in Exhibit "A" attached hereto and incorporated by reference herein. 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 affected, as expressed in an amended Declaration. The undivided Common Interest cannot be separated from the Unit, and any conveyance or transfer of the Unit shall include the undivided Common Interest, the Owner's membership in the Association, and any other benefits or burdens appurtenant to that Owner's Condominium. Each Owner may use the Common Areas in accordance with the purposes for which they are intended subject to the Governing Documents, without hindering the exercise of or encroaching upon the rights of any other Owners subject to the rights of each Owner in the Exclusive Use Common Area appurtenant to that Owner's Condominium.

C. Exclusive Use Common Areas: The following described portions of the Common Area, referred to as "Exclusive Use Common Areas," are set aside and allocated for the exclusive use of the Owner of the Condominium to which they are attached or assigned as shown on the Condominium Plan, and are appurtenant to that Condominium:

- (1) parking space designated "P", followed by the number of the Unit;
- (2) patio/terrace designated "PT", followed by the number of the Unit;
- (3) balcony designated "B", followed by the number of the Unit;

In addition, the following areas or items are "Exclusive Use Common Areas" appurtenant to the Condominiums in which they are located or attached:

- (1) The airspace above the Unit as shown on the Condominium Plan, and the inside face of the structural roof framing;
- (2) that portion of any Common Area floor or ceiling that is pierced by interior stairs;
- (3) the space between the exterior boundary of any Unit and the interior surface of any bay window or greenhouse window;
- (4) interior stairs serving the Unit.

Except as described herein, no other portion of the Common Areas shall be Exclusive Use Common Area.

D. Reserved Rights of Declarant and Board over Common Areas: The Board or Declarant (as long as Declarant owns twenty-five percent (25%) or more of the Condominiums in the Project shall have the power and the right in the name of the Association and all of the Owners as their attorney-in-fact to grant, convey or otherwise transfer to any Owner or any other Person fee title, easements, leasehold estates, exclusive use easements or rights, licenses, lot-line adjustments, rights-of-way and/or dedications in, on, over or under the Common Area or other property interests in order to: (i) construct, erect, operate, maintain or replace lines, cables, wires, conduits or other devices for electricity, cable television, Internet services, fiber optics, telecommunication equipment, power, telephone and other purposes, public sewers, storm water drains and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes and any similar public or quasi-public improvements or

facilities; (ii) accommodate any encroachment that in the sole discretion of the Board or Declarant does not unreasonably interfere with the use and enjoyment of the Common Area; or (iii) accomplish any other purpose that in the sole discretion of the Board or Declarant is in the interest of the Association and its Members and does not unreasonably interfere with the use enjoyment of the Common Area. Each Owner in accepting a deed to a Condominium expressly consents to such action and authorizes and appoints the Association and Declarant (as long as Declarant owns twenty-five percent (25%) or more of the Condominiums in the Project) as attorney-in-fact of such Owner to execute and deliver all documents and interests to accomplish the action, including, but not limited to, grant deeds, easements, subdivision maps, and lot-line adjustments. Notwithstanding anything herein to the contrary, in no event shall the Board or Declarant take any action authorized hereunder that would permanently and unreasonably interfere with the use, occupancy and enjoyment by any Owner of his or her Condominium or any Exclusive Use Common Area without the prior written consent of that Owner. Furthermore, the conveyance of fee title to any portion of the Common Area as authorized in this Section 2.2.D (other than conveyances made as a part of lot-line adjustments) shall require the consent of a majority of the total voting power of the Association other than Declarant and such consent of the Mortgagees as may be required by Section 9.6.

2.3. Parking Allocations and Use: Thirteen (13) of the Parking Spaces located in the Project's parking garage are reserved for the exclusive use of the Occupants of the Residential Units as Exclusive Use Common Area as provided in Section 2.2.C. The surface Parking Spaces located exterior of the Project's parking garage are reserved for parking by guests of the Occupants of the Residential Units in accordance with the Project's Parking Management Plan that is to be administered by the Association and the Association's Rules regarding parking. The remainder of the Parking Spaces located in the Project's underground parking garage shall be shared by the Occupants of the Residential Units, the Commercial Office Unit and the Commercial Retail Units in accordance with the Project's Parking Management Plan that is to be administered by the Association and the Association's Rules regarding parking.

The accessible Parking Spaces within the Project are reserved for the use of Persons who are appropriately licensed to use an accessible parking space by the State of California.

No parking space may be rented, licensed or transferred for use by anyone other than an Owner of a Condominium in the Project or the Invitees of such Owners. [A Residential Owner may enter into an agreement with the Residential Owner of another Residential Unit the temporary use of a space by the Owner or Occupant of the other Residential Unit. The agreement shall be a license only and shall not transfer any other interest in the space. Each license must be on a month-to-month basis, terminated on no later than thirty (30) days' prior notice by the Residential Owner.]

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

A. The non-exclusive rights of each Owner for ingress, egress and support through the Common Area, and use of the Common Area as provided in Sections 2.2.A and 2.2.B.

B. The right of the Association's agents or employees to enter any Unit to cure any violation of the Governing Documents provided that the Owner has received thirty (30) days written notice and a hearing as required by the Bylaws (except in the case of an emergency) and the Owner has failed to cure the violation or take steps necessary to cure the violation within thirty (30) days after the finding of a violation by the Association.

C. The access rights of the Association to inspect, maintain, repair or replace improvements or property located in the Common Area as described in Section 5.2.E, and to enter any Unit to perform the Association's duties under this Declaration.

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

E. The encroachment easements described in Section 9.5.

F. The rights of the Declarant during the construction period as described in Section 9.7.

G. The rights of Owners to make improvements or alterations authorized by California Civil Code § 4760(a)(2), subject to the provisions of Section 7.12 to the extent applicable.

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

Any proceeds or property resulting from a partition shall be distributed to and among the respective Owners and their Mortgagees as their interests appear in proportion to the ratio that the fair market value of each Owner's Condominium bears to the fair market value of all Owners' Condominiums as of the date immediately preceding the date of the event giving rise to the right of the Owners to partition the Common Area.

2.6. Telecommunications Easement: Declarant reserves blanket easements (collectively "Telecommunications Easements") over the Project for access and for purposes of constructing, installing, locating, altering, operating, maintaining, inspecting, upgrading, removing and enhancing Telecommunications Facilities (collectively, "Telecommunications Purposes") for the benefit of Declarant. Such easements are freely transferable by Declarant to any other Person and their successors and assigns (subject to other existing agreements of instruments of Record). No one, except for Declarant and Declarant's transferees may use the Project for Telecommunications Purposes.

All Telecommunications Facilities shall be owned, leased or licensed by Declarant, as determined by Declarant, in its sole discretion and business judgment. Transfer of the Project does not imply transfer of any Telecommunications Easements or Telecommunications Facilities. The holders of the Telecommunications Easements may not exercise the rights reserved hereunder in any manner which will unreasonably interfere with the reasonable use and enjoyment of the Project by any Owner. If the exercise of any Telecommunications Easement results in damage to the Project, then the easement holder who caused the damage shall, within a reasonable period of time, repair such damage. If Declarant has not conveyed the Telecommunications Easements in the Project to another Person before the last Close of Escrow in the Project, then Declarant grants the Telecommunications Easements to the Association effective as of the last Close of Escrow in the Project.

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

2.8. Lien Claims: No lien filed against one (1) Unit shall have any legal effect on any other Unit. If, however, a lien should (erroneously) be filed against one (1) Unit, as a result of a claim against another Unit, the Owner(s) (or the Association, as the case may be) shall immediately, and at its expense, do whatever is required to remove the lien claim from the Unit against which it was erroneously filed.

ARTICLE III. ASSOCIATION, ADMINISTRATION, MEMBERSHIP AND VOTING RIGHTS

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

3.2. Membership: The Owner of a Condominium shall automatically, upon becoming the Owner of the Condominium, be a Member of the Association, and shall remain a Member of the

Association until such time as 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. No Owner may resign his or her membership. Membership is appurtenant to the Owner's Condominium and may not be transferred apart from the Condominium. Any transfer of title to a Condominium (except a transfer solely as security for a loan) automatically transfers the membership to the transferee.

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

3.4. Membership and Voting Rights: Membership and voting rights shall be as set forth in the Bylaws.

3.5. Arbitration: In the event of a dispute between the Members in regard to the rights and duties of the Members and/or the Association, pursuant to this Declaration, then, upon written request of a Member addressed to the Board, the matter shall be submitted to binding arbitration within sixty (60) days pursuant to the provisions of Section 9.15 of this Declaration and the decision of the arbitrator(s) shall be final and conclusive on the parties, and judgment may be entered thereon in any court having jurisdiction, including the award of attorneys' fees and costs. If the dispute or claim involves a sum not in excess of the jurisdictional limit of the Small Claims Court, the Member shall have the option of taking the matter to Small Claims Court in lieu of binding arbitration.

ARTICLE IV. ASSESSMENTS; LIENS AND FORECLOSURE

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

(1) to pay Regular Assessments, Cost Center Assessments and Special Assessments and Reimbursement Charges to the Association as established in this Declaration, and

(2) 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 Regular and Special Assessments, Cost Center Assessments, including Reimbursement Charges, as permitted under Section 4.9, together with interest, late charges, collection costs and reasonable attorneys' fees, shall be a charge on the Condominium and shall be a continuing Assessment Lien upon the Condominium against which each such Assessment is made, the Assessment 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 of the person who was the Owner of such Condominium at the time when the Assessment fell due. The personal obligation of an Owner for delinquent Assessments shall not pass to his successors in title unless expressly assumed by them. No Owner shall be exempt from liability for payment of Assessments by waiver of the use or enjoyment of any of the Common Areas or by the abandonment of the Owner's Condominium.

The interest of any Owner in the amounts paid pursuant to any Assessment upon the transfer of ownership shall pass to the new Owner. Upon the termination of these covenants for any reason, any amounts remaining from the collection of such Assessments after paying all amounts properly

charged against such Assessments shall be distributed to the then Owners on the same pro rata basis on which the Assessments were collected.

4.2. Purpose of Assessments: The Assessments levied by the Association shall be used exclusively to promote the economic interests, recreation, health, safety, and welfare of all the Owners and other residents in the Project and to enable the Association to perform its obligations under this Declaration, including, without limitation, the maintenance of all Common Area improvements in good condition at all times.

4.3. Assessments:

A. Regular Assessments: The Board shall establish and levy Regular Assessments in an amount that the Board estimates will be sufficient to raise the funds needed to perform the duties of the Association during each fiscal year. Regular Assessments shall be made for a one-year period and collected in monthly installments.

The Regular Assessment shall include a portion for Reserves in such amounts as necessary to fully fund Reserves to meet the costs of the future inspection, repair, replacement or additions to the Major Components and fixtures that the Association is obligated to maintain and repair. Reserve Funds shall be deposited in a separate account and the signatures of at least two (2) persons who shall either be Members of the Board or one officer who is not a Member of the Board and a member of the Board shall be required to withdraw monies from the Reserve account.

B. Cost Center Assessments: Certain of the Project's Common Expenses are to be levied to some but not all of the Units in the Project as Cost Center Assessments. For the purpose of allocating these Cost Center Assessments, the Board shall establish Cost Centers for certain of the Units. The Cost Centers for the Project and the allocations to those Cost Centers are set forth in Exhibit "B" of this Declaration.

C. Special Assessments: The Board, at any time, may levy a Special Assessment in order to raise funds for unexpected operating or other costs, insufficient operating or Reserve Funds, or such other purposes as the Board in its discretion considers appropriate. Special Assessments shall be allocated among the Units in the same manner as Regular Assessments, except in the case of an Assessment levied by the Board against a Member to reimburse the Association for costs incurred in bringing a Member into compliance with provisions of the Governing Documents, or to replace insurance proceeds pre-empted pursuant to Section 8.2.A.

4.4. Restrictions on Increases in Regular Assessments or Special Assessments:

A. Approval of Members for Certain Assessments. Except as provided in Section 4.4.B, without having first obtained the approval of such action by the vote or written assent of Members casting a majority of the votes at a meeting of the Association at which a quorum is present, the Board may not: (1) impose a Regular Assessment on any Condominium which is more than twenty percent (20%) greater than the Regular Assessment for the immediately preceding fiscal year or (2) levy a Special Assessment to defray the cost of any action or undertaking on behalf of the Association which in the aggregate exceeds five percent (5%) of the budgeted gross expenses of the Association for that fiscal year. For purposes of this Section 4.4, 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 Section 4.4 shall be conducted in accordance with Chapter 5 (commencing with § 7510) of Part 3, Division 2 of Title 1 of the California Corporations Code and § 7613 of the California Corporations Code. The right of the Board to increase Regular Assessments by up to twenty percent (20%) over the Regular Assessment for the immediately preceding fiscal year is subject to the Board having complied with the provisions of California Civil Code § 5605(a), or having obtained the approval of such increase by the Members in the manner set forth above in this Section 4.4.

B. Assessments - Emergency Situations. Notwithstanding the foregoing, the Board, without membership approval, may increase Regular Assessments or levy Special Assessments necessary for an emergency situation in amounts that exceed the limits set forth in Section 4.4.A, above. For purposes of this Section, an emergency situation is one of the following:

(1) an extraordinary expense required by an order of a court,

(2) an extraordinary expense necessary to repair or maintain the Project or any part of it for which the Association is responsible where a threat to personal safety on the Project is discovered, or,

(3) an extraordinary expense necessary to repair or maintain the Project or any part of it for which the Association is responsible that could not have been reasonably foreseen by the Board in preparing and distributing the pro forma operating budget, provided, however, that prior to the imposition or collection of the Assessment, the Board 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 the Assessment.

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

This Section 4.4.B incorporates the statutory requirements of California Civil Code § 5610. If this Section of the California Civil Code is amended in any manner, this Section 4.4.B shall be automatically amended in the same manner without the necessity of amending this Declaration.

C. Notice and Quorum for Any Action Authorized Under Section 4.4: Any action authorized under Section 4.4, which requires a vote of the membership, shall be taken at a meeting called for that purpose, written notice of which shall be personally delivered or mailed 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 to the provisions of California Corporations Code §7513, in which event the ballot and any related material may be sent by electronic transmissions, and responses may be returned by electronic transmissions.

4.5. Division and Collection of Assessments: Both Regular Assessments and Special Assessments shall be levied equally among the Condominiums, as set forth in the Budget, except for Common Expenses allocated as Cost Center Assessments and those portions of the Assessments specially allocated to meet the cost of insurance, painting and roof reserves, and any commonly metered domestic water, gas or electricity. These specially allocated items shall be levied among the Condominiums in the proportion that the square footage of living space of each Unit bears to the square footage of all the Units subject to the Declaration as determined by the plans prepared by Declarant and set forth in the Budget as set forth in Exhibit "C." Regular Assessments shall be collected on a monthly basis. Special Assessments may be collected in one (1) payment or periodically as the Board shall direct. Cost Center Assessments shall be allocated among the Owners of Units within the Cost Center as provided herein and shall be collected on a monthly basis unless the Board directs otherwise.

4.6. Date of Commencement of Regular Assessment; Due Dates: Regular Assessments (including, where applicable Cost Center Assessments) provided for in this Declaration shall commence as to all Condominiums covered by this Declaration on the first day of the month following the first conveyance of a Condominium to an individual Owner under authority of a Public Report. The first Regular Assessment and Cost Center Assessment shall be adjusted according to the number of months remaining in the calendar year. Subject to the provisions of Section 4.3 hereof, the Board of Directors shall use its best efforts to fix the amount of the Regular Assessment and any Cost Center Assessment against each Condominium and send written notice thereof to every Owner at least forty-five (45) days in advance of each Regular Assessment period, provided that failure to comply with the foregoing shall not affect the validity of any Assessment levied by the Board. Regular Assessments and Cost Center Assessments may be prorated on a monthly basis. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer or designated representative of the Association stating that the Assessments on a

specified Condominium have been paid. Such a certificate shall be conclusive evidence of such payment.

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

4.8. Transfer of Condominium by Sale or Foreclosure: Sale or transfer of any Condominium shall not affect the Assessment Lien. However, the sale of any Condominium pursuant to Foreclosure of a First Mortgage shall extinguish the Assessment Lien of any Assessments on that Condominium (including attorneys' fees, late charges, or interest levied in connection therewith) as to payments which became due prior to such sale or transfer (except for Assessment Liens as to which a Notice of Delinquent Assessment has been recorded prior to the Mortgage). Any First Lender who obtains title to a Condominium pursuant to remedies in the Mortgage or through foreclosure will not be liable for more than six (6) months of the Unit's unpaid regularly budgeted Assessment accrued before acquisition of the title to the Unit by the First Lender, and will be liable (together with all other Owners) for fees or costs related to the collection of unpaid Assessments. No sale or transfer shall relieve such Condominium from liability for any Assessments becoming due after the foreclosure sale or from the lien thereof. The unpaid share of such Assessments shall be deemed to be Common Expenses collectible from all of the Condominium Owners including such acquirer, his 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.

4.9. Priorities; Enforcement; Remedies: If an Owner fails to pay an Assessment when due, the Association has the right, and option, to bring legal action against the Owner to enforce collection of the unpaid and past due Assessment, or may impose an Assessment Lien on the Unit owned by Owner pursuant to the provisions of California Civil Code § 5675. Suit to recover a money judgment for unpaid Assessments and attorneys' fees, shall be maintainable without foreclosing or waiving the lien securing the same. The Association shall distribute the written notice described in subdivision (b) of California Civil Code § 5730 entitled "Notice Assessments and Foreclosure" to each Member during the 60-day period immediately preceding the beginning of the Association's fiscal year. The notice is to be printed in at least 12-point type.

A. Statement of Charges: At least thirty (30) days prior to the Association recording an Assessment Lien upon a Unit pursuant to California Civil Code § 5650, the Association shall notify the Owner of record in writing by certified mail of the following:

(1) A general description of the collection and lien enforcement procedures of the Association and the method of calculation of the amount owed, a statement that the Owner has the right to inspect the Association's records, pursuant to California Civil Code Section 5205, and the following statement in 14-point boldface type, if printed, or in capital letters, if typed: "IMPORTANT NOTICE: IF YOUR SEPARATE INTEREST IS PLACED IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR ASSESSMENTS, IT MAY BE SOLD WITHOUT COURT ACTION".

(2) An itemized statement of the charges owed by the Owner, including items on the statement which indicate the amount of any delinquent Assessments, the fees and reasonable costs of collection, reasonable attorneys' fees, any late charges, and interest, if any.

(3) A statement that the Owner shall not be liable to pay the charges, interest, and costs of collection, if it is determined the Assessment was paid on time to the Association.

(4) The right to request a meeting with the Board as provided by California Civil Code Section 5675.

(5) The right to dispute the Assessment debt by submitting a written request for dispute resolution to the Association pursuant to the Association's "meet and confer" program required in California Civil Code, Article 2 (commencing with Section 5900) of Chapter 10 of the California Civil Code.

(6) The right to request alternative dispute resolution with a neutral third party pursuant to Article 3 (commencing with Section 5925) of Chapter 10 of the California Civil Code before the Association may initiate foreclosure against the Owner's Unit, except that binding arbitration shall not be available if the Association intends to initiate a judicial foreclosure.

Note: Any payments made by the Owner toward the debt shall first be applied to the Assessments owed, and, only after the Assessments owed are paid in full shall the payments be applied to the fees and costs of collection, attorneys' fees, late charges, or interest. The Association need not accept any tender of a partial payment of an Assessment and all costs and attorneys' fees attributable thereto. Acceptance of any such tender does not waive the Association's right to demand and receive full payment. When an Owner makes a payment, the Owner may request a receipt and the Association shall provide it. The receipt shall indicate the date of payment and the person who received it. The Association shall provide a mailing address for overnight payment of Assessments.

B. Payment Plan: An Owner may submit a written request to meet with the Board to discuss a payment plan for the Assessment debt noticed pursuant to Section 4.9.A. The Association shall provide the Owner(s) the standards for payment plans, if any exist. The Board shall meet with the Owner in an executive session within forty five (45) days of the postmark of the request, if the request is mailed within fifteen (15) days of the date of the postmark of the notice, unless there is no regularly scheduled Board meeting within that period, in which case the Board may designate a committee of one or more Members to meet with the Owner. Payment plans may incorporate any Assessments that accrue during the payment plan period. Payment plans shall not impede the Association's ability to record a lien on the Owner's Unit to secure payment of delinquent Assessments. Additional late fees shall not accrue during the payment plan period if the Owner is in compliance with the terms of the payment plan. In the event of a default on any payment plan, the Association may resume its efforts to collect the delinquent Assessments from the time prior to entering into the payment plan.

C. Notice of Delinquent Assessment: After compliance with the provisions of California Civil Code § 5660(a), the Association may record a Notice of Delinquent Assessment and establish an Assessment Lien against the Unit of the delinquent Owner prior and superior to all other liens recorded subsequent to recordation of the Notice of Delinquent Assessment, except (1) all taxes, bonds, Assessments and other levies which, by law, would be superior thereto, and (2) the lien or charge of any First Mortgage of record recorded prior to recordation of the Notice of Delinquent Assessment. The Notice of Delinquent Assessment shall include an itemized statement of the charges owed by the Owner described in Section 4.9.A above, a description of the Unit against which the Assessment and other sums are levied, 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 management agent retained by the Association and shall be mailed by certified mail to every person whose name is shown as an Owner of the Unit in the Association's records no later than ten (10) calendar days after recordation.

D. Lien Releases: Within twenty-one (21) days after payment of the sums specified in the Notice of Delinquent Assessment, the Association shall record or cause to be recorded in the Office of the County Recorder in which the Notice of Delinquent Assessment is recorded a lien release or notice of rescission and provide the Owner a copy of the lien release or notice that the delinquent Assessment has been satisfied.

E. Enforcement of Assessment Lien and Limitations on Foreclosure: The collection by the Association of delinquent Regular Assessments or delinquent Special Assessments of an amount less than one thousand eight hundred dollars (\$1,800), not including any accelerated Assessments, late charges, fees and costs of collection, attorneys' fees, or interest, may not be

enforced through judicial or non-judicial foreclosure, but may be collected or secured in any of the following ways:

(1) By a civil action in small claims court, pursuant to Chapter 5.5 (commencing with Section 116.110) of Title 1 of the California Code of Civil Procedure. If the Association chooses to proceed by an action in small claims court, and prevails, the Association may enforce the judgment as permitted under Article 8 (commencing with Section 116.810) of Title 1 of the California Code of Civil Procedure. The amount that may be recovered in small claims court to collect upon a debt for delinquent Assessments may not exceed the jurisdictional limits of the small claims court and shall be the sum of the following:

(a) The amount owed as of the date of filing the complaint in the small claims court proceeding.

(b) In the discretion of the court, an additional amount to that described in subparagraph (a) equal to the amount owed for the period from the date the complaint is filed until satisfaction of the judgment, which total amount may include accruing unpaid Assessments and any reasonable late charges, fees and costs of collection, attorneys' fees, and interest, up to the jurisdictional limits of the small claims court.

(2) By recording a lien on the Owner's Unit upon which the Association may not foreclose until the amount of the delinquent Assessments secured by the lien, exclusive of any accelerated Assessments, late charges, fees and costs of collection, attorneys' fees, or interest, equals or exceeds one thousand eight hundred dollars (\$1,800) or the Assessments are more than twelve (12) months delinquent. If the Association chooses to record a lien under these provisions, prior to recording the lien, the Association shall offer the Owner and, if so requested by the Owner, participate in dispute resolution as set forth in Article 2 (commencing with Section 5900) of Chapter 10 of the California Civil Code.

(3) Any other manner provided by law, except for judicial or non-judicial foreclosure.

F. Foreclosure: The Association may collect delinquent Regular Assessments or delinquent Special Assessments of an amount of one thousand eight hundred dollars (\$1,800) or more, not including any accelerated Assessments, late charges, fees and costs of collection, attorneys' fees, or interest, or any Assessments that are more than twelve (12) months delinquent, by a civil action, including, if within the jurisdiction of the small claims court, in small claims court, pursuant to Chapter 5.5 (commencing with Section 116.110) of Title 1 of the California Code of Civil Procedure, or any other manner provided by law, including using judicial or non-judicial foreclosure subject to the following conditions:

(1) Prior to initiating a foreclosure on an Owner's separate interest, the Association shall offer the Owner and, if so requested by the Owner, participate in dispute resolution pursuant to the Association's "meet and confer" program required in California Civil Code Article 2 (commencing with Section 5900) of Chapter 10 of the California Civil Code or alternative dispute resolution as set forth in California Civil Code Article 3 (commencing with Section §5925) of Chapter 10 of the California Civil Code. The decision to pursue dispute resolution or a particular type of alternative dispute resolution shall be the choice of the Owner, except that binding arbitration shall not be available if the Association intends to initiate a judicial foreclosure.

(2) The decision to initiate Foreclosure of an Assessment Lien for delinquent Assessments that has been validly recorded shall be made only by the Board and may not be delegated to an agent of the Association. The Board shall approve the decision by a majority vote of the Board Members in an executive session. The Board shall record the vote in the minutes of the next meeting of the Board open to all Members. The Board shall maintain the confidentiality of the Owner or Owners of the Unit by identifying the matter in the minutes by the Unit number of the property, rather

than the name of the Owner or Owners. A Board vote to approve foreclosure of a lien shall take place at least thirty (30) days prior to any public sale.

(3) The Board shall provide notice by personal service to an Owner of a Unit who occupies the Unit or to the Owner's legal representative, if the Board votes to foreclose upon the Unit. The Board shall provide written notice to an Owner of a Unit who does not occupy the Unit by first-class mail, postage prepaid, at the most current address shown on the books of the Association. In the absence of written notification by the Owner to the Association, the address of the Owner's Unit may be treated as the Owner's mailing address.

(4) A non-judicial foreclosure by the Association to collect upon a debt for delinquent Assessments shall be subject to a right of redemption. The redemption period within which the Unit may be redeemed from a foreclosure sale under this paragraph ends ninety (90) days after the sale.

In addition to the requirements of California Civil Code Section 2924, a notice of default shall be served by the Association on the Owner's legal representative in accordance with the manner of service of summons in Article 3 (commencing with Section 415.10) of Chapter 4 of Title 5 of Part 2 of the California Code of Civil Procedure. Upon receipt of a written request by an Owner identifying a secondary address for purposes of collection notices, the Association shall send additional copies of any notices required by this Section to the secondary address provided. The Association shall notify Owners of their right to submit secondary addresses to the Association, at the time the Association issues the pro forma operating budget pursuant to California Civil Code Section 5310. The Owner's request shall be in writing and shall be mailed to the Association in a manner that shall indicate the Association has received it. The Owner may identify or change a secondary address at any time, provided that, if a secondary address is identified or changed during the collection process, the Association shall only be required to send notices to the indicated secondary address from the point the Association receives the request.

G. Sale by Trustee: Any sale by the trustee shall be conducted in accordance with the provisions of §§ 2924, 2924b, 2924c, 2924f, 2924g, 2924h and 2924j of the California Civil Code applicable to the exercise of powers of sale in mortgages and deeds of trust, including any successor statutes thereto, or in any other manner permitted by law. The fees of a trustee may not exceed the amounts prescribed in California Civil Code §§ 2924c and 2924d. 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, nor from taking a deed in lieu of foreclosure.

H. Purchase By Association: The Association, acting on behalf of the Condominium Owners, shall have the power to bid for the Condominium at a 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, including a majority of Members other than Declarant. During the period a Condominium is owned by the Association, following Foreclosure:

- (1)** no right to vote shall be exercised on behalf of the Condominium;
- (2)** no Assessment shall be assessed or levied on the Condominium; and,
- (3)** each other Condominium shall be charged, in addition to its usual Assessment, its share of the Assessment that would have been charged to such 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.

I. Suspension of Voting Rights of Delinquent Owner: The Board may temporarily suspend the voting rights and right to use Common Area facilities of a Member who is in default in

payment of any Assessment. Any other discipline, fine or penalty requires a noticed hearing, as provided in the Bylaws.

J. Fines and Penalties: In accordance with California Civil Code §5725(b), fines and penalties imposed by the Association for violation of this Declaration as a disciplinary measure for failure of an Owner to comply with the Governing Documents, except for late payments, are not "Assessments," and are not enforceable by Assessment Lien, but are enforceable by court proceedings; provided, however, pursuant to California Civil Code § 5725(a), 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 Occupant(s) were responsible may become the subject of a lien; provided, however, that any such enforcement as a lien shall only be permitted if there are no Units in the Project that are subject to the jurisdiction of the Bureau of Real Estate under a Final Subdivision Public Report. In the event that California Civil Code §5725(b) is amended to permit fines and penalties imposed by the Association for violation of this Declaration as a disciplinary measure for failure of an Owner to comply with the Governing Documents to be enforceable by Assessment Lien, then this provision shall be deemed amended to conform to any such amendment of California Civil Code §5725(b).

The provisions of this Section 4.9 are intended to comply with the current requirements of California Civil Code Section 5725. If these Sections are amended or rescinded in any manner the provisions of this Section 4.9 automatically shall be amended or rescinded in the same manner. California Civil Code Sections 5650-5735 may be amended by the State Legislature, and the Board should confirm the current statutory requirements.

4.10. Reimbursement Charges: The Board may levy a Reimbursement Charge against a Member to reimburse the Association for costs incurred by the Association in the repair of damage to the Common Area and facilities for which the Member (or the Occupant for which the Member is responsible) was responsible, and in bringing the Member and his Unit into compliance with the provisions of the Governing Documents. The Reimbursement Charges shall be in the amount required to reimburse the Association for the actual costs and expenses incurred to repair the damage and to enforce the Association's rights under this Declaration. Reimbursement Charges shall be payable when directed by the Board after written notice to the Owner(s), which notice shall in no event be less than thirty (30) days. If an Owner disputes a Reimbursement Charge, the Owner may request a hearing before the Board.

4.11. 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, said taxes shall be included in the Assessments made under the provisions of Section 4.1 and, if necessary, a Special Assessment may be levied against the Units in an amount equal to said taxes, to be paid in two (2) installments, thirty (30) days prior to the due date of each tax installment.

4.12. Estoppel Certificate: Within ten (10) days of the mailing or delivery of a written request by any Owner, the Board shall provide the Owner with a written statement containing the following information: (i) whether to the knowledge of the Association, the Owner or Occupant of the Owner's Condominium is in violation of any of the provisions of the Governing Documents; (ii) the amount of Regular Assessments and Special Assessments, Cost Center Assessments and Reimbursement Charges, including installment payments, paid by the Owner during the fiscal year in which the request is received; and (iii) the amount of any Assessments levied against the Owner's Condominium that are unpaid as of the date of the statement, including any late charges, interest or costs of collection, and that, as of the date of the statement, are or may be made a lien against the Owner's Condominium as provided by this Declaration. The Association may charge a fee to provide this information, provided the fee shall not exceed the Association's reasonable cost to prepare and reproduce the requested items.

ARTICLE V. MAINTENANCE, MANAGEMENT, DUTIES AND POWERS OF THE ASSOCIATION

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

A. Association Maintenance: The Association shall inspect, 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 Section 6.3), improvements, furnishings, equipment and landscaping thereon, and all property that may be acquired by the Association, provided that each Owner shall maintain the Exclusive Use Common Area appurtenant to that Owner's Condominium as required by Section 7.5. The Association shall maintain everything it is obligated to maintain in a clean, sanitary and attractive condition reasonably consistent with the level of maintenance reflected in the most current Budget, and in conformance with the Owners Association Manual.

(1) Common Area Maintenance: Maintenance shall include, without limitation, inspecting, painting, maintaining, cleaning, repairing and replacing of all Common Areas, including the garage of the Building, and the parking areas, the improvements, equipment and facilities in the Common Area, the Common Area landscaping, including irrigation systems (other than landscaping and improvements within Patios, Decks or Terraces that are Exclusive Use Common Area of Units), the exterior doors other than the hardware thereon, exteriors of windows and other glass surfaces, except windows and other exterior glass surfaces of the Retail Commercial Units, the cleaning and repair or replacement of which shall be the responsibility of the Retail Commercial Unit Owners. The cleaning and general maintenance of Exclusive Use Common Areas that are assigned to Units are to be cleaned and maintained by the Owners who are provided the use of such Exclusive Use Common Areas as per Section 7.5.

(2) Storm Water Management: Storm water management within the Project shall be established and performed in accordance with the Storm Water Maintenance and Operations Plan and the Conditions of Approval. [City Condition 45]

(3) Pest Control: The Association shall have the Common Area periodically inspected for wood-destroying pests and organisms, or other pests, and shall take appropriate corrective measures therefor. The Association shall have the authority to require the temporary removal of the Owner and/or Occupants from a Unit as may be necessary in connection with the treatment of wood-destroying pests or organisms, or other pests, pursuant to the procedures described in California Civil Code § 4785 or any successor statute thereto. The costs of any temporary relocation shall be borne by each Owner, or any Occupant for whom an Owner is responsible, who is required to temporarily relocate.

(4) Photovoltaic Array and Solar Panels: The Project is planned and programed for installation of a photovoltaic array and solar panels on the roof of the Building. This photovoltaic array and solar panel system shall be maintained and operated by the Association, with any power credits from such system being credited to the Association common area electrical meters.

(5) Maintenance of Landscaping: All landscaping and trees in the Project shall be maintained, watered, fertilize and pruned according to the Best Management Practices - Pruning-ANSI A300-2001 or current version. Any landscaping that dies shall be promptly replaced. Any automatic irrigation systems for the Common Areas shall be maintained and repaired on a regular basis by the Association with any problems repaired at least within 30 days after discovery of maintenance and repair issues. [City Condition 101]

(6) Air Quality: Indoor air quality measurements required under the City Conditions of Approval shall be performed by the Association pursuant to the requirements of City mitigation measure HAZ 3. [City Condition - Mitigation measure HAZ 3]

(7) Fire Protection Equipment: The Association shall be responsible for the periodic (at least as often as required by City and per Title 19 of the California Code of Regulations), inspection and maintenance, testing, repair and replacement of any built-in fire detection and protection equipment and devices wherever located on the Project (including any interior sprinklers and fire alarm systems, but excluding smoke/carbon monoxide detectors located inside the Units). Each Owner shall immediately notify the Association of any problems with any sprinkler heads located in the Owner's Unit. The Association's obligation to maintain interior sprinklers extends only to the point where the line or lines serving the individual Units branch off of the main distribution lines, so that the maintenance of the laterals or branch lines that serve an individual Unit are the responsibility of the Owner(s). Maintenance shall include periodic testing of such equipment.

(8) Mold: In order to prevent leaks and to reduce the presence of mold, fungi, spores, pollens and other botanical substances, or other allergens (collectively "Mold"), within the Common Area, the Association shall inspect the Common Area improvements not less frequently than once each year, or as recommended by the Owners Association Manual, to check for water leaks or other breaches of the watertight integrity of the improvements, and for the presence of Mold. If any water leaks and/or Mold are detected, the Association shall immediately take appropriate corrective steps to repair the leak, and/or remove the Mold and to maintain proper ventilation within enclosed areas, and to maintain humidity levels to reduce the risk of Mold growth, and shall periodically inspect the irrigation system to ensure proper watering, and to correct any leaks and/or misdirected or excessive watering, and periodically inspect the ground surface around the foundations to ensure that no water is pooling around or within the foundations, and shall maintain rain gutters in a clean and proper operating condition at all times, and take such other prudent steps as may be appropriate to prevent leaks and Mold growth, or eliminate any existing Mold.

(9) Responsibility of Owners for Maintenance Costs: If repairs to the Common Area or other Project Improvements that are the Association's responsibility to maintain or repair are required arising out of or caused by the willful or negligent act or omission of an Owner or Occupant or the Owner's or Occupant's pets, the Association shall be responsible for making the repairs, and the responsible Owner shall pay the costs incurred by the Association or any deductible incurred pursuant to the Association's insurance policies. If the Owner fails to make such payment, then the Association may make such payment and shall charge the responsible Owner a Reimbursement Charge for reimbursement of such payment, which charge shall bear interest at the rate of twelve percent (12%) per annum (but no greater than the maximum rate allowed by law) until paid in full. 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.

(10) Cooperation of Owners/Occupants: Each Owner and Occupant shall fully cooperate with the agents of the Association in the performance of the Association's inspection, maintenance and repair obligations described above. Such cooperation shall include, but is not limited to, immediate notification to the Board or its managing agent of any maintenance or repair problems for which the Association is responsible and access to the Owner or Occupant's Unit and Exclusive Use Common Area as may be necessary to inspect and, if appropriate, to perform any necessary maintenance, inspections or repairs.

(11) Water Leaks: In the event of any water leak or overflow from any pipes, connections, fixtures or devices situated within a Unit that damages any Common Area or any other Unit, the Owner and Occupants of the Unit that is the source of the water leak or overflow (the "Responsible Owner") shall cooperate with the Association in the inspection and correction of the problem. Cooperation shall include providing prompt notice to the Association of any such water leak or overflow and access to the Unit to inspect and to correct the problem and/or repair any such damage. The Responsible Owner shall reimburse the Association and any other Owner whose Unit is damaged because of such water leak or overflow for its, his or her repair costs and other damage arising out of such water leak or overflow, whether or not occasioned through the Owner's negligence, willful act, omission, or inadvertence, to the extent the cost is not covered by insurance maintained by the Association. The Association may levy a Reimbursement Charge against the Responsible Owner to recover the costs incurred by the Association arising from such water leak or overflow. If the Association's insurance covers the damage from such water leak or overflow, the Association shall submit an appropriate claim. Any deductible amount shall be paid by the Responsible Owner. The

Association shall not be responsible for the costs or expenses for any such damage from water leak or overflow originating in a Unit to the extent that such damage is not covered by the Association's insurance. If a Unit Owner becomes aware of any potential problems or issues with respect to the Common Area improvements, including, but not limited to, those listed in this Section 5.1.A, and particularly any water leaks or potential water leaks, the Owner shall promptly notify the Board of the Project's manager regarding such problems or issues with respect to the Common Area improvements.

B. Inspection and Maintenance Guidelines; Owners Association Manual: The Declarant shall provide the Association with an Owners Association Manual, and each Owner with a Unit Owners' Manual for the inspection and maintenance of the improvements within the Project. The Board shall comply with the Owners Association Manual for the periodic inspection and maintenance of the Common Area improvements and landscaping that the Association is required to maintain under this Declaration, and any other improvements outside of the Common Area, which the Association has the responsibility to maintain, including, without limitation, the maintenance requirements provided for in Section 5.1.A(2). The Board shall take all appropriate actions to implement and comply with the Owners Association Manual.

(1) The Association shall cause professional inspections of Major Components and of all Common Area infrastructure to be routinely made. The Board shall engage professionals to conduct such inspection if the Board or the Association's manager deems that such inspections by professionals, such as an architect, a civil engineer and a landscape architect, or other such professional, is warranted. Inspections shall be made at least yearly, and for appropriate items or events, more often. Inspections will include a review of all repair records since the previous inspection. The Board shall cause a log ("Maintenance Log") to be kept to record all inspection and maintenance performed, and to record who performed the work, the results, and the date the inspection or maintenance was performed.

(2) The Association shall prepare and maintain annual reports of the results of the inspection, and the status of maintenance of the Common Area, including a Maintenance Log. The reports shall address any noted deterioration which may require future attention. The reports may also recommend supplemental specialized investigations (i.e., elevator, termite, mechanical, arborist, structural consultants).

(3) The Association shall keep permanent records of all: (a) Complaints and potential problems, including description, date and by whom; (b) Reports, including inspections and recommendations; (c) Maintenance and repairs, including description, location, date, by whom made and cost; and (d) Plans, including construction drawings, subsequent modifications, and repair plans.

(4) For a period of ten (10) years after the date of the last close of escrow in the Project, the Board shall also furnish to Declarant copies of: (a) the report of each inspection performed for the Board, whenever such inspection is performed and for whatever portion of the Common Area that is inspected, within thirty (30) days after the completion of such inspection; and (b) the most recent inspection and/or maintenance report prepared for any portion of the Project, within ten (10) days after the Association's receipt of a written request therefor from Declarant.

(5) The Board may, from time to time, make appropriate revisions to the Owners Association Manual based on the Board's review thereof, to update such Owners Association Manual to provide for inspection and maintenance according to current industry practices so long as such changes do not reduce the useful life or functionality of the items being maintained. No changes may be made to the Owners Association Manual without the Declarant's prior written consent for a period of ten (10) years after completion of construction of the Common Area improvements, or the close of escrow on the sale of the first Unit, whichever occurs later.

(6) The Association shall inspect, maintain and operate the Common Area of the Project in accordance with all applicable municipal, state, and federal laws, statutes and ordinances, as the case may be.

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

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

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

F. 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.

G. Enforcement: The Association and the Board shall be responsible for the enforcement of this Declaration.

H. Annual Budget: During the month of December of each year, the Association shall establish a budget for all expenses of the Project for the coming year, including maintenance, insurance, repair, replacement, including reserves, and management. Each Condominium Owner shall be responsible for payment of its share of the budgeted expenses, and other expenses incurred by the Association during the year, as provided in this Declaration and as stated in Exhibit "B" and Exhibit "C". On request of any Owner, the Association shall prepare and distribute any financial statements and reports that may be required by law.

5.2. Powers of Association: 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, and the Board, where applicable, shall have the following powers:

C. Utility Service: The Association shall have the authority to provide to the Units to obtain, for the benefit of all of the Units utility services that are not provided directly to the Units by a utility company or the City, including water service, cable television services, wireless communications services, garbage and trash collection, and window cleaning services. Where appropriate, the Association may collect for the costs and expenses of such services by the use of submeters.

D. Easements; Grant of Exclusive Use Easements: The Association shall have authority, by document signed by the President and the Secretary, to grant permits, licenses, and easements in addition to those shown on the Map or Condominium Plan and/or referred to in Article VI, where necessary for roads, utilities, communications services, cable television, and sewer facilities over the Common Area to serve the common and open space areas and the Condominiums, and/or where necessary to satisfy or achieve appropriate governmental purpose or request. The Board of Directors may grant exclusive use easement rights over a portion of the Common Area to a Member with the affirmative vote of sixty-seven percent (67%) of the separate interests in the Project, and without the approval of the Members in those limited cases set forth in California Civil Code § 4600, and in such case the Board may cause an amendment to the Declaration and to the Condominium Plan to be recorded to conform to the grant of the exclusive use easement rights.

E. Manager: The Association shall employ a professional management firm and contract with independent contractors or managing agents to perform all or any part of the duties and responsibilities of the Association, including maintenance operations and waste/recycling collection procedures, 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 appointed as a manager or managing agent shall not exceed a one (1) year term, shall provide for the right of the Association to terminate the same at the first annual meeting of the Members of the Association, and to terminate the same for cause on thirty (30) days' written notice, or without cause or payment of a termination fee on ninety (90) days' written notice, or for cause on thirty (30) days' notice.

F. Adoption of Rules: The Board or the Members of the Association by majority vote, may adopt reasonable Rules that are not in conflict with the law, or with the Governing Documents, relating to the use of the Common Area and all its facilities, and the conduct of Owners and Occupants with respect to the Project and other Owners. Written copies of such Rules and any

schedule of fines and penalties adopted by the Board shall be furnished to Owners. All changes to the Rules will become effective fifteen (15) days after they are either: (i) posted in a conspicuous place in the Common Area; or (ii) sent to the Owners via first-class mail or by any system or technology designed to record and communicate messages. The adoption of any Rules or amendment or repeal of any Rule shall comply with the procedures required by California Civil Code §§ 4350, 4355, 4360 and 4365, to the extent applicable.

G. Access: For the purpose of performing inspections, construction, maintenance or emergency repair for the benefit of the Common Area or the Owners in common, and/or to perform maintenance work that an Owner has failed to perform as provided in Section 7.5, the Association's agents or employees shall have the right, after reasonable notice (not less than twenty-four (24) hours except in emergencies) to the Owner or Occupant of the Unit in which such maintenance work has not been performed, to enter any such Unit or to enter any portion of the Common Area at reasonable hours. Such entry shall be made with as little inconvenience to the Owner or Occupant as practicable, and any damage caused by such entry shall be repaired at the expense of the Association.

H. Assessments and Liens: The Board shall have the power to levy and collect Assessments in accordance with the provisions of Article IV hereof.

I. Fines and Disciplinary Action: The Board may impose fines or take disciplinary action against any Owner for failure to pay Assessments or for violation by Owner, or Occupant for whom Owner is responsible, of any provision of the Governing Documents. Penalties may include, but are not limited to, fines, temporary suspension of voting rights, or other appropriate discipline, provided the Owner is given notice and a hearing as provided in the Bylaws before the imposition of any fine or disciplinary action. The Board shall have the power to adopt a schedule of reasonable fines and penalties for violations of the terms of this Declaration, and for violations of any Rules adopted pursuant to Section 5.2.D. The penalties prescribed may include suspension of all rights and privileges of membership; provided, however, that suspension for failure to pay Assessments shall be for a maximum period of thirty (30) days, renewable by the Board for an additional thirty (30) day period or periods until paid; and provided further that suspension for infraction of Rules or violation of this Declaration, other than for failure to pay Assessments, shall be limited to a maximum period of thirty (30) days per infraction or violation, and shall be imposed only after a hearing before the Board. The Board may extend that period for an additional thirty (30) day period or periods in the case of a continuing infraction or violation, and no hearing need be held for such extension. Written copies of Rules and the schedule of penalties shall be furnished to Owners. The Board shall levy fines and penalties and shall enforce such Assessments as appropriate under applicable law.

J. Enforcement: The Board shall have the authority to enforce this Declaration as per Section 9.1 hereof.

K. Acquisition and Disposition of Property: The Board shall have the power to acquire (by gift, purchase or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, or otherwise dispose of real or personal property in connection with the affairs of the Association. Any transfer of property shall be by document signed or approved by two-thirds (2/3rds) of the total voting power of the Association which shall include two-thirds (2/3rds) of the Members other than Declarant, or where the two (2) class voting structure is still in effect, two-thirds (2/3rds) of the Members of each class of Members.

L. Loans: The Board shall have the power to borrow money, and, only with the assent (by vote or written consent) of two-thirds (2/3rds) of the total voting power of the Association including two-thirds (2/3rds) of the Members other than Declarant, or where the two (2) class voting structure is still in effect, two-thirds (2/3rds) of the voting power of each class of Members, to mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred.

M. Dedication: The Board shall have the power to dedicate all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication shall be effective unless an instrument has been signed by two-thirds (2/3rds) of the total voting power of the Association

including two-thirds (2/3rds) of the Members other than Declarant, or where the two (2) class voting structure is still in effect, two-thirds (2/3rds) of the voting power of each class of Members, agreeing to such dedication.

N. Contracts: The Board shall have the power to contract for goods and/or services for the Common Area(s), for the Condominiums, or for the Association, subject to limitations set forth in the Bylaws, or elsewhere in this Declaration. The Board shall not enter into any contracts with an independent contractor until it meets the requirements of Section 8.1.A(3) herein. [Notwithstanding anything in the Governing Documents to the contrary, the Board shall have the power to enter into, accept an assignment of, or otherwise cause the Association to comply with the terms and provisions of an exclusive telecommunications services contract ("Telecommunications Contract") with a telecommunications service provider ("Service Provider"), pursuant to which the Service Provider shall serve as the exclusive provider of Telecommunications Services to each Condominium in the Project. The Board shall only enter into, accept an assignment of, or otherwise cause the Association to comply with the terms and provisions of the Telecommunications Contract if the Board determines, in its sole discretion that such action is in the best interests of the Association. Although not exhaustive, the Board shall consider the following factors in making such a determination:

(1) Initial Term and Extensions. The initial term of the Telecommunications Contract should not exceed five (5) years.

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

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

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

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

O. Delegation: The Board, and the officers of the Association 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 shall not delegate its responsibility:

(1) to make expenditures for capital additions or improvements chargeable against the Reserve Funds;

(2) to conduct hearings concerning compliance by an Owner or Occupant with the Governing Documents;

(3) to make a decision to levy monetary fines, levy Reimbursement Charges, temporarily suspend an Owner's rights as a Member of the Association or otherwise impose discipline;

(4) to make a decision to levy Regular Assessments 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.

P. Security: The Board shall have the power (but not the obligation) to contract for security service for the Common Area. Notwithstanding the foregoing, if the Association elects to provide any security services or systems, neither the Association nor the Board shall be deemed to have made any representation or warranty to any Owner or Occupant, nor to any other Person using the facilities or Improvements within the Project regarding security or safety. Each Owner shall be responsible for the security and safety of Persons who occupy or use the Condominium owned by the respective Owner. The Association shall not be subject to any claims or liability in connection with the provision of any security service or security system, or the failure to provide any security service or security system, within any portion of the Project.

Q. Appointment of Trustee: The Board acting on behalf of the Association, has the power to appoint or designate a trustee to enforce Assessment Liens by sale as provided in Section 4.9 and California Civil Code § 5700(a).

R. Litigation/Arbitration: 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 Project, only as to the facilities or improvements the Association is responsible for maintaining as provided herein, only if the matter is not resolved pursuant to the procedures set forth in Section 9.15, and only after getting the vote at a duly noticed and properly held membership meeting, of a majority of the Members other than Declarant. If, and to the extent that, there is any inconsistency between this Section 5.2.P and applicable provisions of the California Civil Code pertaining to the commencement of an action by the Association for construction defect litigation, the applicable provisions of the California statutes shall control.

S. Other Powers: In addition to the powers contained herein, the Board may exercise the powers granted to a nonprofit mutual benefit corporation under California Corporations Code § 7140.

T. Common Area Improvements: The Board 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 such improvements, provided that the Board shall not include in any Regular Assessment or Special Assessment the cost of any new capital improvement which exceeds \$15,000 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 said expenditure.

U. Granting Rights: The power to grant exclusive or non-exclusive easements, licenses, rights of way or fee interests in the Common Area, to the extent any such grant is reasonably required: (a) for utilities and facilities to serve the Common Area and the Condominiums; (b) for purposes of conformity with the as-built location of improvements installed or authorized by Declarant or the Association; (c) in connection with any lawful lot line adjustment; or (d) for other purposes consistent with the intended use of the Project. This power includes the right to create and convey Exclusive Use Common Areas to the extent provided for in Section 5.2.B. The Association may deannex any real property from the encumbrance of this Declaration in connection with any lawful lot line adjustment.

5.3. Commencement of Association's Duties and Powers: Until incorporation of the Association, and the conveyance of title to the first Unit from Declarant to an Owner other than the Declarant, all duties and powers of the Association as described in this Declaration, including all rights of consent and approval, shall be and remain the duties and powers of Declarant. After the date of incorporation of the Association, and the conveyance of title to the first Unit from Declarant to an Owner other than the Declarant, the Association shall assume all duties and powers, and Declarant shall be relieved of any further liability for those duties and powers.

ARTICLE VI. UTILITIES

6.1. Owners' Rights and Duties: The rights and duties of the Owners of Condominiums within the Project with respect to sanitary sewer, storm sewer, water, drainage, electric, gas, television receiving, telephone equipment, DSL, fiber optic or other cables and lines, meters, catch basins, storage tanks, wires, ducts, flues, pumps, boilers, and pipes, exhaust flues 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 to take timely action to make such repairs or perform such maintenance.

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

C. In the event of a dispute between Owners with respect to the repair or rebuilding of Utility Facilities, or with respect to the sharing of the cost of those facilities, then, upon written request of one (1) Owner addressed to the other Owner(s), the matter shall be submitted first to the Board for mediation, and thereafter, if the dispute remains unresolved, to binding arbitration within sixty (60) days pursuant to Section 9.15.E. The decision of the arbitrator(s) shall be final and conclusive on the parties, and judgment on the decision may be entered in any court having jurisdiction.

6.2. 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 Utility Facilities and landscaping as shown on the Map, and as may be hereafter required or needed to service the Project, are reserved by Declarant and its successors and assigns, until the completion of construction of the Project and sale of the Condominiums under authority of a Public Report, and thereafter are reserved by and for the benefit of the Association and its Members, together with the right to grant and transfer the same. The easements shall be in favor of Declarant, and its successors and assigns, and in favor of the Association.

The location of the Utility Facilities described in this Section, and the location of the easements to accommodate such Utility Facilities, shall be set forth in the final "as-built" plans for each Building. As used in this Declaration, the term "as-built" plans shall mean and refer to the drawings indicating the precise locations of the structural improvements and common utility facilities of the Project which drawings are prepared to show the final as-built locations thereof to the extent they deviate from or were not shown on prior plans.

In case of any variance between the Condominium Plan and the final "as-built" plans with respect to the locations of said Utility Facilities, the "as-built" plans shall be determinative as to the location of said Utility Facilities, and hence, the location of the easements to accommodate such Utility Facilities. In case of any variance between the "as-built" plans and the actual location of the Utility Facilities, the actual location shall control.

6.3. Association's Duties: The Association shall maintain all Utility Facilities located in the Common Area except for those facilities maintained by utility companies, public, private, or municipal and those maintained by the Owners as described in Section 7.5. The Association shall pay all charges for utilities supplied to the Project except those metered or charged separately to the Condominiums.

6.4. Sub-Metering: Where domestic water service is provided to the Units by the Association and metered to the Association under a common meter, and is not separately metered by the water utility provider to the Units, the Association may install sub-meters so that individual water usage by each Unit may be measured. The costs for providing the water service will be paid by the Association. The Association may enter into an agreement with a third-party provider to read the sub-

meters, allocate the costs based on usage, and bill each Owner individually for that Owner's pro-rata share of the costs incurred by the Association for domestic water. Each Owner shall be required to pay the third-party provider directly for the Owner's share plus a service charge, and the provider will remit the payment to the Association less the service charge. The Association will thereupon remit the payment to the water utility provider. If any Owner fails to pay the Owner's share in a timely and proper manner and the Association pays the delinquent amount to cover the shortfall, the Board shall levy a Reimbursement Charge against the Owner's Condominium and enforce the Assessment as described in Section 4.9. The Board has the authority to revise and/or terminate the sub-metering program and payment procedures. If submetering is terminated, the cost for water shall be prorated among each of the Units based upon the Association's reasonable estimate of the usage of domestic water by each of the Units. The cost for Common Area water for irrigation and fire protection shall be allocated equally among the Condominiums.

ARTICLE VII. USE RESTRICTIONS

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

7.1. Residential Condominium Use: No Residential Unit shall be occupied and used except for residential purposes by the Owners or Occupants, and no trade or business shall be conducted therein, except that a Residential Unit may be used as a combined residence and executive or professional office by the Owner or Occupant thereof, so long as such use: (a) does not interfere with the quiet enjoyment by other Owners; (b) does not include visiting clients; (c) business activities take place solely inside the Unit; (d) does not generate in-person visits by suppliers or clientele; (e) complies with all laws, regulations and ordinances applicable to the Property, including zoning, health and licensing requirements; (f) otherwise complies with the Declaration and is consistent with the residential character of the Property; (g) no signs, logos, billboards, or other advertising materials or devices are displayed in the windows of the Unit, or on exterior of the Residential Unit, or on any Common Area, to advertise the activity; (h) the existence or operation of the business is not apparent or detectable outside the Unit by sight, sound or odor; and (i) the business does not increase the liability or casualty insurance obligation or premium of the Association. Declarant, its successors or assigns, may use any Condominium or Condominiums in the Project owned by Declarant for a model home site or sites and display and sales/construction office during construction and until the last Condominium is sold by Declarant, or until three (3) years from the date of closing of the first sale in the Project, whichever occurs first.

The number of permanent residents within a Residential Unit, unless applicable law provides otherwise, shall be limited as follows: No more than two (2) persons per bedroom in any Residential Unit shall be permitted as permanent residents. A "permanent resident" means any Person residing in a Residential Unit more than sixty (60) days out of any twelve (12) consecutive month period, provided that one (1) person shall be allowed in addition to the maximum number of permanent residents otherwise permitted in each Residential Unit.

No Residential Unit or any portion of any Residential Unit shall be leased, subleased, occupied, rented, let, sublet, or used for or in connection with any time sharing agreement, plan, program or arrangement, including, without limitation, any so-called "vacation license," "travel club," "extended vacation," or other membership or time interval ownership arrangement. The term "time sharing" as used herein shall be deemed to include, but shall not be limited to, any agreement, plan, program, or arrangement under which the right to use, occupy, or possess a Residential Unit or any portion of a Residential Unit Project rotates among various persons, either corporate, partnership, individual, or otherwise, on a periodically recurring basis for value exchanged, whether monetary or like kind use privileges, according to a fixed or floating interval or period of time of twenty-five (25) consecutive calendar days or less. This Section shall not be construed to limit the personal use of any Residential Unit or any portion of a Residential Unit by any Owner or Occupant, nor shall it be interpreted to disallow an Owner from trading the temporary use of its Residential Unit for the right to use another dwelling on a temporary basis, provided the frequency of such exchange is in accordance with the Rules. **[[No Residential Unit shall be used for any short term rental arrangements on a daily, weekly or other term of rental, such as "AirBnB" or similar short term rental or occupancy arrangements.**

No health care facilities operating as a business or charity shall be permitted within the Residential Units.

No family day care home shall be permitted within the Residential Units except as specifically authorized by California Health and Safety Code §1597.40 and other applicable state statutes. The owner/operator of any such day care facility shall comply with all local and state laws regarding the licensing and operating of a day care home and, in addition, shall:

C. Name the Association as an additional insured on the liability insurance policy or bond carried by the owner/operator of the day care home;

D. Defend, indemnify and hold the Association harmless from any liability arising out of the existence and operation of the day care home;

E. Abide by and comply with all of the Association's Rules;

F. Supervise and be completely responsible for children at all times while they are within the project; and,

G. Cooperate with the Association if the Association's insurance agent or carrier requires proof of insurance, proof of the agreement of the owner or operator of the day care home to these conditions, or other reasonable requests.

7.2. Commercial Condominium Use: The Commercial Condominiums shall not be used for residential or lodging purposes by the Owners or Occupants of such Commercial Units. The Commercial Office Unit shall be used for commercial office uses pursuant to Conditions of Approval. The Commercial Retail Units shall be used for commercial retail uses pursuant to Conditions of Approval, including that the ground floor of the Project shall be used for retail uses only, with the exception that up to 25% of the area of the ground floor commercial space maybe used for restaurant uses upon approval of the City Director of Planning. **[City Condition 10]**

Commercial Uses – Limitations:

Notwithstanding the foregoing, the following uses are not permitted within the Project, including the Commercial Units: (i) bar or tavern; (ii) night club, discotheque or similar activities; (iii) facilities for marijuana dispensing, sales or growing, "head-shop" or any facility for the sale of drug-oriented paraphernalia drugs; (iv) video game or other amusement arcade; (v) billiard parlor; (vi) adult book store; (vii) any theater or adult theatre or adult amusement facility; (viii) any facility selling or displaying pornographic materials or having such displays; (ix) health services offering overnight care; (x) drug or alcohol rehabilitation center; (xi) liquor store; (xii) off track betting establishment; (xiii) bingo hall; (xiv) massage parlor (excepting physical therapy involving massage therapy); (xv) funeral home, (xvi) assembly hall, (xvii) off track betting establishment, (xviii) bingo hall; (xix) school, training or education facility, including, but not limited to: a beauty school, barber college, reading room, place of instruction, or any other operation catering primarily to students or trainees; (xx) veterinary office, (xxi) pet store; (xxii) pawn shop or (xxiii) denominational or non-denominational places of worship.

Amplified or recorded music and television shall only be permitted within the interior of a Commercial Retail Unit; no outdoor speakers shall be allowed. The volume of the music and/or television within a Commercial Retail Unit shall be maintained at a level to minimize excess noise and vibration to the Residential Units or the Commercial Office Unit.

A Commercial Retail Unit Owner, or the tenants or other Occupants of a Commercial Retail Unit, shall not make changes to the structure or covering of the walls, floors and/or ceilings that would unreasonably increase noise transmission to the Residential Units. The Commercial Retail Unit Owner shall be permitted to add, remove or relocate demising walls within the boundaries of the Commercial Retail Unit in order to reconfigure any portion of the Commercial Retail Unit or any of the individual tenant spaces contained therein. The Commercial Retail Unit Owner shall be permitted to open up walls within the boundaries of the Commercial Retail Unit and in the Common Area in order to add, remove or relocate utilities or other Lines serving the Commercial Retail Unit. There shall be easements over the Common Area in favor of the Commercial Unit Owner for the purposes of

performing any of the actions described herein this subsection, and the approval of the Association approval shall not be required for the Commercial Unit Owner to perform any of the actions described herein this subsection.

Any restaurant use shall comply with the state and local environmental requirements for the design and use of grease interceptors. The owner and or occupants of any restaurant space shall be responsible for compliance and for the maintenance of any such grease interceptors serving a Commercial Retail Unit. [City Condition 70]

7.3. Nuisances: No noxious, illegal, or seriously offensive activities shall be carried on within Condominium, or in any part of the Project, nor shall anything be done thereon that may be or may become a serious annoyance or a nuisance to or which may in any way interfere with the quiet enjoyment of the Owners' Condominiums, or which shall in any way increase the rate of insurance for the Project, or cause any insurance policy to be cancelled or to cause a refusal to renew the same, or which will impair the structural integrity of any element of the Project. The Board is entitled to determine if any device, noise, odor, or activity constitutes a nuisance.

7.4. Parking and Allowed Vehicles:

A. Parking: Parking within the Project shall be subject to the requirements stated in this Declaration and in the Project's Parking Management Plan. Certain Parking Spaces in the Project's garage are reserved for the exclusive use of the Occupants of the Residential Units as provided in Section 2.3. Except as otherwise provided in this Section 7.4, only "Allowed Vehicles" shall be parked, stored or operated within the Project.

B. Allowed Vehicles: Except for commercial vehicles that are making deliveries to the Occupants of Units in the Project, only Allowed Vehicles shall be permitted within the Project. Allowed Vehicles shall mean appropriately licensed passenger automobiles, sports utility vehicles, motorcycles, and trucks having carrying capacity of $\frac{3}{4}$ ton or less, vans having seating capacity of eight (8) persons or less. Owners and/or Occupants shall park their Allowed Vehicles only in the parking space appurtenant to or assigned to their Unit. Vehicles that are not Allowed Vehicles shall not be parked or stored in the Project, except for commercial vehicles or construction equipment that are providing services to a Unit or the Association (but only during the period of time in which such services are being provided and subject to the Rules). Other than commercial vehicles providing delivery or other services to the Units that do not enter or utilized the Project's garage, Allowed Vehicles shall not include any commercial vehicle, construction equipment, trailer, camper, mobile home, recreational vehicle, truck having carrying capacity of greater than $\frac{3}{4}$ ton, van having seating capacity in excess of eight (8) persons or any vehicle which is too large to fit within the Project's garage, or an Owner's assigned parking space, inoperable or abandoned vehicles, boats or similar equipment. No excessively noisy or exhaust polluting vehicles shall be operated on the Project. No Owner or Occupant of a Residential Unit shall park more than one (1) Allowed Vehicles within the Project at any one time. The Association's Parking Management Program and Rules may require that Owners and Occupants of Unit register their vehicles with the Association and shall display a parking sticker, card, or other form of parking identification at all times.

C. Guest Parking Areas: The surface Parking Spaces located exterior of the Project's parking garage are reserved for parking by guests of the Occupants of the Residential Units in accordance with the Project's Parking Management Plan that is to be administered by the Association and the Association's Rules regarding parking. The driveways and drive aisles of the Project shall not be blocked and access shall not be impeded in any manner.

D. Vehicle Parking for Commercial Units: The parking of vehicles of tenants, customers and other invitees of the Commercial Unit Owners shall be subject to the provisions of the Project's Parking Management Plan. The Association, each Owner, and the Occupants of Units shall comply with the Transportation Demand Management Program established for the Project with the City. [City Condition 8]

E. Parking Signage: The Association may install a sign at each vehicular entrance to the Project containing a statement that public parking is prohibited and that all vehicles not authorized to park on the Project will be removed at the vehicle owner's expense. The sign shall contain the telephone number of the local traffic law enforcement agency and shall not be less than 17

x 22 inches in size with lettering not less than one (1) inch in height, and the name and telephone number of each towing company that is a party to a written general towing authorization agreement with the Association. The sign may also indicate that a citation may also be issued for the violation. The Association shall enter into a written general towing authorization agreement with one or more towing companies as required by Vehicle Code Section 22658.

F. Enforcement of Parking Use: The Association may cause the removal of any vehicle wrongfully parked in the Project, including a vehicle owned by an Owner or Occupant in accordance with applicable law. Notwithstanding the foregoing, the Association may cause the removal, without notice, of any vehicle parked in a marked fire lane, within fifteen (15) feet of a fire hydrant, in a parking space designated "handicap" or "loading/unloading zone" without proper authority or in a manner which interferes with any entrance to, or exit from, the Project or any Unit, parking space or garage located thereon. The Association shall not be liable for any damages incurred by the vehicle owner because of the removal in compliance with this Section or for any damage to the vehicle caused by the removal, unless such damage resulted from the intentional or negligent act of the Association or any person causing the removal of or removing the vehicle. If requested by the owner of the vehicle, the Association shall state the grounds for the removal of the vehicle. Unless the Board provides otherwise, any Director or officer, any manager or manager's agent or any Owner authorized to do so by any Director or officer shall have the authority to act on behalf of the Association to cause the removal of any vehicle wrongfully parked within the Project.

The provisions of this Section 7.4 are intended to comply with the current requirements of Vehicle Code Section 22658. If this Vehicle Code Section is amended, this provision automatically shall be amended in the same manner. If this Section is repealed and no successor Section is enacted, this provision shall remain in full force and effect. Vehicle Code Section 22658 may have been amended by the State Legislature since this Declaration was recorded, and the Board should confirm the current statutory requirements.

7.5. Maintenance Duties of Condominium Owners:

A. Except for those portions of the Project which the Association is required to inspect, maintain and repair, each Condominium Owner shall, at his sole cost and expense, maintain and repair the Unit, keeping the same in good condition, pursuant to and in accordance with the Unit Owners' Manual. Each Owner shall be responsible for and bear the cost of inspection, maintenance, repair and replacement of the following items within such Owner's Unit: interior surfaces of all perimeter and interior walls, ceilings and floors (including carpeting, tile, wall paper, paint or other covering); garbage disposals, [water heaters,] ranges, refrigerators, dishwashers, washing machines, dryers, light fixtures, smoke and/or carbon monoxide detectors, [fire extinguishers] and any and all other appliances of any nature whatsoever; heating, ventilating and air conditioning equipment servicing such Unit (although such equipment may be located in part outside such Unit); exterior and interior door hardware, gaskets and seals, interior doors; cabinets, light bulbs; plumbing and other fixtures of any nature whatsoever; "built-in" features; and decorative features, and any furniture and furnishings. Each Owner shall inspect and maintain, repair and replace any smoke and/or carbon monoxide detectors located in the Owner's Unit. The Association shall inspect, maintain and repair any automatic fire sprinkler heads located in any Unit. Each Owner immediately shall notify the Association of any problems with any automatic sprinkler heads located in the Owner's Unit. In addition, each Owner shall be responsible for and bear the cost of inspection, maintenance, repair and replacement of the following items serving such Owner's Unit: entrance and stairway interior surfaces of a Unit, [windows,] [patio landscaping], as approved by the Board or Committee in any such areas. Each Owner shall keep the Exclusive Use Common Area appurtenant to the Owner's Condominium in a clean and neat condition at all times and shall maintain the landscaping in any such appurtenant Exclusive Use Common Area. Unit maintenance shall be performed by each Owner within his Condominium. Each Owner shall have an easement over the Common Area to maintain his Unit. Maintenance shall be performed in a first class manner, and to standards consistent with the highest standards in the area in which the Project is located.

B. Each Owner shall have the exclusive right to paint, plaster, panel, tile, wax, paper or otherwise refinish and decorate the inner surfaces of the walls, ceilings, floors, subject to the provisions of Section 7.26(Sound Transmission), and doors bounding the Owner's Unit.

C. Each Owner shall inspect and maintain the improvements within its Unit in accordance with the inspection and maintenance guidelines set forth in the Unit Owners' Manual established by the Declarant. A copy of the Unit Owners' Manual shall be delivered by Declarant to each Owner when the Unit has closed escrow. Each Owner shall retain the Unit Owners' Manual and take all appropriate actions to comply with and implement the Unit Owners' Manual. When an Owner transfers a Unit, the Owner shall deliver a complete copy of the Unit Owners' Manual, and all manufacturers' materials, to the transferee of the Unit on or before the date the Unit is transferred.

D. In order to prevent leaks and to reduce the presence of mold, fungi, spores, pollens and other botanical substances, or other allergens (collectively "Mold") within the Unit, the Owners shall inspect the interior of their Unit not less frequently than once each quarter to check for water leaks or other breaches of the watertight integrity of the improvements, and for the presence of Mold. If any water leaks and/or Mold are detected within the Unit, the Owner shall immediately notify the Board and take appropriate corrective steps to repair the leak, and/or remove the Mold and to maintain proper ventilation within enclosed areas, and to maintain humidity levels to reduce the risk of Mold growth, and take such other prudent steps as may be appropriate to prevent leaks and Mold growth, or eliminate any existing Mold.

E. In the event the Owner fails to carry out such inspection and maintenance within said period, the Board may, following notice and hearing as provided in the Bylaws, cause such work to be done and the cost of the work shall immediately be paid by such Owner to the Association as a Reimbursement Charge, and until paid shall bear interest at the rate of twelve percent (12%) per annum (but no greater than the maximum rate authorized by law) from the date the cost was incurred by the Association until the date the cost is paid by the Owner.

F. In the event an Owner fails to inspect and maintain the interior of his Unit or its Exclusive Use Common Area in a manner which the Board deems necessary to preserve the appearance and value of the Project, the Board may notify Owner of the work required and request it be done within sixty (60) days from the giving of such notice.

G. Each Condominium Owner shall keep the balcony drains on the Owner's balcony clear of debris.

7.6. Residential Signs: Subject to California Civil Code §§ 712, 713 and 4710, no signs shall be displayed to the public view on any Condominium or on any other portion of the Project, except non-commercial signs may be displayed within a Condominium that are approved by the Board or a committee appointed by the Board, that conform to the Rules regarding signs, and that conform to the requirements of State law, and applicable local ordinances. "For Sale" or "For Rent" or "For Tax Deferred Exchange" signs shall be allowed to be displayed within areas of the Project that are designated in the Rules regarding such signs, and that conform to the requirements of State law, and applicable local ordinances, provided the design, dimensions and locations are reasonable. An Owner or his or her agent may display one (1) such For Sale or For Rent or For Tax Deferred Exchange sign within his or her Condominium and one sign in the Common Area advertising directions to the Owner's Unit which is for sale, rent, or exchange, provided the design, dimensions and locations are reasonable and comply with the Rules regarding signs, and comply with the requirements of State law, and applicable local ordinances. These restrictions on display of signs apply to signs that are visible from the exterior of a Unit, and are not intended to restrict signs that may be seen only from within the Unit in which the sign(s) is displayed. Declarant's rights reserved under Section 9.7 are not limited by this Section.

7.7. Commercial Signs: Signage for the Commercial Units shall conform to the City's Conditions of Approval and applicable ordinances. The Commercial Retail Unit Owners shall have the right to install reasonable signage, window displays, awnings, horizontal sign extensions and window appliques on the exterior of the Building that conform to the requirements of the City and this Declaration. Notwithstanding the above, no Commercial Retail Unit Owner or tenant or other Occupant of a Commercial Retail Unit shall employ an advertising medium or signage which can that uses flashing lights, searchlights, blinking lights, loudspeakers, phonographs, radios or television visible from the exterior of the Commercial Retail Unit. Before any signage and/or other advertising medium(s) may be erected, installed or employed by a Commercial Retail Unit Owner or tenant or other Occupant of a Commercial Retail Unit, all permits and/or other approvals required by City shall first be obtained. All signs and other advertising medium(s) shall conform to applicable ordinances and other requirements of the City.

7.8. Animals: Except as provided in the Governing Documents, no animals of any kind shall be raised, bred, or kept in any Condominium, or on any other portion of the Project. Trained dogs that are service animals used for assistance by visually impaired, hearing impaired or physically handicapped persons, or certified companion animals prescribed by a physician, may be kept by an Owner or Occupant in accordance with the Rules. A "service animal" as defined in 28 CFR § 36.104, as the Code of Federal Regulations under the Americans with Disabilities Act of 1990, meaning a dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability, or as such definition may be revised by the government of the United States. Owners or Occupants of Residential Units may keep no more than one (1) dog or one (1) cat within a Unit, and may keep a reasonable number (as determined by the Board) of other ordinary household pets and fish that are kept in cages or aquariums, provided that no such dogs, cats or other animal or fish may kept, bred, board, or maintained for any commercial purposes. All pets shall be kept under reasonable control at all times. No pets or other animals shall be allowed in the Common Area except as may be permitted by Rules of the Board. Other than qualified service animals, no pets and other animals may not be kept in any Commercial Retail Unit. No Owner or Occupant shall allow his dog to enter the Common Area except on a leash. After making a reasonable attempt to notify the Owner or Occupant, the Association or any Owner may cause any pet found within the Common Area in violation of this Declaration or the Rules to be removed by the Association (or any Owner) to a pound or animal shelter under the jurisdiction of the City or County by calling the appropriate authorities, whereupon the Owner or Occupant may, upon payment of all expenses connected therewith, repossess the pet. Owners or Occupants shall prevent their pets from soiling all portions of the Common Area and shall promptly clean up any waste left by their pets. Owners or Occupants shall be fully responsible for any damage caused by their pets.

Owners or Occupants shall use reasonable efforts to prevent any animal within his Unit from making disturbing noises that can be heard from any other Unit. An Owner or Occupant in violation of this Section may be deemed to be permitting, or causing a serious annoyance or nuisance to any other Owner. The Board, after notice and a hearing, may require the permanent removal of any animal that the Board determines to be a danger to the health and safety of any Occupant in the Project, or otherwise to be a nuisance within the Project. The Board may find that an animal is a nuisance if the animal or its' owner continue to violate the Rules regulating pets after receipt by the Owner or Occupant of a written demand from the Board to comply with the Rules. The Rules may provide that certain breeds or mix of breed of dogs are considered dangerous and may restrict or prohibit the keeping of such breeds of mix of breeds of dogs from being allowed in the Project.

Owners are required to inform the Association of the type of breed of pet upon commencement of occupancy and provide the Association with proof of rabies vaccination and evidence of certification of service animals. In no event shall any Owner or Occupant authorize, bring or keep within the Project: Any snakes, pigs, large lizards, spiders, rats or other vermin.

7.9. Garbage and Refuse Disposal: All rubbish, trash recycling materials and garbage shall be regularly removed from the Units, and shall not be allowed to accumulate therein. Trash, garbage, recycling materials and other waste shall only be kept in sanitary containers. All equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition, and shall be screened from view of neighboring Units, Common Areas and streets. No toxic or Hazardous Materials shall be disposed of within the Project by dumping in the garbage containers or down the drains, or

otherwise. Each Owner shall be responsible for removal of garbage from its Unit to the Project's central trash and recycling facilities in accordance with the Association Rules. The Residential Units shall use the Project's central trash and recycling facilities established for the Residential Units. The Commercial Units shall use the Project's central trash and recycling facilities established for the Commercial Units. All recycling and solid waste shall be confined to approved receptacles and enclosures. Waste and recycling services for the Condominiums shall be maintained by the Association in accordance with a disposal plan approved by the City.

7.10. Antenna Restrictions: No Person, Owner, or Occupant may install on the exterior of a Building any antenna or over-the-air receiving device, except for an "Authorized Antenna" that is not prohibited under Section 7.12.C, without the prior written approval of the Board. The use and installation of an Authorized Antenna in the Project is subject to applicable law and regulation and the following:

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

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

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

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

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

7.11. Right to Lease:

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

(1) all leases must be in writing;

(2) the lease must be for the entire Condominium and not merely parts of the Condominium, unless the Owner remains in occupancy;

(3) all leases shall be subject in all respects to provisions of the Governing Documents and all leases shall clearly obligate all Occupants to obey and comply with the Governing Documents;

(4) all Residential Owners who lease their Condominiums shall promptly notify the Secretary of the Association in writing of the names of all Occupants and members of Occupants' family occupying such Condominiums, and their respective vehicle and pet information, and shall provide the Secretary of the Association with a complete copy of the lease. All Owners leasing their Condominium shall promptly notify the Secretary of the Association of the address and telephone number where such Owner can be reached; and,

(5) no Owner shall lease his Condominium for a period of less than thirty (30) days.

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

C. If any Occupant is in violation of the provisions of the Governing Documents, the Association may bring an action in its own name and/or in the name of the Owner to have the Occupant evicted and/or to recover damages. If the court finds that the Occupant is violating, or has violated any of the provisions of the Governing Documents, the court may find the Occupant guilty of unlawful detainer notwithstanding the fact that the Owner is not the plaintiff in the action and/or the Occupant is not otherwise in violation of Occupant's lease. For purposes of granting an unlawful detainer against the Occupant, the court may assume that the Owner or person in whose name a contract (the lease or rental agreement) was made was acting for the benefit of the Association. The remedy provided by this subsection is not exclusive and is in addition to any other remedy or remedies which the Association has. If permitted by present or future law, the Association may recover all its costs, including court costs and reasonable attorneys' fees incurred in prosecuting the unlawful detainer action;

D. The Association shall give the Occupant and the Owner notice in writing of the nature of the violation of the Governing Documents, and twenty (20) days from the mailing of the notice in which to cure the violation before the Association may file for eviction; and,

E. Each Owner shall provide a copy of the Governing Documents to each Occupant of his or her Unit. By becoming an Occupant, each Occupant agrees to be bound by the Governing Documents, and recognizes and accepts the right and power of the Association to evict an Occupant for any violation by any Occupant of the Governing Documents.

7.12. Architectural Control: The purpose and intent of this Article is to empower the Association to preserve property values within the Project. The Board has the ultimate responsibility, but may delegate that authority to an Architectural Control Committee. The Board and the Board and Architectural Control Committee shall operate pursuant to the following guidelines:

A. Improvements: Only the Association may construct or install improvements within the Common Area of the Project except for Exclusive Use Common Area as herein provided. There shall be no construction or installation of improvements within a Unit or within Exclusive Use

Common Area appurtenant to a Unit or painting, alteration or modification of existing improvements within a Unit or within Exclusive Use Common Area appurtenant to a Unit by an Owner, his agents, Occupants, contractors or other representatives, including, but not limited to, a fence, wall, pool, spa, obstruction, outside or exterior wiring, screen, patio cover, tent, awning, carport cover, trellis, improvement or structure of any other kind within a Unit or within Exclusive Use Common Area, except as provided for in this Section 7.12 until the same has been approved in writing by the Board, or by an Architectural Control Committee appointed by the Board. Notwithstanding the foregoing, an Owner may improve or alter any improvements within the interior boundaries of the Owner's Unit, provided such improvement or alteration does not alter or impair the structural or fire protection elements, or acoustical integrity of any Common Area, the utilities or other systems servicing the Common Area or other Condominiums or the Unit, and does not involve altering any Common Area (including bearing walls) and Utility Facilities.

B. Solar Energy System: The Board shall not restrict or prohibit the installation or use of a solar energy system that is protected by law, including, without limitation, California Civil Code §§ 714, 714.1 and 801.5, except that it may adopt reasonable restrictions which do not significantly increase the cost of the system or significantly decrease its efficiency or specified performance, or which allow for an alternative system of comparable cost, efficiency, and energy conservation benefits.

C. Plans: Plans and specifications showing the nature, kind, shape, color, size, materials and location of any proposed improvements or alterations that require review hereunder shall be submitted to the Board or to the Architectural Control Committee for approval as to quality of workmanship and design and harmony of external design with existing structures, and as to location in relation to surrounding structures, topography, and finish grade elevation, and conformity to the Design Guidelines.

D. Re-Painting: No permission or approval shall be required to repaint a Unit in accordance with Declarant's original color scheme, or to rebuild in accordance with Declarant's original plans and specifications. No permission or approval shall be required to repaint in accordance with a color scheme previously approved by the Board or the Architectural Control Committee, or to rebuild in accordance with plans and specifications previously approved by the Board or by the Architectural Control Committee. Nothing contained in this paragraph shall be construed to limit the right of an Owner to paint the interior of his or her Unit any color desired.

E. Landscaping: No landscaping shall be made or added to any Exclusive Use Common Area which is visible from the street or from the Common Area by any Owner until plans and specifications showing the nature, kind, shape and location of the materials shall have been submitted to and approved in writing by the Board or by an Architectural Control Committee appointed by the Board. No rules or restrictions shall be adopted or applied which prohibit or have the effect of prohibiting the use of low water-using plants or that have the effect of prohibiting or restricting compliance with a water-efficient landscape ordinance, or have the effect of prohibiting or restricting compliance with any regulation or restriction on the use of water adopted pursuant to Section 353 or 375 of the California Water Code. The Association may, however, apply landscaping rules and regulations, provided that such rules and regulations do not prohibit or restrict the use of low water-using plants, or prohibit or restrict compliance with any water efficient landscape ordinance, or any regulation or restriction on the use of water adopted pursuant to California Water Code Sections 353 or 375.

F. Architectural Control Committee: The Architectural Control Committee shall consist of three (3) Members. Declarant may appoint all of the original members of the Architectural Control Committee and all replacements until the first anniversary of the issuance of the original Final Public Report. The Declarant reserves to itself the power to appoint a majority of the members to the Architectural Control Committee until ninety percent (90%) of all the Condominiums in the Project, if any, have been sold or until the fifth anniversary of the issuance of the Final Public Report, whichever occurs first. After one (1) year from the date of issuance of the original Public Report, Board shall have the power to appoint one (1) member to the Architectural Control Committee until ninety percent (90%) of all the Condominiums in the overall Project have been sold or until the fifth anniversary of the issuance of the Final Public Report, whichever first occurs. Thereafter, the Board shall have the power to appoint all of the members of the Architectural Control Committee. Members appointed to the

Architectural Control Committee need not be Members of the Association. A majority of the Architectural Control Committee may designate a representative to act for it. In the event of death or resignation of any member of the Architectural Control Committee, the successor shall be appointed by the person, entity or group which appointed such member until Declarant no longer has the right to appoint any member to the Architectural Control Committee, and thereafter the Board shall appoint such a successor. Neither the members of the Architectural Control Committee nor its designated representatives shall be entitled to any compensation for services performed pursuant to this Declaration.

G. Approvals: In the event the Board or Architectural Control Committee fails to approve or disapprove plans and specifications in writing within thirty (30) days after the same have been submitted to it, approval will not be required and the related covenants shall be deemed to have been fully complied with. Approval of plans by the Architectural Control Committee or the Board shall in no way make the Architectural Control Committee or its members or the Board or its members responsible for or liable for the improvements built after approval of the plans, and the Owner whose plans are approved shall defend, indemnify and hold the Architectural Control Committee, the Board, the Association, and its members harmless from any and all liability arising out of such approval.

The Architectural Control Committee shall meet as necessary to perform its duties. The Architectural Control Committee may, by resolution unanimously adopted in writing, designate an Architectural Control Committee representative (who may be a licensed architect or other professional consultant retained by the Architectural Control Committee) to review Applications and recommend action to be taken by the Architectural Control Committee or to take any other action or perform any other duties for and on behalf of the Architectural Control Committee except the granting of variances. In the absence of such designation, the vote or written consent of a majority of the Architectural Control Committee constitutes an act of the Architectural Control Committee. All approvals issued by the Architectural Control Committee must be in writing. Oral approvals issued by the Architectural Control Committee, any individual Architectural Control Committee member, a Director or any other representative of the Association are not valid, are not binding on the Association and may not be relied on by any Person and/or Owner. In reviewing and approving or disapproving a proposed alteration, modification or improvements to a Unit, the Architectural Control Committee and the Board shall satisfy the following requirements in accordance with California Civil Code Section 4765:

(1) The Architectural Control Committee and the Board in the Design Guidelines shall provide a fair, reasonable, and expeditious procedure for making its decision. The procedure shall provide for prompt deadlines. The procedure shall state the maximum time for response to an application or a request for reconsideration by the Board of Directors.

(2) A decision on a proposed change shall be made in good faith and may not be unreasonable, arbitrary, or capricious.

(3) A decision on a proposed change shall be consistent with any governing provision of law, including, but not limited to, the Fair Employment and Housing Act (Part 2.8, commencing with Section 12900) of Division 3 of Title 2 of the Government Code.

(4) A decision on a proposed change shall be in writing. If a proposed change is disapproved, the written decision shall include both an explanation of why the proposed change is disapproved and a description of the procedure for reconsideration of the decision by the Board of Directors.

(5) If a proposed change is disapproved by the Architectural Control Committee, the applicant is entitled to reconsideration by the Board at an open meeting of the Board. This paragraph does not require reconsideration of a decision that is made by the Board or a body that has the same membership as the Board, at a meeting that satisfies the requirements of California Civil Code Section §§4900-4950. Reconsideration by the Board does not constitute dispute resolution within the meaning of California Civil Code Section 5905.

H. Governmental Approvals: All alterations, modifications, or other improvements on or within the Project shall comply with all design requirements, approvals and procedures of the City.

Before commencement of any alteration or improvements approved by the Architectural Control Committee or Board, the Owner shall comply with all appropriate governmental laws and regulations, including, but not limited to, payment of any fees and obtaining all permits required. Approval by the Architectural Control Committee or Board does not satisfy the appropriate approvals that may be required by any governmental entity with appropriate jurisdiction.

I. Completion of Work; Review of Work: Upon approval of the Architectural Control Committee or Board, the Owner shall diligently proceed with the commencement and completion of all work so approved by the Architectural Control Committee in compliance with the approvals granted. The work must be commenced within six months from the date of approval unless the Architectural Control Committee or Board permits the work to be commenced at a later time. If the work is not commenced within six months after the approval date, or such later time as the Architectural Control Committee or Board has granted approval, then the approval shall be deemed cancelled, and the Owner must reapply to the Architectural Control Committee or Board before undertaking any such work.

The Architectural Control Committee or Board shall inspect work within sixty days after a written notice of completion has been delivered to the Architectural Control Committee or Board by the Owner. The Architectural Control Committee or Board may also inspect the work at any time prior to completion as it deems appropriate to determine that the Architectural Control Committee or Board approval is being followed. The Architectural Control Committee or Board is to inspect the work performed, and determine whether it was performed and completed in compliance with the approval granted in all material respects. If at any time during the construction of any work, the Architectural Control Committee or Board finds that the work was not performed or completed in compliance with the approval granted in all material respects, or if the Architectural Control Committee or Board finds that the appropriate approval which was required for any work was not obtained, the Architectural Control Committee or Board shall notify the Owner in writing of the non-compliance. The notice shall specify in writing the particulars of non-compliance, and shall set forth the requirement of the Owner to remedy the non-compliance. The Architectural Control Committee or Board shall determine in its reasonable judgment whether an alteration, modification or improvement complies with the approval as granted in material respects. Minor changes, deviations or imperfections that do not negatively affect or impact the Project shall not be considered as non-compliance. The Board shall act under this Section 7.12 only if the Board has undertaken the architectural control functions under this Section 7.12, otherwise the Architectural Control Committee shall act.

If the Architectural Control Committee or the Board has determined an Owner has not constructed an improvement in compliance with the approval granted in all material respects, and if the Owner fails to remedy such non-compliance in accordance with provisions of the notice of non-compliance, then after expiration of thirty (30) days from the date of such notification, if the Architectural Control Committee has undertaken the architectural control functions under this Article, the Architectural Control Committee shall notify the Board, and the Board shall provide Notice and Hearing to consider the Owner's continuing non-compliance. If the Board has undertaken the architectural control functions under this section, the Board shall act after expiration of thirty (30) days from the date of such notification. At the Hearing, if the Board finds that there is no valid reason for the continuing non-compliance, the Board shall then require the Owner to remedy the non-compliance as necessary and appropriate in the determination of the Board as to result in the improvement being rendered as reasonably in compliance as is appropriate for the overall good and benefit of the Project, or remove the same within a period of not more than forty-five (45) days from the date of the Board's determination. If the Owner does not comply with the Board's ruling within such period, or within any extension of such period as the Board, in its discretion may grant, the Board may (1) remove the non-complying improvement, (2) remedy the non-compliance, (3) institute legal proceedings to enforce compliance or completion, and to recover costs of enforcement, including attorneys' fees, and to recover costs of enforcement, including attorneys' fees.

After ninety percent (90%) of the Units in the Project have been sold by the Declarant, an Owner who has submitted an application to the Architectural Control Committee may appeal a decision to deny or conditionally approve the Owner's application to the Board by written appeal to the Board. The Board shall notify the appealing Owner in writing of the date set for a hearing regarding the Owner's appeal within ten (10) days after receipt of the Owner's appeal. The hearing shall be held

within thirty (30) days after receipt of the Owner's appeal by the Board. The Board shall make its determination on the appeal in writing delivered to the appealing Owner within ten (10) days after the hearing. The determination of the Board shall be final.

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

K. No Waiver of Future Approvals: The approval of any proposals, plans and specifications or drawings for any work done or proposed in connection with any matter requiring approval does not waive the right to withhold approval of any similar proposals, plans and specifications, drawings or matters subsequently or additionally submitted for approval.

L. Variances: Variances from compliance with any of the architectural provisions of this Declaration or the Design Guidelines, including restrictions may be granted on height, size, floor area or placement of structure, or similar restrictions, when circumstances such as hardship, aesthetic or environmental consideration require. Such variances must be evidenced in writing and become effective on adoption of a resolution by the Board. If variances are granted, no violation of the covenants, conditions and restrictions in this Declaration shall be deemed to have occurred with respect to the matter for which the variances were granted. The granting of a variance does not waive any of the provisions of this Declaration for any purpose except as to the particular property and particular provisions of this Declaration covered by the variance, nor does it affect the Owner's obligation to comply with all laws affecting the use of his Condominium.

7.13. Structural Integrity: Nothing may be done in any Condominium or in, on or to the Common Area that may impair the structural integrity (including the water seal) of any Building, or that may alter the plumbing, electricity or natural gas facilities serving any other Condominium, except as otherwise expressly provided in this Declaration. No Owner may pierce, remove or otherwise modify any wall, ceiling or floor separating the Unit from another Unit or from Common Area (except as approved by the Architectural Control Committee), nor install any wall or ceiling-mounted loudspeakers or other noise-generating devices. The Board may adopt a Rule that restricts the hours of operation or otherwise restricts or prohibit the use of whirl pool or jacuzzi-type tubs in the Residential Units.

7.14. Window Coverings: All drapes, curtains, shutters, blinds or other window coverings visible from the street or Common Areas shall be beige, white, or off-white in color or lined in beige, white, or off-white, or as the case may be, of colors, materials and patterns which are approved by the Board or the Architectural Control Committee.

7.15. Power Equipment and Motor Vehicle Maintenance: No power equipment, hobby shops, or motor vehicle maintenance (other than emergency work) shall be permitted on the Project except with prior written approval of the Board (except for approved construction work being undertaken within a Unit). Approval shall not be unreasonably withheld, and in deciding whether to grant approval, the Board shall consider the effects of noise, air pollution, dirt or grease, fire hazard, interference with radio or television reception, and similar objections. All hazardous waste shall be disposed of properly by each Owner.

7.16. Liability of Owners for Damage to Common Area: The Owner of each Condominium shall be liable to the Association for all damage to the Common Area or improvements caused by the Owner, or any Occupant for which the Owner is responsible, to the extent described in Section 5.1.A(2).

7.17. Sports Apparatus: No fixed sport apparatus shall be attached to the exterior surface of any portion of the Common Area, nor shall any portable apparatus be used for playing basketball or other sports (except within the Commercial Retail Units) of in the Project unless approved by the Board.

7.18. Commonly Metered Utilities: The Board may establish restrictions regarding the individual use of any utility on a common meter, and may impose reasonable charges for the individual use thereof.

7.19. Flags, Pennants, Banners, Etc.: There shall be no exhibiting, flying or hanging of any flags, pennants, banners, kites, towels, etc., from any area of the Project (except by Declarant during the period Declarant is marketing the Project) that would be visible from the street, Common Area, or the other Units, except in conformance with Rules adopted by the Board or the Architectural Control Committee, and except for flags, banners and signs that are expressly permitted by statute. The Association may adopt Rules regarding the display of flags, banners and signs provided that such Rules shall be consistent with the then applicable laws.

7.20. Water Bed Restrictions: No water beds shall be permitted in the Project.

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

7.22. Common Area Use/Bicycle Storage: Nothing shall be stored, grown, or displayed in the Common Area, including, without limitation, Exclusive Use Common Areas such as decks, balconies and patios that is not approved in advance by the Architectural Control Committee. **[The Association may establish Rules and procedures for use of any bicycle storage facilities that may be located within the Common Area.]**

7.23. Drainage: No Owner, Member or Occupant shall do or cause anything to be done that would alter or interfere with the Project drainage patterns or block or alter the natural flow or engineered flow of surface water, or interfere with drainage patterns within the Project.

7.24. Fire Restrictions: No Owner or Occupant of a Residential Unit or the Commercial Office Unit may store any flammable materials within any Exclusive Use Common Area. Further, no exterior fires of any kind, including those contained in barbecue grills, shall be permitted in within any Unit or on any Exclusive Use Common Area balcony, deck or terrace of a Residential Unit or of the Commercial Office Unit. Nothing may be done in any Unit or in, on or to the Common Area that may impair or alter fire sprinklers within the Units or their source of water.

7.25. Water Supply System: No individual water supply, sewage disposal or water softener system is permitted in any Condominium unless such system is approved by the Board or the Architectural Control Committee and is designed, located, constructed and equipped in accordance with the requirements, standards, and recommendations of any water district having jurisdiction, the City, and all other governmental authorities with jurisdiction.

7.26. View Obstructions: Each Owner acknowledges that: (a) there are no protected views in the Property, and no Condominium is assured the existence or unobstructed continuation of any particular view; and (b) any construction, landscaping (including the growth of landscaping), or other installation of improvements by Declarant, other Owners or Owners of other property in the vicinity of the Property may impair the view from any Condominium, and the Owners are deemed to have consented to such view impairment.

7.27. Rights of Disabled: Subject to Section 7.12, each Owner may modify his Unit and the route over the Common Area leading to the front door of his Unit, at his sole expense, to facilitate access to his Unit by persons who are blind, visually impaired, deaf or physically disabled, or to alter conditions which could be hazardous to such persons in accordance with California Civil Code § 4760 or any other applicable law.

7.28. Smoking Restrictions: Smoking of cigarettes, pipes, cigars, or other similar smoking activities, including vapor devices, shall not be permitted in the Common Areas of the Project, including any Exclusive Use Common Areas. **Any such smoking activities shall comply with all applicable City**

regulations and requirements. The Association may adopt Rules pertaining to any such smoking activities.

7.29. Post-Tension Slabs: The concrete slab constructed in the Project may be reinforced with a grid of steel cable installing concrete slabs and then tightened to create extremely high tension, which are commonly known as a "Post-Tension Slab". Cutting into a Post-Tension Slab for any reason, including to install a floor safe or to remodel plumbing, etc., is very hazardous and may result in serious damage, personal injury, or both. Each Owner shall determine if its Unit has been constructed with a Post-Tension Slab, and, if so, agrees that: (a) The Owner shall not cut into or otherwise tamper with the Post-Tension Slab; (b) Owner shall not permit or allow any Person to cut or tamper with a Post-Tension Slab; (c) Owner shall disclose the existence of the Post-Tension Slab to any Person who rents, leases or purchases the Unit from the Owner; and, (d) the Owner shall indemnify and hold Declarant and Declarant's agents and the Association free and harmless from and against any and all claims, damages, losses or other liability, including attorneys' fees and court costs, arising out of any breach of this covenant by Owner.

7.30. Moving In/Out and Contractor Rules: The Board may adopt Rules regulating the moving of property in and out of a Condominium and means of ingress and egress to and from the Condominium. The Rules may include, but are not limited to, Rules regarding the times during which moving in or out may occur, coordination of two or more moves occurring within the same time period, protection for the elevator cabs (if applicable), disposal of moving boxes, and the payment of fees or posting of collateral or security to pay for damage to the Common Area. In addition, the Board may adopt Rules regulating any construction work performed within a Unit, including remodeling or upgrading. The Rules may include, but are not limited to, Rules regarding construction times, protection for the elevator cabs (if applicable), disposal and storage of construction materials and equipment, construction access routes, and the posting of collateral or security to pay for any damage to the Common Area.

7.31. Electric Vehicle Charging Stations: The Project is provided with electrical vehicle charging stations in certain areas of the Project's garage and provides for conduit for installation of electrical vehicle charging stations in certain other areas of the Project's garage. The rights of use of such electrical vehicle charging stations and the rights to install electrical vehicle charging stations in the areas with conduit installed shall be administered by the Declarant as long as Declarant owns a Unit in the Project, and by the Association after such time as Declarant no longer owns a Unit in the Project, or such earlier date that the Declarant assigns such administration to the Association. The Project shall at all times comply with the City's electrical vehicle charging ordinance. **[City Condition 59]**

A. Notwithstanding anything contained in this Declaration to the contrary, any provision in the Governing Documents that either effectively prohibits or unreasonably restricts the installation or use of an electric vehicle charging station in an Owner's designated parking space, including, but not limited to, a parking space in an Owner's Exclusive Use Common Area, or a parking space that is specifically designated for use by a particular Owner, or is in conflict with the provisions of Civil Code section 4745 is void and unenforceable. Provisions that impose reasonable restrictions on electric vehicle charging stations that are in compliance with Civil Code section 4745 are not prohibited.

B. An electrical vehicle charging station that is designed in compliance with California Building Standards Code and delivers electricity for charging one or more electric vehicles may be approved by the Board or by the Architectural Control Committee appointed by the Board if (i) an application for approval is presented to the Board or the Architectural Control Committee; (ii) the Board finds that (a) such application meets the criteria of this Section 7.31; (b) that the existing electrical system is sufficient to carry the electrical load anticipated for the electric charging station, including the amperage of the service and the gauge of the wire used in the construction of the installation; and, (c) the proposed electrical vehicle charging station meets the standards of the California Building Standards Code and all other applicable health and safety standards and requirements imposed by state and local permitting authorities. The approval or denial of such an application shall be in writing. If an application is not denied in writing within sixty (60) days from the date of receipt of the application, the application shall be deemed approved unless that delay is the

result of a reasonable request for additional information. If the charging station is to be placed in a Common Area or an Exclusive Use Common Area, the following provisions shall apply:

(1) The Owner shall first obtain approval from the Association to install the station, pursuant to Section 5.2.B.

(2) The Owner shall agree in writing to:

(a) Comply with the Development's architectural standards and Design Guidelines as to the installation of the station;

(b) Engage a licensed contractor to install the station;

(c) Within fourteen (14) days of approval, provide a certificate of insurance that names the Association as an additional insured under the Owner's insurance policy in the amount of \$1,000,000;

(d) Pay for all electricity uses associated with the station;

(e) Pay for all construction and installation costs; and,

(f) Pay for the cost of preparation and mailing of ballots if an election is required pursuant to Section 5.2.B.

(3) The Owner and each successive Owner of the parking stall on which or near where the electric vehicle charging station is placed shall be responsible for all of the following:

(a) Determining that the existing electrical system is sufficient to carry the electrical load anticipated for the electric charging station, including the amperage of the service and the gauge of the wire used in the construction of the installation;

(b) Costs for damage to the station, Common Areas, Exclusive Use Common Areas or adjacent units resulting from the installation, maintenance, repair, removal or replacement of the station;

(c) Be responsible for costs for the maintenance, removal, repair, and replacement of the electric vehicle charging station until it has been removed from and for the restoration of the Common Area or Exclusive Use Common Area after removal;

(d) Be responsible for the costs of electricity associated with the charging station;

(e) Be responsible for disclosing to prospective buyers the existence of any electric vehicle charging station of the Owner and the related responsibilities of the Owner under Civil Code section 4745, and the obtaining of written acknowledgment of the acceptance of responsibility for compliance with these requirements from the Owner(s).

(4) The Owner and each successive Owner of the charging station, at all times, shall maintain a owner's liability coverage policy in the amount of One Million Dollars (\$1,000,000) covering the obligations of the Owner and shall name the Association as an additional insured under the policy with a right to notice of cancellation.

(5) If a new Owner fails to accept responsibility for the electric charging station prior to the close of escrow on the sale of a Unit, the Board shall obtain a bid or bids for the cost to remove the electric charging station and restore the Common Area or Exclusive Use Common Area and shall require that the cost be paid out of escrow.

The foregoing Section 7.31 is intended to comply with Civil Code section 4745. The provisions of this Section 7.31 shall be deemed modified if said Civil Code section 4745 is amended or modified to conform to the provisions of the amended or modified Civil Code section 4745.

ARTICLE VIII. INSURANCE; DAMAGE OR DESTRUCTION; CONDEMNATION

8.1 Insurance:

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

(1) A master hazard policy insuring all improvements, equipment and fixtures on the Project including the Common Area, and including the interior of the Units as originally

constructed, including built-in or set-in appliances, cabinets, and floor coverings, but excluding additional improvements or upgrades added to the Unit Owner after completion of original construction. The Association's policy does not cover the personal property in Units and does not cover personal liability for damages or injuries occurring within the Units ("All-In-Coverage"):

- (a) changes in building codes ("ordinance or law endorsement");
- (b) inflation guard coverage;
- (c) demolition coverage;
- (d) "agreed-amount" endorsement (to eliminate a coinsurance problem);
- (e) replacement cost endorsement; and,
- (f) primary coverage endorsement.

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

(3) workers' compensation insurance (statutory limits) to the extent required by law (or such greater amount as the Board deems necessary). All independent contractors who contract with the Association shall be required to carry appropriate general liability insurance, automobile liability insurance coverage and workers' compensation coverage, and shall indemnify the Association with respect to any claims from such independent contractor, or independent contractor's employees, with regards to claims for liability and workers' compensation claims from any independent contractor who performs any service for the Association. Independent contractors shall be required to carry a minimum of \$1,000,000 per occurrence, \$2,000,000 general aggregate and \$2,000,000 products-completed operations aggregate under the general liability requirement naming the Association as an additional insured for their work. Independent contractors shall also carry a minimum of \$1,000,000 combined single limit for auto liability covering all owned, hired and non-owned automobiles;

(4) fidelity bonds or insurance covering officers, Directors, and employees that have access to any Association funds;

(5) directors and officers liability insurance covering all past, present and future directors and officers of the Association, the amount of which shall at all times not be less than the minimum amounts required by California Civil Code §§ 5800 and 5805, as amended from time to time, including any successor statutes;

(6) insurance against water damage, and liability for non-owned and hired automobiles;

(7) water damage insurance to the extent typically available from commercial carriers, if available at reasonable rates in the opinion of the Board.

(8) such other insurance as the Board in its discretion considers necessary or advisable.

B. Amount, Term, Deductibles and Coverage. The amount, term and coverage of any policy required hereunder (including the type of endorsements, the amount of the deductible, the named insureds, the loss payees, standard mortgage clauses, notices of changes or cancellations, and the insurance company rating) shall satisfy the minimum requirements imposed for this type of project by the Federal National Mortgage Association ("FNMA"), the Federal Home Loan Mortgage Corporation ("FHLMC"), and the Housing and Urban Development ("HUD") or any successor to either of those entities. If the FNMA, FHLMC or HUD requirements conflict, the more stringent requirement shall be met. If FNMA, FHLMC and HUD do not impose requirements on any policy required hereunder, the term, amount and coverage of such policy shall be no less than that which is customary for similar policies on similar projects in the area. The Board shall adopt a policy regarding payment of deductibles on any insurance coverage. Unless the Board determines otherwise, the Association shall

pay deductibles required under any insurance claims from Association funds, unless insufficient funds are available to the Association from the Association's accounts or from funds borrowed by the Association in accordance with this Declaration, in which event the Association shall levy a Special Assessment, in accordance with Sections 4.3.B and 4.4 of this Declaration, with respect to the amount of any such deductible which exceeds funds available to the Association from Association funds or from borrowing. Owners responsible for causing damage are responsible for the amount of any deductible as provided in Section 5.1.A(2).

C. Representation for Claims. Each Owner appoints the Association or any 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.

D. Waiver of Subrogation. Any insurance maintained by the Association shall contain "waiver of subrogation" as to the Association and its officers, Directors and Members, the Owners and Occupants of the Condominiums (including Declarant) 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.

E. Review of Policies. The Association shall periodically (and not less than annually) review all insurance policies maintained by the Association to determine the adequacy of the coverage and to adjust the policies accordingly.

F. Separate Owner's Insurance: Each Owner shall insure his personal property and any improvements to the interior of the Unit added by the Owner after completion of original construction. The insurance coverage carried by the Owner shall be for 100% of the current replacement cost of all improvements in the Owner's Unit not covered by the Association's policy. The Owner shall not obtain such insurance if the policy referred to in Section 8.1.A (1) will provide coverage for such improvements. If any Owner violates this provision, any diminution in insurance proceeds otherwise payable under the Association's policies that results from the existence of such other insurance will be chargeable to the Owner who acquired such other insurance. All Owners shall deliver a copy of the Owner's insurance policy to the Board, if requested to do so. The Association may establish Rules as to the reasonable limits of insurance to be carried by Unit Owners and other Occupants after consultation with an insurance consultant. All such insurance that is individually carried by a Unit Owner shall contain a waiver of subrogation by the carrier as to the other Owners, the Association, Declarant, and the mortgagees of such Unit.

G. Copies of Policies; Notice to Members. The Association shall make available to all Members a copy of the Association's policy to enable Members to insure their Units without duplicating insurance carried by the Association and inadvertently triggering a co-insurance clause in the Association's policy referred to in Section 8.1.A(1). The Association shall distribute annually to the Members a summary of the Association's insurance policies as required by California Civil Code Section 5300(b)(9) and as provided in the Bylaws. The Association, as soon as reasonably practical, shall notify its Members by first-class mail if any of the policies have been cancelled and not immediately renewed or restored or if there is a significant change such as a reduction in coverage or limits or an increase in the deductible for any policy. If the Association receives any notice of non-renewal of a policy, the Association immediately shall notify its Members if replacement coverage will not be in effect by the date the existing coverage will lapse. To the extent that the information required to be disclosed, as described in California Civil Code § 5300(b)(9), is specified in the insurance policy declaration page, the Association may meet its disclosure obligations by making copies of that page and distributing copies to all its Members.

H. 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 be obtained only

at a cost that the Board 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 immediately shall notify each Member and any Mortgagee entitled to notice that the insurance will not be obtained or renewed.

I. Policies and Procedures Regarding the Filing and Processing of Claims: The Board shall adopt a policies and procedures regarding the filing and processing of claims for damage and destruction of Common Area improvements or any other matters covered by insurance maintained by the Association.

J. Authority of the Board to Change Insurance Requirements: The Board, by unanimous vote at a meeting, notice of which was given to all Owners, may change the insurance requirements from "bare walls coverage" to "all-in coverage", or from "all-in coverage" to "bare walls coverage", and to make consistent changes in the requirements for individual owner's insurance. In such case the Declaration need not be amended, provided all Owners are notified of the change.

8.2. Damage or Destruction: If Project improvements are damaged or destroyed by fire or other casualty, the improvements shall be repaired or reconstructed substantially in accordance with the original as-built plans and specifications, modified as may be required by applicable building codes and regulations in force at the time of such repair or reconstruction and subject to such alterations or upgrades as may be approved by 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 Project improvements, available insurance proceeds are not sufficient to pay for at least eighty-five percent (85%) of the cost of such repairs or reconstruction, and three-fourths (3/4) of the total voting power of the Association residing in Members and their First Lenders vote against such 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, a Special Assessment levied to supplement the insurance fails to receive the requisite approval (if such approval is required) as provided in Section 4.4, and the Board, without such approval by the Owners, is unable to supplement the insurance by borrowing on behalf of the Association sufficient monies to enable the improvements to be substantially repaired or reconstructed within a reasonable time.

A. Costs of Damage – Condominiums: In the case of damage or destruction of a Unit, whether by fire, earthquake or other causes, the Owner of that Condominium Unit shall be responsible for the costs of repair or reconstruction that is not covered by the Association's insurance policies or is within the deductible amount. If an Owner fails to pay the costs of such repair or reconstruction, the Association may elect to pay for the uninsured portion of the cost or deductible amount and shall have the right to assess the Owner(s) for the cost thereof as a Reimbursement Charge and to enforce the Reimbursement Charge as provided in this Declaration. In any case where insurance proceeds are pre-empted by any Owner's lender for application to said Owner's debt, the Association shall immediately impose an individual Assessment upon said Owner's Condominium Unit equal in amount to such preemption pursuant to Section 4.3, and shall enforce such Assessment in accordance with Sections 4.3 and 5.2.F hereof. The proceeds of such Assessment or lien shall then be substituted for the pre-empted insurance proceeds.

B. 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 Project improvements, the Board shall designate a construction consultant, a general contractor, and an architect for the repair or reconstruction. All insurance proceeds, Association monies allocated for the repair or reconstruction, and any borrowings by the 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. Funds shall be disbursed in accordance with the normal construction loan practices of the Depository that require as a minimum that the construction consultant, general contractor and architect certify within ten (10) days prior to any disbursement substantially the following:

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

(2) that such disbursement request represents monies which either have been paid by or on behalf of the construction consultant, the general contractor or the architect and/or are justly due to contractors, subcontractors, materialmen, engineers, or other persons (whose name and address shall be stated) who have rendered or furnished certain services or materials for the work and giving a brief description of such services and materials and the principal subdivisions or categories thereof and the respective amounts paid or due to each of those persons in respect of such services and stating the progress of the work up to the date of the certificate;

(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 such certificate;

(4) that no part of the cost of the repair or reconstruction has been or is being made the basis for the disbursement of any funds in any previous or then pending application;

(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; and,

(6) that mechanics' lien releases have been obtained from those eligible to file lien claims.

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

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

In the event the work required to repair or restore damage or destruction involves work that is the responsibility of Owner and the Association as provided in Sections 7.5 and 5.1.A, then all of such work shall be directed by the Board, with the expense to be allocated between Owner and the Association pursuant to Sections 7.5 and 5.1.A. If more than one Owner is involved, the expense to be paid by each Owner shall be apportioned by the Board. If the Association is involved in a dispute over the apportionment of such expenses, then the dispute shall be settled by arbitration pursuant to Section 9.15.E.

If the Association undertakes any work which Section 7.5 requires an Owner to undertake, or any work which the Association is required to undertake at the expense of the Owner, the Board shall assess the Condominium of the Owner for such work and shall so inform the Owner thereof in writing; provided, however, that the Assessment shall be reduced by the amount of any insurance proceeds paid to the Association as a result of damage to or destruction of the Condominium involved. Such Assessment shall be a lien upon the Condominium of the Owner and may be foreclosed, as set forth in Section 4.9.

C. 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 the Owners of the damaged Units and their respective Mortgagees in proportion to the respective fair market values of their Condominiums as of the date immediately preceding the date of damage or destruction as determined by a qualified independent appraiser selected by the Board, after first applying the proceeds to the cost of mitigating hazardous conditions on the Project, making provision for the continuance of public liability insurance to protect the interests of the Owners until the Project can be sold, and complying with all other applicable requirements of

governmental agencies. In the event of a failure to agree upon an appraiser, the appraiser shall be appointed by the then President of the Bar Association of the County.

If the failure to repair or reconstruct results in a material alteration of the use of the Project from its use immediately preceding the damage or destruction as determined by the Board (a material alteration shall be conclusively presumed if repair or reconstruction costs exceed twenty-five percent (25%) of the current replacement cost of all Project improvements), the Project shall be sold in its entirety under such terms and conditions as the Board deems appropriate. If any Owner or First Lender disputes the Board's determination as to a material alteration, the dispute shall be submitted to arbitration pursuant to Section 9.15.E, and the decision of the arbitrator shall be conclusive and binding on all Owners and their Mortgages.

If, as a result of the destruction or partial destruction of the Project, and a decision is made not to repair or reconstruct the Project, the Project is sold, the sales proceeds shall be distributed to all Owners and their respective Mortgages in proportion to their respective fair market values of their Condominiums as of the date immediately preceding the date of damage or destruction as determined by the independent appraisal procedure described above. For the purpose of effecting a sale under this Section 8.2.C, each Owner grants to the Association an irrevocable power of attorney to sell the entire Project for the benefit of the Owners, to terminate the Declaration and to dissolve the Association. In the event the Association fails to take the necessary steps to sell the entire Project as required under this Article within sixty (60) days following the date of a determination by the Board or arbitrator of a material alteration, or if within one hundred twenty (120) days following the date of damage or destruction the Board has failed to make a determination as to a material alteration, any Owner may file a partition action as to the entire Project under California Civil Code § 4610, or any successor statute, and the court shall order partition by sale of the entire Project and distribution of the sale proceeds as provided in this Declaration.

Notwithstanding anything in this Declaration to the contrary, any Owner or group of Owners shall have a 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 Project under this Section 8.2.C, provided this right is exercised within thirty (30) days of receipt by the Owners of a notice from the Association containing the terms and conditions of any offer it has received. Such notice shall be given by the Association to all Owners, in writing, within thirty (30) days of receipt by the Association of such offer. If the Owner or group of Owners subsequently default on their offer to purchase, they shall be liable to the other Owners and their respective Mortgagees for any damages resulting from the default. If more than one (1) Owner or group elects to exercise this right, the Board shall accept the offer that in its determination is 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(s), or part of the Common Area(s). In the event of a taking or acquisition of part or all of the Common Area(s) by a condemning authority, the award or proceeds of settlement shall be payable to the Association, or any trustee appointed by the Association, for the use and benefit of the Owners and their Mortgagees as their interests may appear. In the event of an award for the taking of any Condominium in the Project by eminent domain, the Owner(s) of such Condominium shall be entitled to receive the award for such taking and, after acceptance of the award, the Owner(s) and Mortgagee shall be divested of all interest in the Project if such Owner(s) shall vacate his Condominium as a result of such taking. The remaining Owners shall decide by majority vote whether to rebuild or repair the Project, or take other action. The remaining portion of the Project shall be resurveyed, if necessary, and the Declaration shall be amended to reflect such taking and to readjust proportionately the percentages of undivided interest of the remaining Owners in the Project. In the event of a taking by eminent domain of any part of the Common Area, the Association shall participate in the negotiations, and shall propose the method of division of the proceeds of condemnation, where Condominiums are not valued separately by the condemning authority or by the court. Proceeds of condemnation shall be distributed among Owners of Condominiums and their respective Mortgagees according to the relative values of the Condominiums affected by the condemnation, said values to be determined by the method provided in Section 8.2. Owners shall be represented by themselves or their attorneys in any condemnation actions involving Units.

If there is a substantial taking of the Project (more than fifty percent (50%)), the Owners may terminate the legal status of the Project and, if necessary, bring a partition action under California Civil Code § 4610 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 Holders holding Mortgages on Condominiums which have at least fifty-one percent (51%) of the votes of Condominiums subject to Eligible 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 Condominiums as determined under the method described in Section 8.2.

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

8.5. Portions of Awards in Condemnation Not Compensatory for Value of Real Property: Those portions of awards in condemnation that do not directly compensate Owners for takings of real property (e.g., awards for takings of personal property, relocation expenses, moving expenses, or other allowances of a similar nature intended to facilitate relocation) shall be paid to the Owners whose personal property is taken, or whose relocation is intended to be facilitated.

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 the Governing Documents, and in such action shall be entitled to recover reasonable attorneys' 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. Failure by the Association to enforce the Governing Documents shall not be deemed to constitute approval of or consent to any violation or failure to comply with the Governing Documents.

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

9.3. Term: Subject to Section 9.4, the covenants and restrictions of this Declaration shall run with and bind the Project, and shall inure to the benefit of and shall be enforceable by the Association or the Owner of any property subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of thirty (30) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years, unless an instrument in writing, signed by 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 the same.

9.4. Amendments:

A. Unilateral Amendment by Declarant: Notwithstanding any other provisions of this Section, at any time prior to the first Close of Escrow in the Project, Declarant may unilaterally amend or terminate this Declaration by recording a written instrument which effects the amendment or termination and is signed and acknowledged by Declarant. Notwithstanding any other provisions of this Section, Declarant (for so long as Declarant owns any portion of the Project) may unilaterally amend this Declaration or by recording a written instrument signed by Declarant in order to: (i) conform this Declaration to the rules, regulations or requirements of VA, FHA, DRE, Fannie Mae, Ginnie Mae or Freddie Mac; (ii) amend, replace or substitute any Exhibit for any purpose to the extent that the Exhibit affects portions of the Project that have not yet been conveyed to the Association or for which there has been no Close of Escrow, as applicable; (iii) amend, replace or substitute any Exhibit to correct typographical or engineering errors; (iv) include any Exhibit that was inadvertently omitted from the

Declaration at the time of recording; (v) comply with any city, county, state or federal laws or regulations; (vi) correct any typographical errors; (vii) supplement or amend this Declaration with provisions which pertain to rights and obligations of Declarant, the Association or Owners arising under the Right to Repair Law at Division 2, Part 2, Title 7 (commencing with Section 895) of the California Civil Code; and (viii) change any exhibit or portion of an exhibit to this Declaration to conform to as-built conditions.

B. Amendment by Members: After sale of the first Condominium, 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 and a majority of the affirmative votes or written consent of Members other than the Declarant, or where the two (2) class voting structure is still in effect, a majority of each class of membership and, if required, the consent of the California Bureau of Real Estate. However, the percentage of voting power necessary to amend a specific Section shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that Section. Any amendment must be in a written document that is executed and acknowledged by the President or Vice President of the Association certifying as required under Civil Code § 4270 that amendment has been approved by the percentage of Members required by this Declaration and by any other Person whose approval is required by the Declaration and recorded in the Recorder's Office of the County.

C. Super-Majority Required for Certain Amendments: Notwithstanding anything to the contrary contained in this Declaration, Sections **9.4.C, 5.1.A, 5.1.B, 7.1, 7.12 [Architectural Control], 9.7, 9.8 and 9.15** shall not be amended without the vote or approval by written ballot of at least (a) ninety percent (90%) of the voting power of the Members of the Association other than Declarant, and (b) at least ninety percent (90%) of the First Lenders.

D. Amendments Requiring Consent of Owners: Except as otherwise provided herein, no amendment affecting the dimensions of any Unit or the interests in the Common Area or Exclusive Use Common Area shall be effective without the consent of all Owners whose Units, Common Area interests, or Exclusive Use Common Area rights are affected by the amendment, except as authorized in Section **2.2.D**. The provisions of this Section **9.4.D** may not be amended without the unanimous consent of the total voting power of the Association.

E. Amendments Regarding Initiation of Construction Defect Claims: Notwithstanding anything to the contrary contained in this Declaration, this Section **9.4.E** and Section **9.15** of this Declaration shall not be amended without the vote or approval by written ballot of at least (a) ninety percent (90%) of the voting power of the Members of the Association other than Declarant, and (b) at least ninety percent (90%) of the First Lenders.

F. Amendments Requiring City's Consent: Notwithstanding anything to the contrary herein, no amendment to this Declaration shall be made until such amendment has been submitted to the City for review and approval in accordance with Section **9.16.I** and approved in writing by the City Attorney of the City.

G. Agreements Among Owners: In any situation where agreement between or among Owners is required, agreement or consent shall not be withheld unreasonably.

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

encroachment of a Building into the Common Area, or into a required setback area, a correcting modification may be made in the subdivision map and/or Condominium Plan. Such modification may be in the form of a certificate of correction and shall be executed by Declarant (so long as Declarant is the sole Owner of the Project) and by Declarant's engineer (in the case of a condominium plan) and, in addition, by the City Engineer (in the case of a subdivision map or parcel map). The modification may also be made by lot line adjustment, if more appropriate.

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

A. Amendments:

(1) Amendments of a material adverse nature to First Lenders require the approval of at least fifty-one percent (51%) of First Lenders (based on one (1) vote for each First Mortgage owned);

(2) any action to terminate the legal status of the Project, or to use insurance proceeds for any purpose other than to rebuild, requires approval of at least fifty-one percent (51%) of First Lenders (based on one (1) vote for each First Mortgage owned); and,

(3) Implied approval may be assumed when a Mortgagee fails to submit a response to any written proposal for an amendment within sixty (60) days after the Mortgagee actually receives proper notice of the proposal, provided the notice was delivered by certified or registered mail, with a "return receipt" requested.

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

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

(2) any default in performance of obligations under the Governing 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 such Eligible Mortgage Holder or Eligible Insurer or Guarantor, which remains uncured for a period of sixty (60) days;

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

(4) any proposed action which would require the consent of a specified percentage of Eligible Mortgage Holders.

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 such parties, at the address given on the current request for notice, in the manner prescribed by Section 9.10.

C. Reserves: The Association shall establish and maintain a Reserve Fund for replacements and a general operating reserve sufficient in amount to satisfy the minimum amounts necessary to comply with the requirements of FNMA, FHLMC, and FHA.

D. First Lenders Rights Confirmed: Any First Lender who comes into possession of the Condominium by virtue of Foreclosure of the Mortgage, or any purchaser at a Foreclosure, will

take the Condominium free of any claims for unpaid Assessments and fees, late charges, fines or interest levied in connection with such claims, against the Condominium which accrue more than six (6) months prior to the time such First Lender or purchaser at a Foreclosure takes title to the Condominium, except for fees or costs related to the collection of the unpaid Assessments, claims for a pro rata share of such Assessments or charges to all Condominiums including the mortgaged Condominium, and except for Assessment Liens as to which a Notice of Delinquent Assessment has been recorded prior to the Mortgage.

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

9.7. Limitation of Restrictions on Declarant: Declarant is undertaking the work of construction of Condominiums and incidental improvements upon the Project. The completion of that work and the sale, rental, and other disposal of the Condominiums is essential to the establishment and welfare of the Project. In order that the work may be completed and the Project be established as a fully occupied community as rapidly as possible, nothing in this Declaration shall be understood or construed to:

A. Prevent Declarant, its contractors, or subcontractors from doing on the Project or any Condominium whatever is reasonably necessary or advisable in connection with the completion of the work; or

B. Prevent Declarant or its representatives from erecting, constructing and maintaining on the Project (except within Units owned by others), such structures as may be reasonable and necessary for the conduct of its business of completing the work and establishing said Project as a mixed-use community and disposing of the Project in parcels by sale, lease or otherwise; or

C. Prevent Declarant from conducting on the Project (except within Units owned by others) its business of completing the work and of establishing a plan of Condominium ownership and of disposing of the Project as Condominiums by sale, lease or otherwise (including use of one (1) or more Condominiums as a sales office or model home); or

D. Prevent Declarant from maintaining or displaying such sign(s), pennants, banners and flag(s) anywhere in the Project (except within Units owned by others) as may be necessary for the sale, lease or disposition thereof for the duration of Declarant's marketing; or,

E. Subject Declarant to the architectural control provisions of Section 7.12 for construction of any Condominium or other improvements on the Project.

The foregoing rights of Declarant shall terminate upon sale of Declarant's entire interest in the Project, and, until then, this Section shall not be amended without Declarant's consent.

So long as Declarant, its successors and assigns, owns one (1) or more of the Condominiums established and described in this Declaration, Declarant, and its successors and assigns, shall be subject to the provisions of this Declaration. Declarant shall make reasonable efforts to avoid disturbing the use and enjoyment of Condominiums (and the Common Area) by Owners, while completing any work necessary to those Condominiums or Common Area.

9.8. Termination of Any Responsibility of Declarant and Acceptance of Obligations by Association: In the event Declarant shall assign or convey all of its right, title and interest in and to the Project to any successor Declarant, then and only in such event, Declarant shall be relieved of the performance of any further duties or obligations under this Declaration arising after such conveyance, and such successor Declarant, shall thereafter be obligated to perform all such duties and obligations of the Declarant.

9.9. Owners' Compliance: Each Owner or Occupant of a Condominium shall comply with the provisions of this Declaration, and (to the extent they are not in conflict with the Governing Documents, and the decisions and resolutions of the Association or the Board, as lawfully amended

from time to time. Failure to comply with any such 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 attorneys' fees, or (5) any combination of the foregoing.

All agreements and determinations lawfully made by the Association in accordance with the voting percentages established in the Governing Documents shall be deemed to be binding on all Owners, their successors and assigns.

9.10. Notice: Any notice permitted or required by the Declaration or Bylaws may be delivered either personally or by mail. If delivery is by mail, it shall be deemed to have been delivered seventy-two (72) hours after a copy of the same has been deposited in the United States mail, first class or registered, postage prepaid, addressed to the person to be notified at the current address given by such person to the Secretary of the Board or addressed to the Condominium of such person if no address has been given to the Secretary.

9.11. Inspection and Assumption of Maintenance Responsibility for Common Area Improvements: The Association's inspection and assumption of maintenance responsibility for the Common Area Improvements shall be determined in accordance with the following procedures:

A. Walk-Through Inspection: On completion of all or any portion of the Common Area Improvements in the Project ("Common Improvements"), Declarant shall notify the Board of Directors of the Association in writing. Within five (5) business days of the notice or such later date as is agreeable to the parties, representatives of the Association and Declarant shall meet for the purpose of inspecting the Common Improvements and identifying any uncompleted or incorrectly completed items. In addition to representatives of the Board and the Declarant, the inspectors may include an inspector who is under contract to the Association to participate in the inspection. With respect to those items that the parties agree need to be completed or corrected, Declarant shall have a reasonable time thereafter to complete or correct the items ("Punch List").

The results of the inspection shall be noted in a written document ("Inspection Report"), which document shall be dated and signed by all of the inspectors, and one duplicate original shall be retained by the Association, and one shall be retained by the Declarant.

B. Assumption of Responsibility for Maintenance of Common Area Improvements: Upon completion of such an inspection, as evidenced by the dated and signed Inspection Report, all obligations and duties dictated by this Declaration for the Common Areas covered by the Inspection Report shall be assumed by the Association, and as of the date of the Inspection Report, the Association accepts the obligations and duties required by this Declaration. Any Punch List items noted on the Inspection Report shall not cause a delay of the Association's acceptance of the obligations and duties required by this Declaration, and the assumption of responsibility for maintenance of the Common Area shall occur as of the date of the Inspection Report.

9.12. Special Provisions Relating to Enforcement of Declarant's Obligation to Complete Common Area Improvements: Where the Project includes Common Area improvements which have not been completed prior to the close of escrow on the sale of the first Condominium, and where the Association is the obligee under a bond or other arrangement (hereafter "Common Area Bond") to secure performance of the commitment of Declarant to complete said improvements, the Board shall consider and vote on the question of action by the Association to enforce the obligations under the Common Area Bond with respect to any improvement for which a notice of completion has not been filed within sixty (60) days after the completion date specified for those improvements in the planned construction statement appended to the Common Area Bond. If the Association has given an extension in writing for the completion of any Common Area improvement, the Board shall consider and vote on the aforesaid question of action if a notice of completion has not been filed within thirty (30) days after the expiration of the extension. A special meeting of Members of the Association for the purpose of: (i) voting to override a decision by the Board not to initiate action to enforce the obligations under the Common Area Bond; or (ii) to consider the failure of the Board to consider and vote on the question shall be held not less than thirty-five (35) days nor more than forty-five (45) days after receipt by the Board of a petition for such a meeting signed by Members representing five percent (5%) or more of the total voting power of the Association. At such special meeting a vote of a majority of Members of

the Association other than the Declarant shall be required to take action to enforce the obligations under the Common Area Bond and a vote of a majority of the voting power of the Association, excluding Declarant, shall be deemed to be the decision of the Association, and the Board shall thereafter implement this decision by initiating and pursuing appropriate action in the name of the Association.

On satisfaction of the Declarant's obligation to complete the Common Area improvements, the Association shall acknowledge in writing pursuant to Board resolution that it approves the release of the Common Area Bond and shall execute any other documents as may be necessary to effect the release of the Common Area Bond. The Association shall not condition its approval of the release of the Common Area Bond on the satisfaction of any condition other than the completion of the Common Area improvements as described on the planned construction statement (Bureau of Real Estate Form RE 611A) attached to the Common Area Bond. If the Common Area improvements have been completed, a notice of completion has been filed, and sixty (60) days have passed without the filing of a mechanics' lien claim, the Association shall authorize and direct the escrow holder holding the Common Area Bond to release the Common Area Bond. If the Association fails to authorize and direct the release of the Common Area Bond within the forty (40) days after receiving a request from Declarant, Declarant may petition the Superior Court of the County for an order releasing the bond, or, at the request of either party, the issue shall be submitted to arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association.

9.13. Special Provisions Relating to Enforcement of Declarant's Obligation to Pay Assessments: Where the Association is the obligee under a bond or other arrangement (hereafter "Assessment Bond") to secure performance of the commitment of Declarant to pay Assessments on Units owned by Declarant, the Board shall consider and vote on the question of action by the Association to enforce the obligations under the Assessment Bond with respect to any of Declarant's Assessments which are delinquent for thirty (30) days. A special meeting of Members of the Association for the purpose of voting to override a decision by the Board not to initiate action to enforce the obligations under the Assessment Bond or such a meeting to consider the failure of the Board to consider and vote on the question shall be held not less than ten (10) days nor more than twenty (20) days after receipt by the Board of a petition for such a meeting signed by Members representing five percent (5%) or more of the total voting power of the Association. At such special meeting a vote of a majority of Members of the Association other than the Declarant shall be required to take action to enforce the obligations under the Assessment Bond and a vote of a majority of the voting power of the Association, excluding Declarant, shall be deemed to be the decision of the Association, and the Board shall thereafter implement this decision by initiating and pursuing appropriate action in the name of the Association.

Upon satisfaction of the Declarant's obligation to assure the availability of funds to pay Assessments upon unsold Units as set forth in Title 10 Cal Code of Regs § 2792.9, the escrow holder holding the Assessment Bond shall return the Assessment Bond to Declarant, after delivery to said escrow holder of Declarant's written request for release of the Assessment Bond, and Declarant's written statement that [1] Declarant has paid, as and when due, all Regular and Special Assessments levied by the Association against Units owned by the Declarant and that [2] 80% of the Units in the Project have been conveyed by Declarant, unless pursuant to Title 10 Cal Code of Regs § 2792.9, the Association delivers to said escrow holder its written objection to the return of the Assessment Bond to Declarant within forty (40) days after delivery of notice of Declarant's request from release and the statement to the Association. The Association shall not condition its approval of the release of the Assessment Bond or Common Area Bond on the satisfaction of any condition other than the payment of Assessments.

If the Association delivers to the escrow holder of the Assessment Bond and to Declarant a demand for remittance of the Assessment Bond or a portion thereof, or the proceeds thereof to the escrow holder of the Assessment Bond, which demand is accompanied by a written statement signed by an officer of the Association that the Declarant is delinquent in the payment of Regular or Special Assessments which have been levied by the Association against Units owned by the Declarant, then all or some specified portion of the security as demanded shall be remitted to the Association upon the Declarant's failure to give the escrow holder within forty (40) days after receipt of delivery of the demand by the escrow holder, the Declarant's written objection to remittance of the security. Both the

Declarant and the Association shall adhere and comply with the terms of escrow instructions with the escrow holder of the Assessment Bond, which shall be in the form approved by the Bureau of Real Estate, with respect to the holding of the Assessment Bond, the return or remittance of the Assessment Bond and other disposition of matters set forth in said escrow instructions with respect to the Assessment Bond. If the Association fails to authorize and direct the release of the Assessment Bond within the forty (40) days after receiving a request from Declarant, Declarant may petition the Superior Court of the County for an order releasing the bond, or, at the request of either party, the issue shall be submitted to arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association.

9.14. Fair Housing. No Owner shall, either directly or indirectly, forbid or restrict the conveyance, encumbrance, leasing, or mortgaging, or occupancy of his Unit to any person of a specified race, sex, sexual orientation, gender, gender identity, gender expression, genetic information, age, marital status, medical condition, citizenship, primary language, immigration status, or color, religion, ancestry, national origin, familial status, source of income or disability of that person.

9.15. Dispute Resolution: The Board is authorized to resolve any such civil claim or action through alternative dispute resolution proceedings such as mediation, binding arbitration, or non-binding arbitration proceedings.

A. Claims for Declaratory Relief or Enforcement of Project Documents: Prior to the filing of an enforcement action as defined in Civil Code section 5925, for declaratory, injunctive, or writ relief in conjunction with a claim for monetary damages, the Board, or any Owner who seeks such relief, shall first endeavor to submit the matter to alternative dispute resolution in compliance with the provisions of California Civil Code Sections 5925-5960. The Board shall comply with the requirements of California Civil Code Section 5965 by providing Members of the Association annually with a summary of the provisions of Article 3 (commencing with California Civil Code Section 5925) of Chapter 10 of the California Civil Code, including the following language: "Failure of a Member of the Association to comply with the alternative dispute resolution requirements of Section 5930 of the California Civil Code may result in the loss of your right to sue the Association or another Member of the Association regarding enforcement of the Governing Documents or the applicable law".

B. Design or Construction Defect Claims: Actions by the Association pertaining to or based upon a claim for defects in the design or construction of improvements within the Project against the Declarant, or any architect, engineer or other consultant, or any contractor, subcontractor or materials supplier engaged by or on behalf of Declarant for the design and/or construction of the Project, or any element thereof, or otherwise defined in California Civil Code Sections 896 or 897 as an Actionable Defect ("Claim"), shall be resolved and administered in accordance with California Civil Code Sections 895 through 945.5, and California Civil Code Section 6000, as such Sections may be amended, revised or superseded, from time to time.

If a Claim is subject to pre-litigation procedures in California Civil Code Sections 910 through 938, or any successor statutes, each Owner, and the Declarant, prior to filing any civil action, arbitration or action in judicial reference regarding such Claim shall comply with the pre-litigation procedures of California Civil Code Sections 910 through 938. Notices of Claims shall specify all of the matters as set forth in California Civil Code Section 6150 and/or California Civil Code Sections 910 through 938, as applicable, and any successor statutes or laws.

The Association and not the individual Members shall have the power to pursue any Claims for alleged construction defects in the Common Area or other improvements or property within the Project that the Association is obligated to maintain or repair under this Declaration. Any recovery by the Association with respect to any damage to or defect in the Common Area or other improvements or property within the Project that the Association is obligated to maintain or repair under this Declaration shall be utilized solely for the purpose of paying for the costs of obtaining the recovery and for correcting such damage or defect.

If the Claim is not resolved by and pursuant to the pre-litigation procedures of California Civil Code Sections 910 through 938, subject to the provisions of California Civil Code Section 6000, then notwithstanding the provisions of California Code of Civil Procedure Section 1298.7, the Claim shall be

resolved in accordance with the provisions of Section 9.15.D of this Declaration (Judicial Reference) or Section 9.15.E of this Declaration (Arbitration of Disputes). WAIVER OF JURY TRIAL: DECLARANT, AND BY ACCEPTING A DEED FOR ANY PORTION OF THE PROPERTY, THE ASSOCIATION (USE IF THE ASSOCIATION TAKES TITLE TO SOME OF THE COMMON AREA) AND EACH OWNER AGREE (i) TO HAVE ANY DESIGN OR CONSTRUCTION DISPUTE DECIDED BY JUDICIAL REFERENCE AS PROVIDED HEREIN, OR BY NEUTRAL ARBITRATION IN ACCORDANCE WITH THE FEDERAL ARBITRATION ACT AND THE CALIFORNIA ARBITRATION ACT, TO THE EXTENT THE CALIFORNIA ARBITRATION ACT IS CONSISTENT WITH THE FEDERAL ARBITRATION ACT; (ii) TO GIVE UP ANY RIGHTS THEY MIGHT POSSESS TO HAVE THE DESIGN OR CONSTRUCTION DISPUTE LITIGATED IN A COURT OR JURY TRIAL. IF ANY PARTY REFUSES TO SUBMIT TO JUDICIAL REFERENCE OR TO ARBITRATION AFTER AGREEING TO THIS PROVISION, SUCH PARTY MAY BE COMPELLED TO DO SO.

C. Notices to Members of Legal Proceedings Against Declarant. In accordance with California Civil Code Section 6150, at least thirty (30) days prior to filing any civil action, including arbitration, against Declarant or other developer of the Project for alleged damage to the Common Areas, alleged damage to the separate interests that the Association is obligated to maintain or repair, or alleged damage to the separate interests that arises out of, or is integrally related to, damage to the Common Areas or separate interests that the Association is obligated to maintain or repair, the Board shall provide written notice to each Member specifying each of the following:

- (1) That a meeting will take place to discuss problems that may lead to the filing of a civil action;
- (2) The options, including civil actions, that are available to address the problems; and,
- (3) The time and place of the meeting.

If the Association has reason to believe that the applicable statute of limitations will expire before the Association is able to give notice, hold the hearing and file the civil action, the Association may file the civil action first and then give the notice within thirty (30) days after filing of the action.

D. Judicial Reference for Certain Disputes: For any action by the Association or any Owner against the Declarant, any architect, engineer or other consultant, or any contractor, subcontractor or materials supplier engaged by or on behalf of Declarant for the design and/or construction of the Project, or any element thereof ("Developer Parties"), subject to the provisions of California Civil Code Sections 895 through 938, California Civil Code Section 6000 and California Civil Code Section 6000, or any other action by the Association or any Owner against the Declarant, except as otherwise provided herein, such claim shall be submitted to Judicial Reference as hereinafter provided:

- (1) The dispute shall be submitted to binding general judicial reference pursuant to California Code of Civil Procedure Sections 638 through 645.2, or any successor statutes thereto pertaining to proceedings under judicial reference ("Judicial Reference"). The parties shall cooperate in good faith to ensure that all necessary and appropriate parties are included in the Judicial Reference proceeding. Declarant shall not be required to participate in the Judicial Reference proceeding unless it is satisfied that all necessary and appropriate parties will participate. The parties shall share the fees and costs of the referee for the Judicial Reference proceeding as determined by the referee.
- (2) The referee shall have the authority to try all issues, whether of fact or law, and to report a statement of decision to the court. The parties shall use the procedures adopted by Judicial Arbitration and Mediation Services ("JAMS") for judicial reference (or any other entity offering judicial reference dispute resolution procedures as may be mutually acceptable to the parties), provided that the following rules and procedures shall apply in all cases unless the parties agree otherwise:

(a) If the Declarant is a party to the Judicial Reference, then any fee to initiate the Judicial Reference shall be paid by Declarant, provided however, that the cost of the judicial reference shall ultimately be borne as determined by the referee;

(b) The proceedings shall be heard in the County;

(c) The referee must be a neutral and disinterested party who is a retired judge or a licensed attorney with at least ten (10) years' experience in relevant real estate matters;

(d) Any dispute regarding the selection of the referee shall be resolved by JAMS or the entity providing the reference services, or, if no entity is involved, by the court with appropriate jurisdiction;

(e) The referee may require one or more pre-hearing conferences;

(f) The parties shall be entitled to discovery, and the referee shall oversee discovery and may enforce all discovery orders in the same manner as any trial court judge;

(g) A stenographic record of the Judicial Reference proceedings shall be made, provided that the record shall remain confidential except as may be necessary for post-hearing motions and any appeals;

(h) The referee's statement of decision shall contain findings of fact and conclusions of law to the extent applicable;

(i) The referee shall have the authority to rule on all post-hearing motions in the same manner as a trial judge;

(j) The referee shall be authorized to provide all recognized remedies available in law or equity for any cause of action that is the basis of the Judicial Reference; and,

(k) The statement of decision of the referee upon all of the issues considered by the referee shall be binding upon the parties, and upon filing of the statement of decision with the clerk of the court, or with the judge where there is no clerk, judgment may be entered thereon. The decision of the referee shall be appealable as if rendered by the court.

(l) If submission of a disputed matter referenced in this Section 9.15.D to Judicial Reference is not permitted under the then applicable law, then notwithstanding California Code of Civil Procedure Section 1298.7, if the dispute is not resolved through mediation, each Owner, the Association and Declarant shall resolve such dispute exclusively through binding arbitration conducted in accordance with Section 9.15.E of this Declaration.

(3) Judicial Reference shall only proceed for any matter that is subject to the requirements of California Civil Code Sections 5925-5960 after the parties have attempted to reasonably comply with the alternative dispute resolution requirements set forth in California Civil Code Sections 5925-5960, as same may be amended from time to time.

(4) Notwithstanding the foregoing, any dispute under Sections 9.12 and 9.13 of this Declaration between the Declarant and the Association regarding the question of satisfaction of the conditions for exoneration or release of the Assessment Bond or Common Area Bond or other security shall, at the request of either party, be submitted to arbitration pursuant to Section 9.15.E of this Declaration.

E. Arbitration of Disputes: If a dispute is the subject of binding arbitration under this Declaration, 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; provided, however, if the Declarant is a party to the arbitration, then any fee to initiate arbitration shall be paid by Declarant, but the cost of arbitration shall ultimately be borne as determined by the arbitrator;

(2) a neutral and impartial individual with at least ten (10) years' experience in real estate construction arbitration shall be appointed to serve as arbitrator, with the arbitrator to be selected by mutual agreement of the parties. If the parties are unable to agree on an arbitrator within fifteen (15) days after any party initiates the arbitration, a neutral and impartial arbitrator shall be selected by JAMS. In selecting the arbitrator, the provisions of §1297.121 of the California Code of Civil Procedure shall apply. An arbitrator may be challenged for any of the grounds listed in §1297.121, or in §1297.124 of the California Code of Civil Procedure;

(3) venue of the arbitration shall be in the County;

(4) the arbitration shall commence in a prompt and timely manner in accordance with (i) the Commercial Rules of JAMS, or if the rules do not specify a date by which arbitration is to commence, then (ii) by a date agreed upon by the parties, and if they cannot agree as to a commencement date, (iii) a date determined by the arbitrator. The arbitrator shall apply California substantive law in rendering a final decision. The arbitrator shall have the power to grant all legal and equitable remedies and award compensatory damages. When the arbitrator is prepared to make the award, the arbitrator shall first so inform the parties, who shall have ten (10) days to attempt to resolve the matter by a binding agreement between them. If the parties resolve the matter, the arbitrator shall not make any award. If the parties do not so resolve the matter within the ten (10) day period, the arbitrator shall make the award on the eleventh day following the arbitrator's notice of being prepared to make the award;

Rules of JAMS; (5) the arbitration shall be conducted in accordance with the Commercial

manner; (6) the arbitration shall be conducted and concluded in a prompt and timely

(7) the arbitrator(s) shall be authorized to provide all recognized remedies available in law or equity for any cause of action that is the basis of arbitration. The arbitrator(s) shall not have the power to commit errors of law or legal reasoning, and the award may be vacated or corrected on appeal to a court of competent jurisdiction for any such error;

(8) a judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction or application may be made to such court for judicial acceptance of the award and an order of enforcement;

(9) Preliminary Procedures. If state or federal law requires an Owner, the Association or Declarant to take steps or procedures before commencing an action in arbitration, then the Owner, the Association or Declarant must take such steps or follow such procedures, as the case may be, before commencing the arbitration. In addition, nothing contained herein shall be deemed a waiver or limitation of the provisions of California Civil Code Sections 6150, 6000 and 6100;

(10) Participation by Other Parties. An Owner, the Association and Declarant, to such extent any such party is defending a claim in the arbitration, may, if it chooses, have all necessary and appropriate parties included as parties to the arbitration;

(11) Federal Arbitration Act. Because many of the materials and products incorporated into the home are manufactured in other states, the development and conveyance of the Property evidences a transaction involving interstate commerce and the Federal Arbitration Act (9

U.S.C. §1 et seq.) now in effect and as it may be hereafter amended will govern the interpretation and enforcement of the arbitration provisions set forth herein; and,

(12) ARBITRATION OF DISPUTES. BY EXECUTING THIS DECLARATION, DECLARANT AND BY ACCEPTING A DEED TO ANY PORTION OF THE PROPERTY, EACH OWNER AND THE ASSOCIATION SHALL BE DEEMED TO HAVE AGREED TO HAVE ANY DISPUTE RELATING TO OR BASED UPON A CLAIM FOR DEFECTS IN DESIGN OR CONSTRUCTION OF IMPROVEMENTS WITHIN THE PROJECT DECIDED BY JUDICIAL REFERENCE AS PROVIDED IN SECTION 9.17.D, AND TO HAVE ANY DISPUTE RELATING TO OR BASED UPON CLAIMS FOR DECLARATORY RELIEF OR ENFORCEMENT OF THE GOVERNING DOCUMENTS DECIDED BY NEUTRAL BINDING ARBITRATION IN ACCORDANCE WITH THE FEDERAL ARBITRATION ACT AND THE CALIFORNIA ARBITRATION ACT, TO THE EXTENT THE CALIFORNIA ARBITRATION ACT IS CONSISTENT WITH THE FEDERAL ARBITRATION ACT, AND AS PROVIDED IN SECTION 9.15.E, DECLARANT, THE ASSOCIATION AND EACH OWNER ARE GIVING UP ANY RIGHTS DECLARANT, THE ASSOCIATION AND EACH OWNER MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A JURY TRIAL. DECLARANT, THE ASSOCIATION AND EACH OWNER ARE GIVING UP JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE "JUDICIAL REFERENCE FOR CERTAIN DISPUTES" PROVISION (SECTION 9.15.D), AND THE "ARBITRATION OF DISPUTES" (SECTION 9.15.E) PROVISION. IF DECLARANT, THE ASSOCIATION OR ANY OWNER REFUSES TO SUBMIT TO JUDICIAL REFERENCE OR ARBITRATION, DECLARANT, THE ASSOCIATION OR SUCH OWNER MAY BE COMPELLED TO SUBMIT TO JUDICIAL REFERENCE OR ARBITRATION UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE.

(13) Cost Center. In the event that the Owners of Units within a Cost Center desire to have the Association bring a construction defect action under California Civil Code §5980, for damage to Common Areas within a Cost Center, or damage to separate interests within the Cost Center which the Association is obligated to maintain or repair, the Association shall submit the claim to judicial reference upon receipt of evidence that a majority of the Owners of Units within the Cost Center have voted to submit the claim, and in the absence of such evidence, the Association shall not be obligated to submit the claim to judicial reference.

9.16. City Requirements for Project:

A. The Project, including all Common Areas and private streets within the Project, shall at all times comply with the City's Zoning Code and shall not be used for any purpose other than as permitted in the City Zoning Code.

B. All alterations, modifications, or other improvements on or within the Project shall comply with all applicable City Codes and with all design requirements, approvals and procedures of the City.

C. The Association is responsible for maintenance and landscaping of all parts of the Common Area of the Project and such maintenance shall be performed at least to the standard of maintenance prevalent in the neighborhood of the City in which the Project is located pursuant to Palo Alto Municipal Code section 16.38.030(a).

D. The Association may terminate the contract of any person or organization engaged by the Declarant to perform management or maintenance duties three months after the Association assumes control of the Project or any time thereafter pursuant to Palo Alto Municipal Code section 16.38.030(b).

E. The Association shall be responsible for maintaining the private driveways in the Common Area in accordance with industry standards and in compliance with all City ordinances and regulations.

F. The Association shall be responsible for removing abandoned or improperly parked vehicles within the private driveways in the Common Area.

G. Neither the Association, the Project's Occupants, nor their agents, employees, representatives, invitees, licensees, customers, or contractors shall alter or modify any storm water facilities in any way including but not limited to placing, maintaining, constructing, or planting any improvements, landscaping or other items, including without limitation decks, stairs, walls, irrigation systems, trees, or any vegetation on any storm water facilities.

H. All trash disposal and recycling areas shall be kept in a clean and sanitary condition and shall comply with all applicable City Ordinances. Neither the Association, the Occupants, nor their agents, employees, representatives, invitees, licensees, customers, nor contractors shall use the Project in any way which emits pollution into the atmosphere in excess of environmental standards set forth by City, State, and Federal laws, ordinances, and regulations. Neither the Association, the Occupants, nor their agents, employees, representatives, invitees, licensees, customers, nor contractors shall discharge garbage, trash, waste, or any other substance or materials of any kind into any private or public sewer or waterway on the property in violation of any regulations of any private or public body having jurisdiction over such matters.

I. Any amendments or modifications to the Project's Governing Documents shall be submitted to the City Attorney of the City for approval. No amendment or modification to the Project's Governing Documents shall be effective without prior written consent of the City Attorney of the City.

J. The City is hereby granted the right, but in no event the duty, to enforce the covenants and restrictions set forth in this section of the Project's Governing Documents. The Association shall recognize that it has the primary responsibility for enforcement of the Project's Governing Documents and unequivocally guarantees to institute and expeditiously prosecute any required legal action to obtain compliance with all provisions set forth in the Project's Governing Documents.

K. No failure of the City to enforce any of the covenants or restrictions contained in the Project's Governing Documents will in any event render them ineffective.

L. Remedies available to the City to cure any breach or violation of the Project's Governing Documents shall be cumulative to any other provisions of law. The City's failure to exercise any remedy provided for in the Project's Governing Documents shall not, under any circumstances, be construed as a waiver of the remedy.

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

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

9.18. "General Rules": This Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for creating and operating a mixed-use residential/commercial condominium development and maintaining the Common Area. As used in this Declaration, the singular includes the plural and the plural the singular. The masculine, feminine and neuter each includes the other, unless the context dictates otherwise.

9.19. "Articles, Sections and Exhibits": The Article and Section headings have been inserted for convenience only and may not be considered in resolving questions of interpretation or construction. Unless otherwise indicated, any references in this Declaration to articles, sections or exhibits are to Articles, Sections and Exhibits of this Declaration. Exhibit "A", Exhibit "B" and Exhibit "C" attached to this Declaration are incorporated herein by this reference.

9.20. "Priorities and Inconsistencies": If there are conflicts or inconsistencies between the Governing Documents, then the provisions of this Declaration shall prevail.

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

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

IN WITNESS WHEREOF, the undersigned, being the Declarant, has executed this Declaration this _____ day of _____, 201__.

Palo Alto Properties Investment, LLC,
a California limited liability company

By: _____

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

STATE OF CALIFORNIA

COUNTY OF _____

On _____, 201__ before me, _____, a Notary Public, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal

Notary Public, State of California

(SEAL)

EXHIBIT "A"
COMMON AREAS PERCENTAGES

Exhibit "B"

COST CENTER ALLOCATIONS OF ASSESSMENT ITEMS

Exhibit "C"

ALLOCATION OF ASSESSMENT ITEMS