
**AMENDED AND RESTATED DECLARATION OF
COVENANTS, CONDITIONS & RESTRICTIONS
FOR THE TOY WAREHOUSE LOFTS OWNERS ASSOCIATION**

RECITAL

All of the limitations, covenants, conditions, reservations, liens, charges and restrictions contained in this Declaration shall run with the land and shall be binding on all parties having or acquiring any right, title or interest in the Property or any part thereof, whether as sole owners, joint owners, lessees, tenants, occupants, or otherwise. Each and all of said limitations, covenants, conditions, restrictions, reservations, liens and charges herein shall be, and shall be construed as equitable servitudes, enforceable by the Association or by any of the owners of any of the Condominiums or any interest in the Property against any person or entity bound or subject to the Declaration, and shall be enforceable by the Board of Directors, as that term is defined herein, or its duly appointed representative against any such person or entity.

ARTICLE I

DEFINITIONS

The following definitions apply unless otherwise required by the context:

"Alternative Dispute Resolution" ("ADR") - Non-judicial (non-court) procedure to resolve disputes. Such procedures include Mediation, Binding Arbitration and Non-binding Arbitration. All three types of procedures (set forth below) are conducted by a neutral third party, such as an arbitrator or a retired judge.

- (a) **"Mediation"** is an informal settlement procedure aided by a neutral third party.
- (b) **"Binding Arbitration"** is a formal non-judicial procedure wherein the parties have agreed that any decision or award rendered by the arbitrator may be entered as an enforceable judgment by any party in a court having jurisdiction. The decision or award rendered in Binding Arbitration is final.
- (c) **"Non-binding Arbitration"** is a formal non-judicial procedure wherein the matter can be heard and decided anew by a court of law having jurisdiction.

"Approval" - Prior written approval.

"Articles" - The Articles of Incorporation of the Association, including any amendments.

"Artist-in-Residence" - The City of Los Angeles has granted the Property "Artists and Artisans" in residence status such that residents are permitted to conduct certain approved business functions as well as reside within the Property. Such status was granted pursuant to the variance granted in Case No. ZA2011-2095(ZAD)(ZV)

"Assessments" - All types of Association charges and Assessments levied against the Owners.

"Assessment Schedule" – Assessment schedule shall mean and refer to that schedule attached hereto as Exhibit B which allocates a proportional percentage of certain Association expenses based on the relative size of Units.

"Association" - The Toy Warehouse Lofts Owners Association, a California nonprofit mutual benefit organization formed to govern the Project, its successors and assigns, including its agents, the Board or any committee as applicable.

"Board" or "Board of Directors" - The Board of Directors of the Association.

"Building" – The three story building and basement which are part of the improvements on the Total Property.

"Building Declaration" – The Declaration of Covenants, Conditions and Restrictions recorded as Instrument 01-1199778 in the Los Angeles County Recorder's office which govern the interaction of the Association with the Commercial Owners (Lot 2 of Tract 53056 concerning operation and administration of the Total Project or Total Property. The Building Declaration is part of the general plan for the Total Project or Total Property and all units are subject to the Building Declaration in addition to the Declaration herein.

"Bylaws" - The Bylaws of the Association, including any amendments.

"Code Section" - Any reference to "Code Section" (e.g. "Civil Code", "Vehicle Code") refers to Codes as set forth by the State of California. Reference to any specific Code Section shall include any future amendments, modifications or successor sections.

"Commercial Lot" – Lot 2 of the Total Property, which is located on the first floor of the building and is regulated by the Building Declaration.

"Common Area(s)" - The entire Property (including structures, land and improvements) other than the Units described in this Declaration and the Condominium

Plan. Without limiting the foregoing the Common Area shall include, but shall not be limited to, the Property, all structural and waterproofing components of the building envelope, all bearing walls, columns, vertical supports, sub-floors (as distinguished from the finished flooring affixed thereto), roofs, foundations, beams, balcony railings, planter walls, central heating, central refrigeration and central air-conditioning equipment, reservoirs, tanks, pumps and other central services, pipes, ducts, flues, chutes, conduits, wires, sprinkler systems and other utility installations, wherever located (except outlets thereof located within the airspace of a Unit) and shall also include all equipment and mechanical devices making up an system or systems installed by Declarant or Association for security or for announcing those seeking access to a Unit, even when located within the airspace of a Unit as shown on the Condominium Plan, and all lobbies, stairs and stairways (except those within a Unit which are more than one floor as shown in the Condominium Plan), surface and guest parking facilities and ramps, yards, gardens, community facilities, mail rooms and facilities, driveway areas, , all compressors and control equipment serving the Common Areas and/or more than one Unit as distinguished from those compressors and control units which serve individual Units, and all other parts, apparatus and installations existing in any Building necessary or convenient to the existence, maintenance or safety of the Project as a whole.

"Common Expenses" - The actual and estimated expenses of the Association in performing its duties as set forth in the Governing Documents relative to maintaining, managing, insuring, operating, repairing and replacing the Common Area as determined from time to time by the elected Board of Directors, including amounts determined necessary and appropriate for reserves for anticipated long-term maintenance, repair and replacement of capital improvements upon the Common Area, contingencies and the service obligations of the Association. Common Expenses shall not include the costs of any new construction or unanticipated repair/replacement of a capital improvement upon the Common Area, including the necessary fixtures or personal property related thereto.

"Condominium" - An estate in real property (defined in Sections 783 and 4125 of the California Civil Code) consisting of both:

- (a) A separate interest in space called a "Unit"; and
- (b) An undivided interest in the Common Area appurtenant to each Unit.

"Condominium Building" - A building or structure containing any portion of any Condominium Unit(s).

"Condominium Plan" - The recorded diagrammatic floor plan of the Units built or to be built on the Property which identifies each Unit and shows its dimensions pursuant to California Civil Code Section 4125 which is attached hereto as Exhibit C.

"Courtyard" – The common area deck located on the second floor of the building, including but not limited to the walls forming the perimeter of the courtyard area.

"Declarant" - The original developer of the Project identified in the introductory paragraph of the original Declaration; also, Declarant's successors and assignees, including any Mortgagees acquiring Declarant's interest in the Project by foreclosure or deed in lieu of foreclosure.

"Declaration" - This instrument and any amendments.

"Deed of Trust" - A three party security instrument conveying title to land as security for the performance of an obligation. Also called "Trust Deed".

"BRE" - The California Bureau of Real Estate and any successors thereto.

"Eligible First Mortgagees" - Holders of First Mortgages who have requested the Association to notify them of specified proposals and changes to the Governing Documents and other Association matters.

"Exclusive Use Common Area" - Those portions of a Common Area expressly designated by the Declaration, and/or Condominium Plan or by law for the exclusive or restricted use of the Owners of particular designated Units, if any. Included are internal and external telephone wiring designed to serve a single unit, but located outside the boundaries of the Unit.

"First Mortgage" or "First Mortgagee" - A Mortgage or Mortgagee that has priority over all other Mortgages or Mortgagees encumbering the same Unit or any other portion of the Project.

"Governing Documents" - All documents governing the Property, including this Declaration, the Articles, Bylaws, Condominium Plan and any Rules and Regulations.

"Grant Deed" - A written instrument transferring title to real property.

"Institutional Lender" - Any bank, savings and loan association, insurance company, real estate investment trust, retirement fund trust, or other financial institution holding a recorded first Mortgage on any Condominium.

"Manager" or "Managing Agent" - The person(s), firm or corporation contractually engaged by the Association or Declarant and charged with the management of the Common Area(s) and the performance of other duties of the Association as provided for in this Declaration.

"Member" - Any person who is an Owner based upon the provisions of the Governing Documents. Corporations, trusts, partnerships and limited liability companies may be members if title to a unit is held in the name of an entity other than an individual or individuals.

"Mortgage" - A two party security instrument pledging land as security for the performance of an obligation. Reference to Mortgage includes the Deed of Trust.

"Mortgagee" - The party entitled to performance by a Mortgagor. Reference to Mortgagee includes any beneficiary under a Deed of Trust on any portion of the Property, recorded prior to the recording of this Declaration.

"Mortgagor" - The party executing a Mortgage. Reference to Mortgagor includes the Trustor under the Deed of Trust.

"Notice and a Hearing" - A notice of time and an opportunity for a hearing as provided for in the Governing Documents.

"Occupant" - An Owner, resident, guest, invitee, tenant, lessee, sub-lessee, or other person in possession of a Unit.

"Owner" or "Owners" - The person(s) or legal entity holding a fee simple interest in a Unit, or the purchaser(s) of a Unit under a contract of sale with prospective obligations. "Owner" does not include any person or entity having an interest in a Unit merely as security for the performance of an obligation.

"Parking Area" – Shall mean those portions of the Common Area more particularly shown on the Parking Area Plan in the Condominium Plan which are set aside and reserved for the exclusive use for guest parking and approved permitted resident parking.

"Person" - A natural person, partnership, corporation, trustee or other legal entity.

"Percentage Interest" – Shall mean and refer to that percentage interest set forth in the Percentage Interest Schedule attached hereto as Exhibit B, which represents each Owner's undivided interest in and to the Common Area upon which certain Association expenses are allocated.

"Protected Mortgagees" - First Mortgagees, irrespective of the date of recordation of their trust deeds.

"Quorum" - The minimum number of members who must be present for a deliberative assembly to legally transact business as defined in the Bylaws, Article III, Section 3.05.

"Regular Assessments" - Assessments used to meet the Association's normal operating expenses and to establish necessary reserves.

"Residential Lot" – Lot 1 of the Total Property which is located on and consists of the second and third floors and basement of the building which are divided into condominium units and parking spaces appurtenant to the condominium units.

"Rules and Regulations" - The rules as established and amended from time to time by the Board as provided for in this Declaration.

"Special Assessments" - Assessments levied on an as-needed basis to meet expenses of an extraordinary or capital nature, or imposed against a particular Owner in order to reimburse the Association for any costs incurred in connection with that Owner's violation of the Governing Documents.

"SBA"- United States Small Business Administration.

"Total Project" or **"Total Property"** - The real property described in Exhibit "A" to this Declaration as all of Lots 1 and 2 of Tract No. 53056, which is divided into 20 Condominiums, including the Common Area and the Units therein. The Project is a "Condominium Project" as defined in Section 4125 of the California Civil Code. The Property is a "Common Interest Development" as defined in Section 4125 of the California Civil Code.

"Total Voting Power" - One hundred percent (100%) of the votes by Association Members which may potentially be cast. (Even if any Owner's voting rights have been suspended, the number of votes constituting the Total Voting Power would include any suspended vote(s).)

"Trustor" - The person conveying property in trust.

"Unit" - The elements of a Condominium that are not owned in common with other Owners as defined in California Civil Code Section 4125. Each Unit is designated as a Unit in the Condominium Plan for the Property and is separately identified in that plan. The unit shall consist of the airspace bounded by the walls, ceiling, windows, doors and floors of the space outlined on the Condominium Plan and shall include the interior finish surface of all the walls, ceilings, doors and floors of the space, including but not

limited to paint, wall paper, skim coat plaster, paneling, acoustic ceiling material, tile, hardwood, vinyl or any other material which is attached to the unfinished wall, floor or ceiling assembly. Entry doors and door frames shall be considered part of the Unit. Drywall/gypsum board attached to framing (on perimeter walls) and lightweight concrete or similar over-floor assemblies shall not be part of the unit. The unit shall also consist of electrical outlets, conduit, and cable outlets which are physically within the airspace of the unit and plumbing pipe and fixtures to the extent that said items penetrate through the common area walls, ceilings and floors into the condominium airspace described above. Partition walls which are bearing walls or have structural aspects are not part of the unit. Plumbing lines, including plumbing pipes which service the bathtub/shower of the units, and the shower pan and tub enclosures which are within the unit, and HVAC ducting and electrical conduit/wiring which are enclosed within or outside any framed wall or floor ceiling diaphragm shall be considered part of a unit. The unit may also include such additions and modifications constructed by the owner which are duly authorized and approved through the Architectural Review process and which are permitted and approved by the applicable governmental agencies. Mechanical equipment, such as air conditioning and heating units and hot water heaters and similar mechanical devices which service only a single condominium unit are part of the unit and all maintenance, repair and replacement of same are the sole and exclusive responsibility of the owner of the unit which the mechanical device serves, regardless of where the device is located. Glass in windows and sliding glass doors shall be part of the unit. Frames of windows and sliders which are not integrated into the waterproofing system of the common area building envelope shall be part of the unit. Window operating hardware, including sash and lift mechanisms as well as window screens shall be part of the unit.

“Unit Fixtures and Improvements”- Are all items which are within the unit airspace and which are attached or affixed to a Common Area wall, ceiling or floor, or any part of same. Included within this category are cabinets/cabinetry, built-in appliances, sinks, toilets, bathtubs, shower pans, lighting fixtures, alarm systems, garage doors and openers, plumbing fixtures (such as toilets, angle stop valves, faucets, water heaters, shower valves and spouts, bathtub fixtures) within unit airspace, carpeting, tile, hardwood floors, wall-paper, paint, paneling, window coverings/blinds/shades, window glass, doors, door frames and electrical switches, boxes and outlets.

“VA” - The Department of Veterans Affairs of the United States and any department or agency of the federal government which succeeds to VA's function of issuing guarantees of notes secured by Mortgages on residential real estate.

ARTICLE II

DIVISION, MAINTENANCE AND INSURANCE OF PROPERTY

2.01 **Units.**

- (a) Each Unit consists of all elements and areas identified as such on the Condominium Plan and as defined in Article I herein.
- (b) Existing physical Unit boundaries (re)constructed in substantial accordance with the original plans will be the presumed boundaries (rather than the figures in the deed or Condominium Plan) regardless of a building's settling, lateral movement or other minor variances.

All mechanical equipment and devices which serve only a single unit, wherever located, shall be considered part of the unit and all maintenance, repair and replacement responsibility shall be that of the owner of said unit. Maintenance, repair and replacement of said devices which are located on or in common areas shall be accomplished in strict accordance with rules and regulations for same adopted by the Board of Directors in order to protect and preserve the common areas for the benefit of all members. This section shall be enforced consistently with Article II, Section 2.04 (a)(5).

2.02 **Common Area(s).**

The Property not constituting the Units or Lot 2 is the Common Area.

Each Unit Owner will receive an undivided fractional interest in the Common Area as reflected in Exhibit B hereto.

2.03 **Exclusive Use Common Area(s).**

- (a) As set forth in Civil Code Section 4125, "Exclusive Use Common Area(s)" are portions of the Common Area(s) expressly designated in the Condominium Plan, if any, for the exclusive use of the Owner(s) of the Unit to which the Exclusive Use Common Area is appurtenant.
- (b) As set forth in Civil Code Section 4125, any shutters, awnings, fire escape mechanisms, window boxes, doorsteps, stoops, porches, (except as otherwise provided in this Declaration or Condominium Plan), if any, designed to serve a particular Unit but located outside the boundaries of the Unit shall be considered Exclusive Use Common Areas allocated exclusively to that Unit, whether or not they are designated and shown as such on the Condominium Plan. Owners of the Units which exclusively use said items are responsible for repair, replacement and maintenance of these items except to the extent that these components are

part of the structural components or waterproofing system for the building, in which case, the Association shall be responsible for all repairs, replacement or maintenance necessary to ensure the proper functioning of the building waterproofing or to the extent that such items are damaged as a result of a failure of another building component which the Association is obligated to maintain. Owners shall be responsible for the cost of repairing or replacing exclusive use common area waterproofing components and systems due to misuse or negligence on the part of the Owner, his guests or invitees beyond normal and customary wear and tear (see Article II, Section 2.05(d))

- (c) As set forth in Civil Code Section 4125, internal and external telephone wiring designed to serve a particular Unit, but located outside the boundaries of the Unit, are Exclusive Use Common Areas allocated exclusively to that Unit, whether or not they are designated and shown as such on the Condominium Plan. External electrical boxes housing circuit breakers and fuses which serve only a particular unit are also designated as Exclusive Use Common Areas
- (d) Use of the Exclusive Use Common Area(s), if any, are subject to reasonable restrictions contained in any Governing Documents.

2.04 **Repair and Maintenance of the Property by Owner.**

- (a) In accordance with the Governing Documents, each Owner must maintain and repair all of the following:
 - (1) All of the Owner's Unit (also see the Condominium Plan for a detailed description) i.e., the space contained within the interior unfinished surfaces of the perimeter walls, floors, ceilings, windows, window frames (to the extent not part of building waterproofing), doors and door frames, and Exclusive Use Common Areas appurtenant to the Unit, must be maintained in a clean, sanitary, attractive and safe condition. Maintenance and repair does not include repair or replacement of structural or waterproofing elements;
 - (2) intentionally omitted
 - (3) Utility installations, or portions thereof which project from walls (both partition and bearing walls), ceilings or floors into the airspace of the Unit, that the Owner has exclusive use of, including, without limitation: circuit breakers, fuse boxes, wall heaters, plumbing fixtures and pipes, angle stops, electrical and lighting fixtures in the Owner's Unit (including recessed lighting fixtures and boxes); including but not limited to plumbing

pipe and connections to the bathroom fixtures which are accessed from available access panels.

- (4) Any damage to the Common Area(s), including but not limited to walls, floors and ceilings forming the boundaries of a Unit caused by the failure (whether due to negligence in maintenance or not) of any component of a Unit, or caused by an Owner, Owner's tenant, his family or guest, even if the damage is to an area otherwise maintained by the Association or originates at or within any area in the Project. For example, if a washing machine hose or angle stop valve fails for any reason, causing damage to common areas, the Unit Owner shall be solely responsible for the repair of said damage or the cost of the repair. All the repairs shall be subject to prior approval of the Board. At the Board's sole discretion, the Association may notify the Owner that the Association intends to perform the repairs and may thereafter specially assess the Owner for the cost of said repairs, which assessment may become a lien against the Unit. Notwithstanding any other provision in this Declaration, the Board shall have the sole and exclusive discretion to submit a claim to the Association's property casualty insurance carrier for any damage which results from the failure of a Unit component. In the event a claim is tendered to the Association's property insurance carrier for such a loss described in this section, the Owner shall be responsible for the insurance deductible amount. Further, if the Owner refuses to pay the insurance deductible amount required, the Board shall have the power to assess the Owner for said amount.

In the event of damage caused by a failure of a Unit component, the Owner shall have the duty and obligation to promptly notify the Association, in writing, of the damage or incident and promptly undertake to mitigate the damage through engaging emergency services firms specializing in such situations and shall provide access upon reasonable request to the Association to investigate the damage to the Common Areas.

In the event of damage to a Unit or Common Area caused by a failure of a Common Area component, such as a waterproofing system or a plumbing pipe within a wall, the Owner shall have the duty and obligation to immediately notify the Association, in writing, of the damage or incident and cooperate in providing access to mitigate damage and perform repairs. The failure to timely report a failure resulting in damage or the failure to cooperate in allowing access to investigate or perform repairs, shall entitle the Association to specially assess the non-compliant Owner for such additional costs of repair due to delay or non-cooperation.

- (5) Air conditioning and similar mechanical devices which service a particular unit. Said mechanical devices shall be kept in good repair so that they do not make excessive noise or cause excessive vibration resulting in interference with the quiet enjoyment of units or common area by other members. Owners shall comply with any and all rules and regulations regarding vendor access and work on such equipment located on or in the Common Areas and shall be responsible for all damage to common areas caused by vendors working on such mechanical equipment.
- (6) Electrical wiring, including such wiring, plumbing, ducting and conduit which is enclosed within common area walls or floor/ceiling diaphragms, which serves only a particular, discrete condominium unit, shall be exclusive use common area which shall be the Unit Owners responsibility to repair, replace and maintain.
- (b) Except as otherwise provided herein, each Owner has the exclusive right to paint, wallpaper or otherwise furnish and decorate the interior surfaces of the walls, partitions, ceilings, and doors within the Unit (including furniture and furnishings), without prior approval of the Board.
- (c) An Owner shall notify the Association of any substantial improvements to the Owner's Unit and Exclusive Use Common Area(s), if any, in consideration of any effect of such improvements on the Association's insurance policy or maintenance responsibility.
- (d) Any change to the exterior appearance of a Unit or an Exclusive Use Common Area serving a Unit must be approved by the Board in accordance with the Governing Documents and applicable laws. Any change to the building waterproofing system or building envelope without express written approval of the Board shall make the Owner who caused such change financially responsible for any damage caused by such action and financially responsible for the repair/ replacement of the modified or altered waterproofing system.
- (e) Subject to this Declaration and California Civil Code Section 4760, an Owner may do the following:
- (1) Make any improvement or alteration within the Unit that does not impair the structural integrity, unit to unit sound attenuation capacity, waterproofing capacity, fire rating, electrical, plumbing or mechanical systems, or lessen the lateral or vertical support of any portion of the Property or otherwise negatively impact the insurability of the Property.

- (2) Modify a Unit to eliminate hazards and facilitate access for disabled persons (including the route from the public way to the Unit door) subject to the following conditions:
 - (A) The modifications must be consistent with applicable building code requirements and permits shall be obtained prior to performing such modification.
 - (B) The modifications must be consistent with applicable provisions of the Governing Documents regarding safety and aesthetics.
 - (C) External modifications to the Unit or its Exclusive Use Common Area may not prevent reasonable passage by other Owners, and must be removed by the Owner when the Unit is no longer occupied by the person(s) requiring the modifications.
 - (D) Plans and specifications must be submitted to the Board for review to determine compliance with the provisions of this paragraph.
 - (E) The Board may not deny approval of the proposed modifications without good cause. The Board may condition approval on the work being performed by a licensed contractor with appropriate liability insurance naming the Association as an additional insured.

2.05 **Repair and Maintenance of the Property by Association.**

- (a) The Association (not individual Owners) is solely responsible for maintaining Common Areas in a functioning, sanitary, safe and serviceable condition, making necessary repairs, modifications and improvements in a timely fashion.
- (b) The Association is solely responsible for maintaining and repairing the following specific items if they exist on the Property:
 - (1) All building components, (including roofs, exterior walls and framing), rain gutters and downspouts, walls, ceiling and floor assemblies) that have a structural or waterproofing aspect as designed or constructed or which provides an element of life safety protection such as fire protection, seismic or lateral load resistance or the like. All plumbing, waste and electrical systems located within walls (including interior partition walls) or floor/ceiling diaphragms.

- (c) Any damage to any of the Common Areas or Exclusive Use Common Area(s) listed in subparagraph (b) above caused by a negligent or intentional act of an Owner, his family, tenant or guest, or as the result of a failure of any portion of a Unit (as described in Section 2.04(a)(4)) shall be repaired at the sole expense of the responsible Owner. If the Association elects to undertake the repairs, the cost of the repair shall be the basis for a special assessment to reimburse the Association for said cost and may be the basis for a lien.
- (d) In the event damage is caused to any portion of the Unit as a result of a failure of a Common Area component or element other than due to the negligence of the Association, the Owner of the Unit shall be responsible for any and all property damage to the Unit or contents and shall tender a claim to the Unit Owner's insurance carrier.

2.06 **Association Insurance.**

- (a) The Board shall maintain the following specified (or equivalent) insurance coverages subject to the Section entitled, "Government Financing Programs:
 - (1) Fire and casualty insurance for one hundred percent (100%) of the full insurable value of all improvements constituting the Common Areas (bare walls coverage), and all improvements within the Commercial Lot as provided in the Building Declaration, naming as insured the Owners, the Commercial Owner, their Mortgagees, and/or the Association. This provision does not prevent the Association (in the discretion of the Board after reasonable notice to the members) from obtaining property casualty insurance that includes coverage for elements of the Unit or Unit Fixtures and Improvements as defined herein. If the Board elects to procure only (bare walls) property insurance, the Board shall give written notice to the membership 60 days in advance of changing or reducing the coverage to permit members to supplement their individual unit insurance coverage.

Earthquake insurance shall be obtained as provided by the terms of the settlement in July, 2012 unless the cost of same is not economically feasible and the members fail to approve a special assessment or assessment increase to pay for such earthquake coverage.
 - (2) Extended coverage for replacement costs of damage to the Common Area(s) that arises out of vandalism or malicious mischief.
 - (3) At least two million dollars (\$2,000,000), or another minimum amount of insurance as set out in Civil Code section 5805, in comprehensive public

liability insurance that covers the Association, Board, Managing Agents, Officers, Owners, Occupants and any other agents or employees incident to the ownership or use of Common Area(s) against physical injury, death and property damage arising out of a single occurrence. This policy shall also insure the Owner of the Commercial Lot as provided in the Building Declaration.

- (4) If available and feasible, an extended coverage endorsement clause known as "special form".
 - (5) To the extent feasible and available there shall be a deductible of no more than ten thousand dollars (\$10,000.00) except as to earthquake coverage. If a policy with a deductible in the above amount is not commercially available or economically feasible, the Association shall obtain a policy which has the least deductible amount available which is economically feasible.
 - (6) Each hazard insurance policy must be written by a carrier who meets FNMA requirements for a "Best Rating".
 - (7) A fidelity bond that insures the Association for the estimated maximum amount (or at least three (3) months aggregate Assessments on all Units and reserve funds) that could be affected by the dishonest act of any Association employee or Board member who handles funds for the Owners' benefit.
 - (8) Workers' compensation insurance, in compliance with all applicable laws.
- (b) The Board may, in its sole discretion, elect to purchase an insurance policy with extended fire and casualty insurance coverage including any of the following types of property contained within a Unit: fixtures, improvements and alterations that are a part of or attached to the building or structure; and appliances, such as those used for refrigeration, ventilating, cooking, dishwashing, laundering, security or housekeeping, as long as the improvements are replaced without deduction for depreciation or coinsurance naming as insureds the Owners, their Mortgagees, and/or the Association.
- (c) Association insurance policies shall contain the following provisions, ("Special Condominium Endorsements") as appropriate:
- (1) A waiver of the carrier's right of subrogation against any Owner, the Association, the Board and any of their agents or employees;

- (2) Inflation Guard Endorsement, if obtainable at a reasonable cost;
- (3) If a construction code requires changes to undamaged portions of a building, when any part of the building is destroyed by an insured hazard, then a Construction Code Endorsement, typically including endorsements for demolition cost, increased cost of construction, and contingent liability from building operation laws, is required if economically feasible or appropriate in the discretion of the Board;
- (d) All fire or other insurance proceeds payable for losses to real property and improvements, and all casualty insurance proceeds, may be paid to the Board or a Trustee, to be held and expended for the benefit of the Owners, the Association, Mortgagees, and others, as their respective interests shall appear. If repair or reconstruction is authorized, the Association shall have the duty to contract for such work as provided for in this Declaration.
- (e) Insurance and fidelity bonds must provide for a ten (10) day written notice of modification or termination to any insurance trustee, and to each FNMA servicer who has filed a written request with the carrier for such notice.
- (f) At least annually, the Board must review the Association's insurance policies.
- (g) If economically feasible, prior to the annual review on even numbered years, the Board shall obtain a current appraisal of the full replacement value of Improvements on the Property (except for foundations and footings) without deduction for depreciation.
- (h) In the event of a damage claim to a Unit caused solely by the failure of a Unit component, the Board shall have the sole discretion to determine whether a claim should be tendered to the Association's insurance carrier.

2.07 **Waiver of Claims Against Association.**

Except as provided elsewhere herein, as to all policies of insurance maintained by or for the benefit of the Association and the Owners, the Association and the Owners hereby waive and release all claims against one another and the Board to the extent of the insurance proceeds available, whether or not the insurable damage or injury is caused by negligence of or breach of any agreement by any of said persons.

2.08 **Owner Insurance.**

- (a) It shall be each Owner's obligation to obtain:
- (1) An HO-6 Insurance policy for the Unit fixtures and improvements, personal property or potential liability occurring within a Unit; the Association's master policy excludes coverage for building components which do not constitute common area as defined herein;
 - (2) Loss assessment coverage for certain future special assessments;
 - (3) Any other available insurance.

In the event damage is caused to any portion of the Unit as a result of a failure of a Common Area component or element other than due to the negligence of the Association or is caused by a failure of a Unit component, the Owner of the Unit shall be responsible for any and all property damage to the Unit or contents and shall tender a claim to the Unit Owner's insurance carrier and that insurance policy shall be deemed primary.

- (b) If an Owner obtains insurance for personal property or unit fixtures/improvements or liability occurring within the Owner's Unit, the policy must contain a waiver of subrogation rights by the carrier as to other Owners, the Association, Declarant and any Institutional Mortgagee of the Owner's Unit.
- (c) An Owner shall not obtain any insurance that potentially may cause a reduction in the Association's insurance proceeds. If an Owner violates this provision, the Owner shall be liable to the Association for any reduction in the Association's insurance proceeds.

An Owner shall promptly notify the Association of any substantial improvements to the Owner's Unit that could affect the Association's property insurance coverage. If an Owner fails to do so, the Owner is liable to the Association for any damages pertaining to the Association's insurance coverage, if any, including any reduction in coverage.

ARTICLE III
OWNERS GENERAL USE RESTRICTIONS

3.01 **Unit Use.**

- (a) Each Unit shall be used solely as a private residential dwelling and for no other purpose, except as provided herein as “live-work” dwellings under the Artists in Residence designation.
- (b) An Owner may rent a Unit for residential purposes subject to the provisions of this Article, provided:
 - (1) There is a written agreement between the Owner and tenant in a form which has been previously approved by the Board of Directors, a copy of which is provided to the Association upon tenant occupancy. The lease shall indicate the names and contact information (phone number and email addresses) of all persons who are going to reside in the unit.
 - (2) The rental term is at least one (1) year in duration. Short term rentals of any kind, including VRBO and AirBNB are expressly prohibited;
 - (3) The lease expressly provides that it is subject to all the provisions of the Governing Documents, which include the Declaration, the Condominium Plan, the By-Laws, the Articles of Incorporation and the Rules and Regulations such that in any action by the Association to compel compliance with the governing documents, the tenant can be a party thereto and subject to an injunctive remedy. All governing documents shall be physically provided to the Tenant by the Owner. Further, the lease shall expressly provide that a Tenant’s failure to comply with the Governing documents shall constitute a default in the lease which, if not corrected after thirty days written notice to Owner and Tenant, shall entitle the Association to directly prosecute an unlawful detainer action to evict Owner’s Tenant(s);
 - (4) The Board may levy reasonable charges and fees against owners of rental units based on increased administrative burden or maintenance costs due to tenant move-in/move-out.
 - (5) The Owner is solely responsible for obtaining compliance by a tenant as to the governing documents. In the event a tenant fails to comply with the governing documents and the Owner fails to obtain compliance by the tenant within thirty days of written notice, the Association can pursue both the Owner and tenant in an action for injunctive relief to comply with the governing documents or prosecute an unlawful detainer action directly against the tenant for breach of the lease covenants as a Real Party In Interest, regardless of whether the lease terms incorporate the

Declaration. The Association's right to pursue an eviction is derived from California Code of Civil Procedure Sections 1165 and 374. In such event the Association shall be entitled to recover all attorney's fees and costs actually incurred in the prosecution of said action, jointly and severally, from the Owner or the Tenant. If an Owner, in response to a demand to obtain compliance from the Association initiates and prosecutes to conclusion an unlawful detainer against the tenant that shall be deemed compliance by the Owner.

- (6) The Owner shall expressly indemnify and hold the Association, its Board of Directors and its agents and employees harmless from any and all claims arising out of the actions or conduct of Owner's tenant, including the cost of attorneys' fees and costs incurred in defending any such claim.
- (7) Each person who is now or becomes an Owner in the Project and a Member of the Association agrees that, in the event that monthly regular assessment or any special assessment levied by the Association becomes more than thirty (30) days overdue or otherwise in arrears in payment, the Association shall be entitled, upon fifteen (15) days written notice to the Owner, to notify any tenant renting or leasing said Owner's unit that the monthly rent otherwise payable to the Owner is to be paid directly to the Association. This provision is intended to provide the Association with the same type of rights conferred upon a lender pursuant to a deed of trust with an assignment of rents as set forth in California Civil Code Section 2938. The Association shall have the right to demand that an Owner and Tenant execute a Rent Assignment Agreement provided by the Association.

Each Owner who rents or leases a Unit to a tenant shall include in each and every rental agreement entered into to lease or rent a Unit a provision notifying the tenant or prospective tenant that in the event the Owner becomes delinquent in payment of regular or special assessments to the Association, that the tenant may be required to pay said rental or lease payment directly to the Association upon notice and written demand. Said written demand shall be in substantially the same form as provided in Civil Code Section 2938(k). Each tenant shall also be advised in writing that in the event said tenant refuse or fail to comply with a proper written notice and demand from the Association to pay rental or lease payments directly to the Association, said tenant may be held personally liable for said failure to comply and may be compelled by court order to comply and be responsible for any and all attorney's fees and costs incurred by the Association to enforce this provision.

In the event an Owner becomes delinquent and the assignment of rents provision herein is invoked by the Association, the Owner shall not require or demand that the tenant pay rent to the Owner and the Owner shall not take any action against a tenant who complies with the Association's demand hereunder. Owner shall not serve a three day notice or prosecute an unlawful detainer action if a tenant complies with the Association's demand hereunder. This limitation shall remain in effect until said delinquencies by the Owner are paid in full. To the extent that the rental or lease payments received by Association from tenant pursuant to these provision exceeds the amount of delinquency (including late fees, interest, attorney's fees and costs), said excess funds shall be returned to the Owner within sixty (60) days, unless a further delinquency accrues during this period. The rights, limitations and restrictions contained with this Article do not limit, restrict, abrogate or impair any other statutory or common law right held by any party referred to as may be permitted by public policy.

- (8) The Unit is occupied by the Owner or immediate family of Owner for at least a two-year period after its purchase. This provision applies to Units purchased after the effective date of this amended declaration.

A maximum of 50% of the Units shall be eligible to leased at any given time. This provision shall apply only prospectively to Owners acquiring title to Units after the recordation of this amended and restated Declaration and shall not affect the rights of Owners of Units at the time this Declaration was recorded to lease their respective Units. Upon the transfers of more than 50% of the units after recordation hereof, the Board shall establish a procedure to identify and monitor units which are leased and further a random procedure for determining which units may be leased if more than 50% of the owners wish to lease their Units. When the 50% threshold is established, the Board shall establish a waiting list of unit owners who wish to lease their units based on first come first served.

- (c) Occupations and businesses that do not interfere with the residential nature or character of the Property or quiet enjoyment by other Owners may be carried on within a Unit, provided that all applicable laws, ordinances, zoning regulations and rules are satisfied and that there is no external evidence of any such occupation, such as an unreasonable increase in visitors or burden on the parking at the Project. As an Artists in Residence building, occupations and businesses related to art, design, film or music and the like are permitted, subject only to the Board being notified of such live-work use and verification that the nature of the business is in compliance with the applicable regulations for Artist in Residence variances.

- (d) In no event shall a Unit be occupied by more individuals than permitted by applicable zoning laws or governmental regulations and which the occupancy does not result in the creation of a nuisance. The maximum occupancy of a Unit shall be limited to two (2) persons per designated bedrooms plus one person.
- (e) Each Owner and occupants shall be accountable to the Association and all remaining Owners and occupants, their families, visitors, guests and invitees, for the conduct and behavior of their children and any children temporarily residing in or visiting the Property, and for any property damage caused by such persons.
- (f) There shall be no storage of any items, except in an enclosed area not visible from any Common Area within a Unit or in another area expressly approved by the Association or within an assigned storage unit.
- (g) No exterior clothes-line shall be erected or maintained and there shall be no exterior drying of clothes, towels or any other item on balconies, patios, porches or other areas or from windows.
- (h) Windows may not be painted or covered by foil, cardboard or other similar materials except with the consent of the board.
- (i) Window air conditioners are prohibited.

3.02 **Common Area Use.**

Common Area(s) and Exclusive Use Common Area(s), if any, may only be used for purposes which are compatible with usages customarily associated with common areas located within residential developments in California, and subject to the limitations described in this Declaration and other Governing Documents. Common Area roofs of the project shall not be used by members, guests, invitees for any purpose. Workmen of members requiring access to roof areas to provide service to mechanical devices shall notify the Association of the need for access, identify the reason access is needed, and provide proof of licensure and insurance prior to being allowed access to the roof and shall be required to strictly follow any and all policies related to activities on said roof. Workmen and contractors performing work for Owners/Tenants shall not use common areas to perform work, stage equipment or materials or to store equipment and materials.

3.03 **Nuisances.**

- (a) Illegal, offensive, obnoxious actions, or noxious odors from any source that interfere with any Occupant's quiet enjoyment are not permitted anywhere on the Property.
- (b) An Occupant may not cause the level of noise or sound from the Unit to interfere with the quiet enjoyment of an Occupant of another Unit (i.e., loud music or television, shouting, slamming of doors, and other such actions.) If sounds coming from within a Unit can be heard in the Common Area or in another Unit, this shall constitute a nuisance. This includes excessive noise or vibration from children and from air conditioning units or similar mechanical devices.
- (c) Unless otherwise expressly permitted by the board, no owner shall serve food or beverages, cook, barbeque, or engage in similar activities, excepting within such owner's unit and excepting within those portions of the common area subject to exclusive easements appurtenant to such owner's unit if any.
- (d) The Board shall have the right to determine if any situation, action, odor, noise or other conduct constitutes a nuisance, and to appropriately deal with the situation, including but not limited to seeking injunctive relief to compel cessation. If the Board makes a determination that a nuisance exists, the Board shall use reasonable, non-litigation means and methods to effectuate the abatement of the nuisance. These means shall include convening a hearing under Civil Code Section 4820 prior to imposing discipline upon the owner causing or responsible for the nuisance and the imposition of monetary fines or suspension of Association rights. The Board shall not be required to pursue injunctive relief to abate a nuisance unless it determines, in its sole discretion, that the best interests of the Association and its members would be best served by instituting a lawsuit for injunctive relief because of the widespread effect and serious nature of the nuisance.

3.04 **Debris, Trash and Refuse.**

- (a) Weeds, rubbish, debris, used motor oil, toxic waste, objects or materials of any kind that are unsanitary, unsightly, or offensive may not be placed or permitted to accumulate in any Unit or the Common Area(s).
- (b) Trash deposited into the association's receptacles must be sealed, as more fully described in the rules and regulations of the association.

3.05 **Signs.**

- (a) An Owner may advertise a Condominium for sale or lease with one sign, not to exceed 24" by 36" in size, placed on the Association's designated location for sale or lease signs.
- (b) An Owner may, pursuant to Civil Code Section 4710 display one non-commercial sign, poster, flag or banner. The sign, poster, flag or banner may be made of paper, cardboard, cloth, plastic or fabric and may be posted or displayed from the exclusive use common area yard, window, door, balcony or outside wall of the separate interest. The sign, poster, flag, or banner shall not be made of lights, roofing, siding, paving materials, flora or balloons or similar materials and shall not include the painting of architectural surfaces. The signs and posters permitted hereunder shall not exceed 9 square feet in size. Flags and banners shall not exceed 15 square feet in size. Attachment of these items to the exterior of the separate interest in a way that results in damage to the structure or waterproofing of the building is prohibited. Except as provided herein, no other signs or banners may be displayed anywhere on the Property visible outside a Unit without the prior written consent of the Board.

3.06 **Use/Alteration Affecting Insurance Rates.**

- (a) Acts that threaten cancellation or an increase of insurance rates for the Property are prohibited.
- (b) If a particular Owner's use or activity is the cause of increased insurance rates, the responsible Owner is personally liable for the additional insurance premiums.

3.07 **Parking / Vehicle Code Regulations.**

- (a) All applicable provisions of the California Vehicle Code Section 22658.2 (regarding illegally parked vehicles) shall be enforced. The Board shall have the authority to adopt rules and regulations consistent with these provisions, including a fine schedule to be imposed.
- (b) Unless otherwise expressly permitted by the association, no vehicle shall be parked or left on any property subject to this declaration other than in a designated parking space assigned to a particular Unit.
- (c) No commercial vehicle shall be parked or left on any parking area unless approved by the Board. Parking by commercial vehicles for the purpose of

making deliveries or performing repair work in or about a Unit shall be permitted in accordance with the association rules.

- (d) A parking space may not be used for anything except parking of registered, insured and operational motor vehicles.
- (e) No vehicle shall be used as a living area while within the project or development. No boat, truck, trailer, camper, recreational vehicle or tent shall be used as a living area while permitted by the board to be parked within the development.
- (f) The Board shall be authorized to institute a vehicle registration program which requires each Owner to identify all vehicles and affix a registration decal thereon.

3.08 **Animal Regulations.**

- (a) No bird, reptile or animal of any kind shall be raised, bred or kept in any Unit or in the Common Area, except dogs, cats or other domestic household pets which don't exceed 60 pounds in weight may be kept in a Unit, provided the animals are not kept, bred or raised for commercial purposes and are kept under reasonable control at all times. The combined number of pets kept in a Unit shall not exceed four (4).
- (b) Any animal that constitutes a nuisance as described herein or that bothers or annoys other Owners or residents (e.g., excessively barking dogs or chirping birds) may not be kept on the Property or in a Unit.
- (c) Dogs may only enter the Common Area(s) while on a leash which is held by a person capable of controlling it.
- (d) Owners are responsible for and must prevent their pets or those of their tenants or guests from soiling the Common Area(s), and are solely responsible for any required clean-up.
- (e) The Board shall determine whether specific pets are a nuisance and should be removed from the Property.
- (f) The Board shall have the authority to adopt rules and regulations consistent with these provisions, including a fine schedule to be imposed.

3.09 **Satellite Dish/Antennae**

(a) Consistent with the provisions of Civil Code Section 4725, an owner or an owner's tenant may not install a satellite dish upon or on the Common Areas or Exclusive Use Common Areas without the express, written consent of the Board of Directors.

(a) The Board may adopt reasonable restrictions concerning the installation of satellite dishes which are 36 inches in diameter or less on non-Common Areas. Reasonable restrictions shall not significantly increase the cost of the system or significantly decrease the efficiency or performance of the system. Unless otherwise specifically approved in writing by the Board, all such satellite dishes shall be located on portable stands on exclusive use common areas. Except as expressly permitted and approved by the Association as to manner, method and location, no cabling for satellite service shall be permitted to hang over the roof and down the side of the building. Common area walls may only be penetrated to install cable in locations and in a manner approved by the Association and which will not negatively impact the waterproofing system of the building. All cable must be securely fastened and shall be in horizontal or vertical runs as required by the Association. Diagonal or other non-conforming runs are prohibited. No other antennae of any type shall be permitted on the common areas or exclusive use common area. The cost of repairing any damage to the common areas caused by satellite installation or removal shall be borne by the unit owner causing the satellite to be installed. The Board may impose a special assessment against the owner for the costs of repairing damage in accordance with Civil Code Section 5600-5610 and this Declaration.

(b) The Board may require the installer to show proof of proper insurance to indemnify the association. The owner or tenant shall be responsible for any and all damage to common areas resulting from said installation.

(c) This provision shall not be applicable to satellites installed prior to the adoption of this Amended and Restated Declaration.

3.10 **Courtyard Access.** The Owners of Units 2, 3, 5, 7, 9, 10, 12 and 14 (the "Townhouse Units") may obtain access to the Courtyard from their respective Units as follows. Access to the Courtyard from the Townhouse Units shall be permitted installing a 3 foot by 7 foot steel door from such Unit but only onto a hallway leading to the Courtyard. All such doors installed shall conform in appearance to the other doors in place or other guidelines approved by the Association. If any relocation or re-routing of utility lines or facilities is required to accommodate such installation, regardless of what units or areas the lines or utilities serve, the cost shall be solely of the Owner installing the door. Any such door shall match exactly existing steel entry doors and paint colors shall match existing stucco. No cuts or modifications of the hallways or Courtyard for the installation of the door or threshold are permitted unless prior Association approval has been obtained building permits for any doors to be added shall be obtained. Prior to commencement of installation an Owner shall

submit a written application for the installation accompanied by plans and specifications for consideration for approval by the Board of Directors as provided in this declaration in Article 7. The Board may require a reasonable fee for processing such applications and may require a bond securing the performance of the work. The contractor engaged to perform the work shall be licensed and carry at least \$1,000,000 in completed operations liability coverage which covers operations in a common interest development. Said insurance shall name the Association as an additional named insured. After installation, the Owner who installed the door or the Owner's successor shall be responsible for the maintenance, repair and replacement of the door and all components parts thereof.

ARTICLE IV

ASSOCIATION MEMBERSHIP AND VOTING RIGHTS

4.01 **Membership.**

Every Unit Owner is automatically an Association Member.

4.02 **Voting Rights.**

- (a) Each joint Unit Owner has an indivisible interest in a single Membership.
- (b) Each Unit is entitled to one (1) vote.
- (c) Each Unit's vote is cast as a single unit, without fraction.
- (d) If joint Unit Owners cannot unanimously agree how to cast their vote, they forfeit their right to vote on the matter in question.
- (e) If a joint Owner casts a vote representing a certain Unit, it will be presumed for all purposes to be a vote with the authority and consent of all other joint Owners of the Unit.
- (f) After Notice and Hearing, the Association has the right to suspend the voting rights of any Owner delinquent in the payment of Assessments.

4.03 **Transfer of Membership.**

- (a) Membership of each Owner shall be appurtenant to the Condominium owned, and may only be (and is automatically) transferred upon conveyance of title to a new Owner of a Condominium. Each Owner shall have the duty to inform the Association of the listing of a Unit for sale and entry into Escrow. Failure to notify the Association of a sale of a Unit shall result in both the seller and buyer of the Unit being jointly and severally responsible for any delinquent assessments or related collection costs due at the close of escrow.
- (b) In connection with any transfer or change of ownership of any Condominium, the Association and each Owner must comply with Civil Code Section 1368.

4.04 **Cumulative Voting**

There shall be cumulative voting in the election of directors as specified in the Association's Bylaws. The Board shall, as provided in the Bylaws, prepare and send out ballots indicating that cumulative voting shall apply.

4.05 **Annual Meeting**

The Association shall hold its annual meeting during the month of December each successive year unless the Board determines that there is good cause for postponing said meetings for up to sixty (60) days.

ARTICLE V

DUTIES AND POWERS OF THE ASSOCIATION

5.01 **Specific Association Duties and Powers.**

The duties and powers of the Association are those set forth in the Governing Documents, together with its general and implied powers as a nonprofit mutual benefit corporation, generally to do all things which are necessary or proper for the peace, health, comfort, safety and general welfare of its Members, including the following:

- (a) Subject to the reasonable discretion of the Board based on factors including but not limited to the costs of enforcement proceedings and benefit to the community, enforce the applicable provisions of the Governing Documents and other instruments for the ownership, management and control of the Project.
- (b) Adopt and enforce reasonable rules and regulations concerning the Property through any legal means, including the imposition of reasonable monetary fines. The Board shall at all times comply with the provisions of Civil Code Section 4340 et seq. concerning notice to the membership of its intent to vote to adopt or modify Association operating rules, except in the case of an emergency as defined in said statute.
- (c) Contract for goods and/or services for the Common Areas, facilities, and interests, or for the Association subject to the limitations set forth below. Prior to entering any contract for the repair, replacement or maintenance of the Common Areas of the Association which may exceed the sum of \$10,000.00, the Association, through its Board of Directors, shall have prepared a scope of work by a competent professional which shall be submitted to at least three licensed and insured contractors for a proposal. The Board may choose from the multiple proposals submitted, the contractor which it believes to be the most competent

and cost effective based on price, experience, qualifications, recommendations and other criteria. The Board is not obligated to accept the lowest bidder.

- (d) Exercise any powers normally exercised by residential homeowner associations under the laws of the State of California.
- (e) Conduct reserve studies not less than every three (3) years under Civil Code Section 5300 and 5565.
- (d) Establish and maintain a reserve fund for the purposes described in Civil Code Section 5300 and 5565 to repair, replace and maintain the major building components of the project at the end of their useful life, based on a reserve study analysis.
- (e) To comply with and enforce the Building Declaration and any other binding agreements between the Association and the Commercial Owners described therein, including but not limited to the appointment of members to the Committee.

5.03 **Board Powers and Limitations.**

- (a) Except as to matters requiring the approval of Owners, the affairs of the Association shall be managed and conducted by the Board and its officers consistent with the law.
 - (1) The Board shall have the express power to appoint committees to serve at the Board's pleasure to accomplish specific delegated tasks. The committees, if any, shall serve the advisory function of submitting recommendations for action by the Board through a majority vote of the Board. The committees shall have no independent power to take action in the name of the Board without express Board approval. The Board shall have the sole discretion in the appointment of said committees, the length of service of the members, the continued existence of the committee and the acceptance or rejection of committee recommendations.

If the Board establishes a committee under this Article, the Board shall establish a review and reporting procedure, on a minimum bi-annual basis, to monitor the activities and performance of said committee. The Board shall have the authority to appoint qualified, non-members of the Association, to serve as consultants to said committees.

(b) The Board is authorized to institute, defend, settle or intervene on behalf of the Association in litigation, arbitration, mediation, or administrative proceedings in matters pertaining to:

- (1) Enforcement of the governing instruments;
- (2) Damage to the Common Area(s);
- (3) Damage to the separate interests which the Association is obligated to maintain or repair; or
- (4) Damage to the separate interests which arises out of, or is integrally related to, damage to the Common Area(s) or separate interests that the Association is obligated to maintain or repair.

(4) Said action by Board concerning litigation shall conform to any applicable statutory limitations including but not limited to Civil Code section 5975 and 6000.

- (5) Enforcement of the provisions of the Declaration by or through injunctive relief is specifically authorized due to the express recognition that remedies at law for the recovery of damages for the breach, default or violation of any of the covenants, conditions, restrictions, limitations, reservations, grants of easement, rights, charges and equitable servitudes contained in the Declaration are inadequate and the failure of any owner, tenant, occupant or user of any Condominium or any portion of the Common Area to comply with each and all of the terms and provisions of this Declaration, the rules, regulations, decisions, resolutions and By-laws of the Association and its Board of Directors, may be enjoined by appropriate legal proceedings instituted by the Association, its Board of Directors or its officers.

(b) Directors and Members of the Association shall not be eligible to provide goods or services to the Association unless:

- (1) Full disclosure is made to the Board of Directors of all possible conflicts of interest;

In any vote by the Board or the membership concerning approving the provision of services or goods by a member or director, said member or director shall be ineligible to vote on said matter;

The member or director shall meet the same objective criteria for competence, financial capacity and insurance as outside parties; and

If the board approves hiring or contracting with a member or director for goods or service, this information shall be provided to the membership in writing.

5.04 **Budget, Financial Statements and Governing Documents.**

- (a) The Board of Directors of the Association must comply with all current requirements of California Civil Code Sections 5300-5320, 5310, 5810, 5200-5240, 5500-5560, 4177-4178, or successor statutes pertaining to financial records, governing documents, etc.
- (b) The Association shall make the following documents available for inspection and copying by a Member or his duly appointed representative at the office of the then Property Manager for the Association upon request during normal business hours or under other reasonable circumstances:
 - (1) The Membership register, mailing addresses, books of account and minutes of meetings of the Board for any purpose reasonably related to a Member's interest. The membership register and membership information shall only be supplied after the Board reasonably determines that the Member has complied with the provisions of California Corporations Code Section 8330(a) or Civil Code Section 5200-5240 by stating the purpose for which the inspection is sought. Phone numbers and email addresses of owners shall not be supplied.
 - (2) For Owners, lenders, holders, insurers and guarantors of a First Mortgage on any Unit, current copies of all Governing Documents, books, records, and financial statements of the Association;
 - (3) The Association may charge a fee to the requesting party for this service which may not exceed the reasonable cost to prepare and reproduce the requested items.
 - (4) Copies of relevant California Code Sections referenced in any Governing Documents.
 - (5) Any and all other documents or records as required under Civil Code Sections 5300-5310, 5810, 5200, 5240, 5500, 5560, 4177-4178 or successor statutes.

- (c) Association Members shall annually be provided a summary of the provisions of Section 5975, as set forth therein, which must include the following language: "Failure by any member of the association to comply with the pre-filing requirements of Section 5930 et seq. of the Civil Code may result in the loss of your rights to sue the association or another member of the association regarding enforcement of the governing documents." This summary shall be provided either at the time the pro forma budget required by Section 5300-5320, 5310, 5810, 5200-5240, 5500-5560, 4177-4178 is distributed, or in the manner specified in Section 5016 of the Corporations Code.
- (d) Association Members shall annually be notified as to the amount and type of insurance coverage maintained by the Association as well as other disclosure requirements mandated by Civil Code section 5805.

5.05 **Association Performance of an Owner's Obligations.**

At the discretion of the Board and subject to all notice requirements, if an Owner fails to accomplish any maintenance or repair required by this Declaration, the Association has the right (but not the obligation) to cause such maintenance or repair to be accomplished according to the following regulations:

- (a) The Board must give the Owner a Notice of Deficiency that outlines the problem/ violation and set a date for a hearing before the Board or its appointed Committee.
- (b) A hearing must be held from fifteen (15) to thirty (30) days after the Notice of Deficiency's delivery date and must be conducted as follows:
 - (1) According to reasonable rules and procedures adopted by the Board;
 - (2) The Owner may present evidence and cross-examine any person offering evidence against the Owner;
 - (3) A decision rendered against the Owner must set a date by which the Owner is to correct the deficiency; and
 - (4) A committee decision may be appealed to the Board, but a decision by the Board is final.
- (c) If the deficiency continues after the time limit imposed by the Board, such maintenance or repair may be accomplished according to the following regulations:

- (1) After a written Notice of Action by the Board, the Owner has no more than ten (10) days to select a day(s) when such maintenance or repair may be accomplished;
 - (2) The Owner must select a date between fifteen (15) and forty-five (45) days from the final day of the ten (10) day Notice of Action period;
 - (3) If the Owner does not select a day(s), the Board may select dates to accomplish the work, between twenty-five (25) and fifty-five (55) days from the last day of the ten (10) day Notice of Action period; and
 - (4) Unless the Owner and Board otherwise agree, such maintenance or repair must take place during daylight hours Monday through Saturday, excluding national holidays.
- (d) Any Association payments for such maintenance or repair must be reimbursed by the Owner within thirty (30) days.

5.06 **Penalties for Non-Compliance.**

- (a) In recognition of the need for a reasonable means of encouraging and insisting upon compliance with the provisions of the Governing Documents without resorting to suits for injunctive relief, the Board is authorized to do the following:
- (1) Establish a reasonable policy of reasonable penalties, including monetary penalties (which specify the amounts of potential monetary penalties);
 - (2) Assess such penalties against any Owner found to be in violation of any provision of the Governing Documents; and
 - (3) Temporarily suspend an Owner's voting rights as a Member of the Association for as long as the violation continues and suspend the owner's privileges to use the recreational facilities, and other services provided by the Association which do not affect habitability or safety.
- (b) Notice and Hearing relating to the imposition of any penalties in this Section must be made in the following manner and at a minimum:
- (1) Notice must be given to the relevant Owner's most recent address in the Association's records at least ten (10) days before the hearing scheduled to determine whether a penalty or disciplinary measure will be taken;

- (2) Notice must set forth details of the violation itself, the proposed penalty, and the date, time and place of the Hearing;
 - (3) The penalized Owner may be heard (either orally in person or in writing submitted through the Association's property manager) at a Hearing in executive session of the Board of Directors;
 - (4) Following the Hearing, the Board must decide whether or not the Owner should in fact be penalized, and the nature of the penalty. The decision of the Board shall be final and binding upon the owner and shall be provided in writing by first class mail to the Owner within 15 days after the hearing.
- (c) If the Association adopts a policy imposing any monetary penalty, including any fee on any member for a violation of the Governing Documents or rules of the Association, including any monetary penalty relating to the activities of a guest or invitee of a member, the Board shall adopt and distribute to each member by personal delivery or first-class mail, a schedule of the monetary penalties that may be assessed for those violations, which shall be in accordance with authorization for member discipline contained in the Governing Documents. (The Board shall not be required to distribute any additional schedules of monetary penalties unless there are changes from the schedule that was adopted and distributed to the members.)
- (d) If an Owner fails to comply with a penalty imposed pursuant to the provisions of this Section, the Board may seek judicial enforcement of the penalty in any court of competent jurisdiction, with the Owner liable for all costs (collection costs, court costs, attorney's fees, etc.). However, except as permitted by Civil Code Section 5650-5740 such penalties and costs shall not be treated as an assessment that may become a prejudgment lien enforceable by Civil Code Section 2924.
- (e) Notwithstanding the foregoing, the Owner shall be given, at a minimum, the rights set forth in Corporations Code Section 7341 or any successor statute.

5.07 **Right of Entry.**

- (a) The Board shall have the right to demand entry into any Unit to determine compliance with the governing documents or to carry out any maintenance or repair obligation of the Association under the declaration. If the Board has a reasonable basis for believing that an Owner may not be in compliance with the Governing Documents or that there has been or will be damage incurred to the Common Areas accessed only from a Unit, the Board has the right to enter any

Unit or Exclusive Use Common Area(s) upon reasonable notice. Except in the case of an emergency, the right of entry conferred herein shall not be exercised except after giving reasonable notice and after obtaining an order from a court of competent jurisdiction for compliance by the owner with this provision. In the event that an Owner or tenant refuses access pursuant to a request under this Section, the Association shall be entitled to recover all attorney's fees and costs incurred in obtaining a court order for access. Self help shall not be used to gain entry except in the case of an emergency and with reasonable attempts to contact the owner for access.

- (b) In case of emergency, a Unit may be entered immediately by two board members or a board member and property manager and self help may be used. An emergency situation arises when the Board has a good faith belief that a condition exists that negatively impacts life-safety or risks substantial property damage within the Project. Otherwise, absent a court order, a Unit or its Exclusive Use Common Area(s) may only be entered at reasonable hours after the Owner has received reasonable notice, and if the Occupant does not physically attempt to stop the entry.
- (c) Entry must be made with as little inconvenience or damage as possible to the Owner.

5.08 **Wood-Destroying Pests.**

If maintenance and repair of Common Areas, necessitated by wood-destroying pests or organisms is required by the Association (including treatment of infestations), the procedure must be in compliance with Civil Code Section 4775-4790. The Association shall be responsible for the conduct of and costs of repairs and treatment, but the individual owners affected by the repairs shall bear the expense of costs of relocation during the treatment. The Association may cause the temporary, summary removal of any occupant of the Project for such period as is necessary for prompt, effective treatment of such organisms or pests. The Association shall give notice of the need to temporarily vacate a unit to occupants and Unit owners not less than 15 nor more than 30 days prior to the date of the temporary relocation. The notice shall state the reason for the relocation, the date and time of the beginning of treatment, the anticipated date and time of completion of the treatment and that the occupants/Owners shall be responsible for their own accommodations during the relocation. Notice shall be provided in accordance with Civil Code Section 4775-4790. In the event an Owner or an occupant fails to vacate a unit pursuant to proper notice, the Association shall have the right to impose a special assessment upon the Owner of the unit not vacated for all costs incurred by the Association and the other members as a result of the failure to vacate.

5.09 **No Liability.**

The Association and Board (including officers, directors, employees, agents and Members) are not liable in any way for loss, damage or injury of any kind in connection with actions taken or not taken in the course of the Board's or Director's duties, unless there is evidence of willful misconduct or bad faith (in which case only the guilty person(s) are liable) and there is in place appropriate liability insurance coverage in amounts specified in the Declaration.

ARTICLE VI

COVENANTS FOR ASSESSMENT

6.01 **Assessments.**

- (a) Assessments may be levied by the Association for improvement, repairs and maintenance of the Common Area(s), administration of the Property, and to promote the recreation, safety, and welfare for the common good of all the Owners.
- (b) Each Owner, by acceptance of a deed to a Unit whether or not it shall be so expressed in any deed, covenants and agrees to pay all Assessments to the Association.
- (c) Assessments and related interest, collection costs, and reasonable attorneys' fees are the personal obligations of the Owner, but are not the personal obligation of successors in title unless expressly assumed by them. The Unit remains subject to any Assessment liens of record, except upon foreclosure of a First Mortgage, as stated in the Article entitled "Mortgagee Protection".
- (d) Pursuant to Civil Code Section 5600(b), the Association may not collect an assessment or fee that exceeds the amount necessary to defray the costs for which it is levied.

6.02 **Due Dates of Assessments.**

- (a) Regular Assessments for all Units in the Project are due on the first day of the month.
- (b) Regular Assessments shall be due and payable in any reasonable manner established by the Board.

6.03 **Assessment Rate.**

- (a) Regular (monthly) common assessments shall be calculated and allocated to the Units in accordance with the percentage figure for each unit as set forth in Exhibit B as to insurance, commonly billed water, commonly billed gas, painting of common areas, roof repair or replacement and water heater/boiler repair/replacement. All other Association expenses shall be pro-rated equally among all Units.
- (b) Special Assessments may be levied for the purpose of defraying the cost of any new construction or unanticipated repair or replacement of Common Area components or improvements. Special Assessments shall be levied in the same manner as set forth in (a) depending on the purpose or subject of the Assessment.

6.04 **Assessment Duties of the Board of Directors.**

- (a) The Board must levy Regular and Special Assessments in compliance with Civil Code Section 5600 et seq. Increases in regular assessment greater than 20% annually, and special assessments greater than 5% of the gross budgeted expenses of the Association must be approved by a majority of a quorum of the total voting power of the Association. Voting on such assessment increases or special assessments shall be conducted in accordance with the election policy set forth in the Association's bylaws.
- (b) The Board must establish separate bank accounts for operating monies and reserve monies. In the event of transfer or conveyance of an Owner's fee simple title to a Unit, said Owner shall have no further right or interest in any Assessments collected prior to such transfer. Assessments collected in accordance with the provisions of the Governing Documents shall be appurtenant to a Unit and shall automatically transfer to a new Owner in the event of sale.

6.05 **Notices and Disclosures.**

- (a) Sixty (60) days before the beginning of the Association's fiscal year, the Association shall distribute to all Members the following notices and disclosures regarding assessments:

(1) The notice required by Civil Code Section 5730 and 4040 shall be provided to every Member and shall be printed in at least 12-point type. The notice shall be in the language set forth in Section 5730 and 4040 or any successor statute. (2) The disclosure summary required by Civil Code Section 5730 and 4040

regarding assessments and reserve funding shall be provided to every Member, in the language set forth in Section 5730 and 4040 or any successor statute.

5.5.2 An Owner may provide written notice by facsimile transmission or United States mail to the Association notifying of a secondary address. If a secondary address is provided, the Association shall send any and all correspondence and legal notices to both the primary and the secondary address.

6.06 **Effect of Nonpayment of Assessments: Delinquency and Remedies of the Association.**

- (a) An Assessment is delinquent ("Delinquent Assessment") if not paid within fifteen (15) days after the due date. A Delinquent Assessment includes:
- (1) A late charge imposed by the Board to the maximum amount in accordance with California Civil Code Section 5600-5650 (or any successor statutes);
 - (2) Reasonable collection costs and attorney's fees; and
 - (3) Interest on all costs and charges at the maximum permissible rate, commencing thirty (30) days after the Assessment is due.
- (b) Delinquent Assessments and related costs will be a continuing lien on the relevant Unit when a "Notice of Delinquent Assessment" is recorded against an Owner's fee interest in a Unit.
- (c) Notwithstanding the foregoing, a Compliance Assessment imposed by the Board as a disciplinary measure for failure of an Owner to comply with the Governing Documents may not become a lien against the Owner's Unit enforceable by a sale of the interest in accordance with the provisions of Sections 2924, 2924(b) and 2924 (c) of the Civil Code.

However, this does not apply to charges imposed against an Owner consisting of reasonable late payment penalties for Delinquent Assessments and/or charges to reimburse the Association for the loss of interest or for costs reasonably incurred including attorney's fees in its efforts to collect other Delinquent Assessments.

- (d) In addition to all other legal rights and remedies, the Association may:
- (1) Bring legal action against an Owner who is personally obligated to pay the Assessment and charges (without foreclosing or waiving any lien security);
 - (2) Judicially foreclose the lien against the Unit, including the Assessment, interest, collection costs and late charges;
 - (3) Foreclose the lien by power of sale in accordance with California Civil Code Sections 2924-2924h, or any other lawful manner;
 - (4) Bid on the Unit through authorized agents at the foreclosure sale, to acquire and thereafter to hold, lease, mortgage or convey; or

- (5) Temporarily suspend the voting rights of the Owner in accordance with the provisions of this Declaration.
- (e) The Association may not foreclose a lien unless the amount of Delinquent Assessments exceeds one thousand eight hundred dollars (\$1,800) exclusive of late charges, interest and fees and costs of collection, or unless the assessments have been delinquent for longer than twelve (12) months.
 - (f) Foreclosure action may not proceed until thirty (30) days after a Notice of Delinquent Assessment is duly recorded with the relevant County Recorder that meets the requirements of Civil Code Sections 5700.
 - (g) The decision either to record a lien for Delinquent Assessments or to initiate foreclosure upon such a lien shall be made only by the Board and may not be delegated to an agent of the Association. The Board's decision shall be by majority vote of Directors present in an open meeting and shall be recorded in the minutes of that meeting. The confidentiality of the affected Owner shall be maintained by identifying the matter in the minutes by the parcel number of the property rather than the name of the Owner.
 - (h) Upon an Owner's timely payment of a default and all related fees, Association officers may prepare and record (at the Owner's cost) a release of the Notice of Delinquent Assessment.

6.07 **Notice of Delinquent Assessments.**

At least thirty (30) days before a lien is recorded upon an Owner's separate interest to collect a debt for Delinquent Assessments, the Association shall notify the Owner in writing by certified mail of the following, as required by Civil Code Section 5650-5710, 5735 or successor statute:

- (a) A general description of the collection and lien enforcement procedures of the Association and the method of calculation of the amount;
- (b) A statement that the Owner has the right to inspect the Association records, pursuant to Corporations Code Section 8333;
- (c) The following statement, in capital letters or in 14-point boldface type:
"IMPORTANT NOTICE: IF YOUR SEPARATE INTEREST IS PLACED IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR ASSESSMENTS, IT MAY BE SOLD WITHOUT COURT ACTION."

- (d) An itemized statement of the charges owed, showing the amount of any delinquent Assessments, the fees and reasonable costs of collection, reasonable attorney's fees, late charges and interest, if any.
- (e) A statement that the Owner shall not be liable to pay the charges, interest and costs of collection if it is determined that the assessment was paid on time to the Association.
- (f) A statement that the Owner shall not be liable for charges, interest or costs of collection if it is established that the assessment was properly paid on time.
- (g) A statement that the Owner has the right to request, and upon request the Association shall participate in, a meeting to discuss establishing a payment plan to satisfy Delinquent Assessments.
- (h) A statement that the Owner has the right to request, and upon request the Association shall participate in, Alternative Dispute Resolution as set forth in Civil Code Sections 5900-5920 or Sections 5925-5960. The form of Alternative Dispute Resolution, if any, used to resolve a dispute arising from Delinquent Assessments shall be the choice of the Owner, except that binding arbitration shall not be used if the Association intends to commence a judicial foreclosure. Should the Owner make such a request, the Association shall not record a lien or initiate foreclosure action without participating in Alternative Dispute Resolution. If it is determined through dispute resolution or Alternative Dispute Resolution that the Association has filed a lien for a Delinquent Assessment in error, the Association shall be required to reverse specified charges and take other corrective actions.
- (i) If a lien is recorded against an Owner's Unit in error, the person who recorded the lien must record a lien release within twenty-one (21) days, and must provide the Owner certain documents in this regard.

6.08 **Payments and Payment Plans.**

- (a) The Association must provide a receipt for payment of assessments, indicating the date of payment and the person who received it, if requested by an Owner. However, the Association is not obligated to accept and credit a partial payment tendered by an Owner except after the Association and the Owner have entered into a written payment agreement approved by the Board.
- (b) The Association must inform all Owners of a mailing address for overnight payments.

- (c) An Owner may dispute an assessment debt by submitting to the Association a request for dispute resolution under Civil Code Section 5900-5920, The Association may not commence foreclosure without participating in dispute resolution under Civil Code Section 5925-5960 if requested by the Owner.
- (d) An Owner may submit a written request to meet with the Board to discuss a payment plan for the debt pursuant to Section 5.6 above. The Board shall meet with the Owner in executive session or by a designated committee of one or more Members within forty-five (45) days of the postmark of the request, if the request is mailed within fifteen (15) days of the date of the postmark of the Notice of Delinquent Assessment.
- (e) Payment plans may incorporate any assessments that accrue during the payment plan period.
 - (1) Payment plans shall not impede the Association's ability to record a lien on the Owner's Unit to secure payment of delinquent Assessments.
 - (2) Additional late fees shall not accrue during the payment plan period if the Owner is in compliance with the terms of the payment plan.
 - (3) Payment plan terms may include waivers of the statutory requirements as to notice, timing and how payments are applied to delinquent amounts, so as to best preserve the security interest of the Association.
- (f) 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 and pursue any remedies provided for in the payment plan.

6.09 **Collection of Assessment Debts Not Collectible Through Foreclosure.**

Delinquent Regular or Special Assessments of less than one thousand eight hundred dollars (\$1,800), exclusive of interest, charges and fees, may be collected in any of the following ways, as provided by Civil Code Section 5655 or successor statute:

- (a) By a civil action in small claims court;
- (b) By recording a lien on the Owner's separate interest upon which the Association may not foreclose until the amount of Delinquent assessments exceeds one thousand eight hundred dollars (\$1,800) or the delinquency is for longer than twelve (12) months); or
- (c) Any other manner provided by law except judicial or non-judicial foreclosure.

6.10 **Right of Redemption.**

A non-judicial foreclosure by the Association shall be subject to a right of redemption from a foreclosure sale within ninety (90) days after the foreclosure sale.

6.11 **Nonuse and Abandonment.**

An Owner does not waive or otherwise avoid liability for Assessments by nonuse of the Common Area(s) or abandonment of a Unit.

6.12 **Waiver of Exemptions.**

With respect to Assessment liens, each Owner waives (to the extent permitted by law) the benefit of any California homestead or exemption laws in effect when any Assessment or installment becomes delinquent or a lien is imposed.

6.13 **Reimbursement Special Assessments.**

In the event that the Association incurs expenses, including attorney's fees relating to efforts to compel compliance by an Owner/Tenant as to the governing documents or to repair damage to Common Areas which was caused by an Owner, invitee or family member of Owner or Tenant, the Association shall be entitled to levy a Reimbursement Special Assessment against the Owner for all expenses incurred by the Association. This Reimbursement Special Assessment may become a lien against the Unit of the responsible Owner, subject to the foreclosure provisions in this Article.

6.14 **Emergency Special Assessments.**

Pursuant to Civil Code Section 5605-5610 the Board of Directors shall have the authority to levy, without the approval of the membership, an emergency special assessment to pay: (1) an extraordinary expense required by an order of a court; (2) an extraordinary expense necessary to repair or maintain the Common Areas or any portion of the separate interest which the Association is obligated to maintain, where a threat to personal safety is discovered; and (3) an extraordinary expense necessary to repair or maintain the Common areas or any portion of the separate interest which the Association is obligated to maintain, including insurance costs, that could not have been reasonably foreseen by the Board in preparing and distributing the Association's annual budget. In the event that the emergency assessment is levied for (3) the Board shall pass a resolution containing written findings as to the necessity of the expense and why the expense was not reasonably foreseeable in the budgeting process. Said resolution shall be distributed to the members in conjunction with the notice of the assessment.

6.15 **No Offsets.**

All assessments shall be payable in the amount specified by the Association and an Owner shall not be entitled to offset, or otherwise withhold payment of assessments based on any claim against the Association of any kind whatsoever.

ARTICLE VII

ARCHITECTURAL CONTROL

7.01 **Approval by the Board.**

- (a) Any exterior alteration or improvement or change to the exterior of a Unit anywhere on the Property (including any Common Area) or any interior improvement that may impact structural integrity, sound attenuation between units, water proofing, electrical, plumbing, fire ratings or mechanical systems must first be approved in writing by the Board. In the Board's discretion, the review process may be delegated to a committee appointed by the Board, subject to final approval in writing by the Board. Exterior alterations include changes in landscaping within yard areas which will be visible from the Common Areas or another Unit.
- (b) Complete plans and specifications must be submitted in writing which clearly describe all proposed alterations, improvements and changes and lists materials, sizes, color, models, types, design and landscaping details applicable to the proposal. The signature of the Owner shall appear on each of these documents. Any and all approvals are expressly conditioned upon compliance and adherence to the plans and specifications submitted and the Owner obtaining all necessary building or related permits for the work. All work requiring a building permit shall only be performed by a licensed contractor with liability insurance. Proof of licensure, insurance and permit shall be submitted by the owner prior to commencing work upon approval of architectural modifications.

7.02 **Certain Procedures for the Board.**

- (a) If the Board fails to rule on a proposal within sixty (60) days after complete plans and specifications have been submitted as outlined below, the plans will be considered automatically approved if the alteration or modification as installed is not inconsistent with the pre-existing aesthetical and architectural appearance of the Project.
- (b) Complete plans and specifications must be either:

- (1) Personally delivered to the Association through its then property manager at the office of the property manager;
- (2) Mailed postage prepaid, certified mail, return receipt requested to the Board at the office of the Association's then property manager.
- (3) The Association shall provide the Owner with a written acknowledgment of receipt for the plans submitted indicating the date and time of receipt by the Association.

7.03 **Enforcement by Owners.**

If the Association fails to take corrective action with regard to any violation of the architectural rules and regulations within a reasonable period of time after knowledge of a violation, an Owner may take legal action to enforce these provisions.

7.04 **No Waiver.**

Board approval of a particular proposal made by an Owner does not limit the Board's right to withhold approval for similar proposals by another Owner submitted at a later date.

7.05 **Review Standards.**

- (a) The Board must approve or reject plans and specifications submitted for proposed construction or alteration based on:
 - (1) Aesthetic aspects of design, placement, landscaping, color, finish, materials all conform harmoniously with the existing appearance of the Project. All windows and doors must be of the same appearance and style typically used in the project;
 - (2) Overall benefit or detriment to the Property and the area immediately surrounding the Unit involved, including preservation or increasing the value of the Units within the Project.
- (b) The Board or the delegated architectural review committee is not responsible for approval of plans from the standpoint of structural safety, life safety, construction or design quality or performance or conformance with building codes.

7.06 **Rules and Regulations.**

The Board may adopt, amend and repeal reasonable Rules and Regulations to implement the provisions of Article VII.

7.07 **Variances.**

The Board, in its sole discretion, shall have the authority to allow reasonable variances in order to avoid unnecessary expense or hardship.

7.08 **Compliance With Governmental Regulations.**

Review and approval by the Board of any proposal, application, plans or submittals pertaining to alterations or improvements shall in no way constitute or be construed to constitute satisfaction of governmental requirements or building department requirements. In addition to complying with the plans, specifications and application submitted for architectural review, the Owner shall be obligated to obtain all required inspections and approvals from applicable governmental agencies. Approval of an architectural application and the constructed alteration or improvements by the Board or Association shall be expressly conditioned upon the Owner obtaining approvals by applicable governmental agencies.

ARTICLE VIII

MORTGAGEE PROTECTION

8.01 **Subordination of Lien and Foreclosure**

(a) Any lien created or claimed in this Declaration:

(1) Is subject and subordinate to the rights of any first Mortgage and/or Protected Mortgage that encumbers any part of the Property made for value in good faith; and

(2) May not in any way impair or invalidate the obligation or priority of a first Mortgage and/or Protected Mortgage unless expressly subordinated in writing by the Mortgagee.

(b) Foreclosure of any Assessment lien created by any provision of this Declaration shall not operate to impair any lien encumbered by a first Mortgage and/or Protected Mortgage made for value in good faith.

- (c) Upon foreclosure of a first Mortgage and/or Protected Mortgage, the purchaser:
 - (1) Will take the Condominium title free of any Assessment lien accrued up to the time of the foreclosure sale (provided that nothing herein is intended to impair the rights of the Association to receive payment on any Assessment lien in the event the net sale proceeds are in excess of what is owed on all encumbrances prior to the Assessment lien);
 - (2) Is only obligated to pay Assessments or other Association charges accruing after the Unit title is acquired; and
 - (3) Where the Mortgagee obtains title with a deed in lieu of foreclosure, any Assessment lien will not be extinguished.

8.02 Effect of Breach of Declaration.

- (a) Breach of this Declaration may be enjoined or abated by court action by the Association, or any Unit Owner, and damages may also be awarded provided that:
 - (1) The violation does not impair or invalidate the Mortgage lien or deed of trust made for value in good faith; and
 - (2) This Declaration binds any Owner whose title is derived through foreclosure, trustee's sale or otherwise.

8.03 Restrictions on Certain Changes.

Eligible First Mortgagees and/or Protected Mortgagees are holders of First Mortgages and/or Protected Mortgages who have requested the Association in writing to notify them of specified proposals and changes to the Governing Documents.

At least fifty-one percent (51%) of Owners and at least fifty-one percent (51%) of the votes of Eligible First Mortgagees and/or Protected Mortgagees must give written approval before the Association may, by act or omission, do any of the following:

- (a) Alter the method of determining assessments or other charges levied against an Owner;

- (b) Use hazard insurance proceeds for losses to the Property (Unit or Common Area) for other than repair, replacement or reconstruction of the relevant Property (except as provided by statute in case of substantial loss to the Units or Common Areas);
- (c) Change, waive or abandon any regulations or enforcement pertaining to the architectural design, the exterior appearance or the maintenance of the Units or the Common Area(s).
- (d) Terminate or fail to renew Fire and Extended Coverage on insurable Common Area(s) as specified in this Declaration.
- (e) Amend any provision of the Governing Documents concerning:
 - (1) Voting rights;
 - (2) Rights to use the Common Area(s), and reallocation of interests in the Common Area (including Exclusive Use Common Areas);
 - (3) Reserves and responsibility for maintenance, repair and replacement of the Common Property;
 - (4) Unit boundaries;
 - (5) Owners' interests in the Common Area;
 - (6) Convertibility of Common Area into Units or Units into Common Area;
 - (7) Establishment of self-management by the Association where professional management has been required by any beneficiary, insurer or guarantor of a first Mortgage and/or Protected Mortgage;
 - (8) Assessments, Assessment liens, or the subordination of such liens;
 - (9) Casualty and liability insurance (or other insurance or fidelity bonds);
 - (10) Any provisions that are for the express benefit of first Mortgagees and/or Protected Mortgagees, insurers or governmental guarantors of first Mortgages and/or Protected Mortgages.
- (f) Change, waive or abandon the provisions of this Declaration (and their enforcement) pertaining to architectural design and control of the exterior

appearance of structures, maintenance of the Common Area(s), walks, fences, driveways, lawns and plantings on the Property.

- (g) An Eligible First Mortgagee's (and/or Protected Mortgagee's) approval will be considered granted if a negative response is not delivered to the Board within thirty (30) days after it receives notice of the proposed amendment, provided notice was delivered personally or by certified or registered mail, return receipt requested. To the extent an amendment does not alter or change provisions or rights described in (e) of this section, an Eligible First Mortgagee shall not be entitled to vote on the Amendment.

8.04 **Inspection of Association Books and Records.**

Any first Mortgage and/or Protected Mortgage holder has the right to examine the books and records of the Association.

8.05 **Condemnation Awards and Insurance Proceeds.**

- (a) First Mortgagees and/or Protected Mortgagees have priority over any other party (including the Owner) pursuant to their Mortgage in a case of a distribution to Owners of insurance proceeds or condemnation awards for losses to or taking of Units or Common Areas. Any provision to the contrary in this Declaration, the Bylaws, or other Governing Documents is to such extent void.

8.06 **Mortgagee's Right to Attend Meetings.**

Any Mortgagee may appear at Association and Board meetings, but is not eligible to vote or participate.

8.07 **Payments by Mortgagees.**

- (a) First Mortgagees and/or Protected Mortgagees may pay the following jointly or severally:
 - (1) Taxes or other charges in default which may be a charge against any part of the Common Area(s); and
 - (2) Overdue premiums on hazard insurance policies, or to secure new hazard insurance coverage on the lapse of a policy for the Common Area(s).
- (b) Upon making such payments, the Association:

- (1) Owes immediate reimbursement to first Mortgagees and/or Protected Mortgagees making such payments; and
- (2) Must, upon Mortgagee's request, execute an agreement that reflects the first Mortgagees' and/or Protected Mortgagees' entitlement to such reimbursement.

8.08 **Notices to Mortgagees.**

- (a) The holder, insurer or guarantor of each Mortgage on any Unit is entitled to timely written notice of:
 - (1) Any condemnation or casualty loss that affects a material portion of the Project or the Unit securing its mortgage;
 - (2) Any sixty-day delinquency in the payment of Assessments or charges owed by the Owner of any Unit on which it holds the mortgage;
 - (3) A lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association; and
 - (4) Any proposed action that requires the consent of a specified percentage of Eligible First Mortgage Holders and/or Protected Mortgage Holders.
- (b) To obtain the information above, the mortgage holder, insurer or guarantor must send a written request to the Association, stating both its name and address and the unit number or address of the unit it has the mortgage on.

ARTICLE IX

DESTRUCTION OF IMPROVEMENTS

9.01 **Restoration of the Property.**

- (a) If insurance proceeds cover at least eighty-five percent (85%) of restoration costs to the Common Areas, the Association shall cause Common Area damage to be repaired
- (b) If insurance proceeds cover less than eighty-five percent (85%) of restoration costs for the Common Area, then the vote (or written assent) of a majority of the Owners must approve proceeding with restoration and a Special Assessment to be levied by the Board.
- (c) If the estimated cost of repair does not exceed twenty five thousand dollars (\$25,000.00), the Board must cause the repair to occur without the consent of Members irrespective of the available amount of insurance proceeds. The Board is empowered to levy a Special Assessment if necessary as described herein.

- (d) If the Owners decide to rebuild, then within a reasonable period of time after the date of destruction, the Board shall record with the County Recorder a certificate of resolution authorizing such construction. A reasonable period of time shall be that period necessary to obtain sufficient information to allow the Owners to vote on the rebuilding in an informed manner. This period shall be determined in the Board's reasonable discretion. If said period extends beyond 9 months after the date of destruction, the Board may by majority vote, extend the period for a reasonable period of time by recording a Certificate to Extend Time To Vote and providing notice to the members.
- (e) If the Owners (and Mortgagees, if applicable) decide to rebuild, the Board shall levy a Special Assessment against all Owners to raise the remaining funds required for repair of such damage. Said Special Assessment shall be levied equally upon all units.
- (f) If the Owners and Mortgagees determine that restoration costs would be substantial and reconstruction would not be in their best interests, the Owners may proceed as provided below.
- (g) The Board shall act reasonably and prudently to ascertain the scope of destruction and cost of repairing said damage or destruction. If a determination is made to conduct repairs of all or part of the damaged or destroyed areas which the Association controls as common area, the Board shall obtain either contract proposals or competitive bids from and interview at least two qualified contractors for consideration to perform the repair project as part of its due diligence in selecting a contractor. The Board shall select the contractor which it believes will provide the best overall value to the Association in accomplishing the repair objectives, for a reasonable price. The Board shall, after selecting a competent contractor through the above process, negotiate a contract price and other terms with the contractor using all reasonable means to accomplish the goals of the Association. The Board may, if in its discretion it is appropriate, obtain multiple bids for the scope of work sought. In appropriate circumstances, defined by the complexity and dollar amount of repairs, the Board shall be authorized to employ a qualified consultant in the selection of a contractor to assist in determining qualifications, pricing and using value engineering. The Board shall not be required or authorized to award the repair work until it has sufficient monies to fund the reconstruction. These monies may be from a combination of insurance proceeds, special assessments, government loans or other sources, including reserve funds allocated under emergency conditions of the Civil Code. The Board, upon awarding said contract shall thereafter be authorized to disburse monies to the contractor in accordance with said contract out of the combined proceeds from insurance proceeds, special assessments and government loans

in accordance with this article. It shall be the obligation of the board to take all steps necessary to assure the commencement and completion of such reconstruction at the earliest possible date. All such reconstruction shall be in accordance with the original plans of the project to the extent permitted by the applicable governmental regulations.

- (h) In the event a government loan such as a United States Small Business Administration loan shall be obtained to fully or partially fund repairs of the common areas of the project, and said loan is approved by the majority necessary to vote to rebuild the project under this article, any special assessment levied to repay said loan shall remain in effect for the term of the loan and the obligation to pay the special assessment shall run with each condominium unit as a lien against the condominium unit until the loan is repaid. This section shall only be effective if the loan obtained is conditioned upon the passage of a special assessment to be paid by each unit owner based upon percentages as set out in section 6.03 herein.

9.02 **Sale of Property and Right to Partition.**

- (a) If the Association elects not to rebuild, an independent M.A.I. (Member Appraisal Institute) appraiser (or an appraiser of comparable experience) shall determine the relative fair market values of all condominiums as of a date immediately prior to any damage or destruction and the proceeds of insurance shall be apportioned among all Owners, and their respective Mortgagees, in proportion to such values.
- (b) An Owner may not partition his or her interest in the Condominium, and there may be no judicial partition of the Property, except:
 - (1) If a certificate of a resolution to rebuild has not been recorded within a reasonable period after the destruction; or
 - (2) If restoration has not begun within a reasonable time, then conditions for partition as set forth in Subdivision (4) of California Civil Code Section 4610 will be deemed satisfied.
 - (3) If a Certificate Not To Rebuild is recorded in the County Recorder's office which states that the Association has met any of the conditions set forth Civil Code Section 4610.
- (c) In case of partition based on meeting the conditions set forth in Civil Code Section 4610, the Association (acting through a Board majority) is authorized and must promptly record a certificate that states:

- (1) That a Board majority has irrevocable power of attorney to sell the Property for the Owners' benefit and execute whatever documents are necessary for the Association to sell the Property for the best price, either in its damaged condition, or after damaged structures have been razed; and
 - (2) That the certificate is conclusive evidence of authority for any person relying upon it in good faith.
- (d) Net proceeds from sale, condemnation award (affecting all or a part of the Common Area which is not apportioned among Owners by court judgment or by agreement between condemning authorities and each of the Owners) and/or Association insurance must be divided proportionately among the Owners according to an appraised fair market value of the Condominiums (as of a date immediately prior to destruction or condemnation), computed by dividing the value of each Condominium by the total value of all Condominiums. Appraiser(s) hired by the Board for this purpose will be paid as an Association Common Expense.
- (e) The balance due on any valid encumbrance of record will be paid in order of priority before the distribution of any proceeds to the relevant Owner.

9.03 **Notices to Owners and Listed Mortgagees.**

Immediately upon learning of any material damage or destruction to the Common Property or any Unit in which the cost of repairs is expected to exceed \$25,000, the Board must notify all Owners, and Beneficiary, insurer or guarantor of any relevant Mortgage who have filed a written request for Board notice.

ARTICLE X

CONDEMNATION

10.01 **Representation by the Board in Condemnation Proceedings.**

In case any Condominium is taken by condemnation or sale by eminent domain:

- (a) The Board will be the sole representative of all Members in any action to recover awards and all aspects of condemnation proceedings (subject to Mortgagees who have requested to join the Board in the proceedings); and

(b) Members may not challenge the Board's good faith in fulfilling these duties.

10.02 **Distribution of Award.**

- (a) In case of condemnation or sale by eminent domain, the Board must distribute any award according to these provisions (after deducting fees and expenses related to the condemnation proceedings).
- (b) Any award to a unit Owner must first be applied toward payment of any balance due on any Mortgages of record for that unit, in order of priority.
- (c) If condemnation judgment apportions the award among the Owners and Mortgagees, the Board will distribute the remaining amount (after deductions above) according to the terms of the judgment allocation.
- (d) If by sale under threat of condemnation (or if the judgment of condemnation fails to apportion the award), the Board will distribute the award based upon relative values of the affected Condominiums as determined by an independent M.A.I. appraiser(s) hired by the Board and approved by fifty-one percent (51%) of the Mortgagees. If said percentage of Mortgagees do not approve, then any Mortgagee may hire an M.A.I. appraiser at their own cost, and the award amount will be calculated based upon the average of all appraisals obtained.
- (e) The determination of the appraiser(s) of each Condominium's value and degree of affect by the proceedings will be final and binding on all Owners and Mortgagees.
- (f) An Owner does not have priority over a Mortgagee for the condemnation award allocated to the Condominium.
- (g) An award may not be distributed to an Owner or Mortgagee in excess of the allocated amount.

10.03 **Inverse Condemnation.**

The Board may bring an inverse condemnation action, in which case these provisions apply with equal force.

10.04 **Revival of the Right to Partition.**

- (a) If condemnation or sale by eminent domain renders more than twenty percent (20%) of the Units incapable of substantial restoration to prior condition (of at least ninety-five percent (95%) of the floor area):

- (1) The Board must call an Owners' meeting within sixty (60) days by mailing notice to each Owner at the address in the Association records; and
 - (2) The Owners may permit sale and partition of the entire Property (by a fifty-one percent (51%) vote or written consent of the Owners, based on one (1) vote per Unit), in which case an Owner's right to partition through legal action is revived.
- (b) The Board shall determine whether Condominiums partially taken are capable of being restored, and their decision is final and binding.

10.05 **Awards for Members' Personal Property and Relocation Allowances.**

- (a) In case of condemnation or sale by eminent domain, each Owner has exclusive right to claim from any award or proceeds received by the Association:
- (1) All of the award made for the Member's personal Property: and
 - (2) Relocation and moving expenses.

- (b) The Board may represent each Member in an action to recover awards regarding the Members' personal property, and must allocate the proportional amount of any award attributable to the appropriate portion of each Member's personal property.

10.06 **Notices to Members.**

As soon as the Board learns of any potential condemnation or sale by eminent domain, it must notify all Members and First Mortgagees who have filed a written request for notice (see "Mortgagee Protection" Article).

10.07 **Change of Condominium Interest.**

- (a) In case of condemnation or sale by eminent domain, the Board may amend the Condominium Plan to reflect changes (subject to this Declaration).
- (b) If the Board records such an amendment, all relevant Owners and security interest holders must:
 - (1) Execute and acknowledge the amendment in compliance with California Civil Code Section 4120 (or any similar statute in effect); and
 - (2) Execute other documents and take other actions required to make the amendment effective.
- (c) The Board must send a notice of Condominium Plan change to each Owner and Mortgagee within ten (10) days after the amendment is filed in the relevant County Recorder's Office.

ARTICLE XI

**COVENANT AGAINST PARTITION AND RESTRICTION
ON SEVERABILITY OF CONDOMINIUM COMPONENT INTEREST**

11.01 **No Partition; Exceptions; Power of Attorney.**

- (a) The right of partition is hereby suspended (except that the right to partition revives and the Property may be sold as a whole when the provisions of this Declaration or Civil Code Section 4610, concerning Destruction and Eminent Domain are met).

- (b) Upon meeting the requirements of the Declaration or the Civil Code, an Owner may bring an action for partition by sale as provided in California Civil Code Section 4610 (or any similar statute in effect at the time).
- (c) These provisions do not prevent a judicial partition between co-tenants of a Unit.
- (d) Subject to obtaining the prior approval by vote or written consent of fifty-one percent (51%) of the Owners and First Mortgagees who have given notice hereunder, Association (through its Board) has irrevocable power of attorney for the following circumstances:
 - (1) To sell the Property (subject to court approval) for the benefit of Owners and Mortgagees when the conditions for seeking partition under California Civil Code Section 4610 are met;
 - (2) Only after a certificate executed by a majority of Board Members is recorded which states that power of attorney is duly exercisable under the circumstances.
- (e) In the event that the appropriate consent is obtained pursuant to Article XI, Section 11.01(d), the Board, pursuant to its irrevocable power of attorney, may elect to partition and sell the project judicially by filing a partition action and obtaining a judgment for partition and approving a sale.

11.02 Proceeds of Partition Sale.

- (a) Whenever the project is declared partitioned and is sold, the Owners will share the proceeds in the same proportion as the relative values of each Condominium, determined by comparing its fair market value on partition date (established by an M.A.I. Appraiser selected by the Association) to the total assessed value of all Units in the Property on that date.
- (b) Distribution of partition sale proceeds must be adjusted to reflect prior condemnation awards or insurance proceeds paid to Owners and Mortgagees.
- (c) In case of partition and sale, provisions of all Mortgages and Assessment liens extend to each Owner's interest in the resultant proceeds.
- (c) An Owner's interest may only be distributed upon prior payment of any Mortgage or Assessment encumbering the proceeds.

ARTICLE XII

EASEMENTS

12.01 Certain Easements for Owners.

Declarant grants nonexclusive easements for enjoyment, ingress, egress, pedestrian walkway and general recreation purposes over and upon the Common Areas and Facilities (except Exclusive Use Common Areas, if any) to all Owners, subject to the Governing Documents.

12.02 Certain Easements for Association.

Pursuant to the original Declaration, the Association holds nonexclusive easements over the Common Areas and Units to the Association to discharge its obligations as described in this Declaration.

12.03 Encroachment.

The Association and Owners of contiguous Units have a reciprocal easement appurtenant to each of the Units and Common Areas for the following purposes:

- (a) Accommodating any existing encroachment of a wall or structure; and
- (b) Maintaining any structure and accommodating authorized construction, reconstruction, repair, shifting, movement or natural settling.

12.04 Creation of Easements.

- (a) Easements referred to herein are established upon the recordation of the first deed conveying a condominium in the Project, and the provisions hereof with respect to such easements shall be covenants running with the land for the use and benefit of Units and Property superior to all other encumbrances.
- (b) Individual grant deeds to Units shall state that the grant is made subject to the provisions of this Declaration, and may set forth reference to these easements, but are not required to do so.

12.05 Utility Easements.

The Association may grant easements and rights of way through the Common Area(s) and units for water, sewer, telephone and cable lines, storm drains, underground conduits, sprinkler systems, and other purposes intended to

maintain the health, safety, convenience and enjoyment of the Units and Common Area(s).

ARTICLE XIII

AMENDMENT

13.01 Amendment.

- (a) This Declaration may only be amended in the following ways (and subject to the Article entitled "Mortgagee Protection"):
 - (1) A signed, written instrument from fifty-one percent (51%) of Association Members; or
 - (2) A signed, written instrument by the Association president certifying that the relevant amendment has been approved by at least fifty one percent (51%) of Association Members or pursuant to a court order under Civil Code Section 4275.
- (b) Any amendment must be properly recorded in the relevant County Recorder's Office.
- (c) The percentage of Association Members needed to amend this Declaration may not be less than the percentage of affirmative votes prescribed for action to be taken under the relevant provision.
- (d) An Owner or the Association may petition the Superior Court for an order reducing the percentage of affirmative votes needed to amend this Declaration (pursuant to Civil Code Section 4275, or any successor statutes).

ARTICLE XIV

MISCELLANEOUS PROVISIONS

14.01 Enforcement: Resolution of Disputes.

- (a) An Owner or the Association may enforce by legal action any restrictions, conditions, covenants, reservations, liens, Assessments, fees and penalties imposed by this Declaration or other Governing Documents for violations

committed by any offending party, or with respect to any dispute related to any portion of any property covered by the Declaration.

- (b) Failure to take action does not constitute a waiver of the right to take action.
- (c) Reference is hereby made to California Civil Code Section 5925-5965 which sets forth pre-filing requirements, or arbitration proceedings and other procedures for certain types of enforcement actions.
- (d) It is recommended, although not required, that the Board consider diversion of the prosecution or defense of any civil action to Alternative Dispute Resolution proceedings, including, but not limited to Mediation, Non-binding Arbitration, or Binding Arbitration.
- (e) If the Board diverts any civil action to an Alternative Dispute Resolution proceeding, the Board shall agree to:
 - (1) Participate fully, and in good faith, in the resolution of any such action diverted to an Alternative Dispute Resolution proceeding; and
 - (2) Pay its pro rata share of the costs reasonably incurred to participate in Alternative Dispute Resolution proceedings.
- (f) The Board shall, in good faith, attempt to provide reasonable advance notice of the Board's intent to initiate the prosecution of any civil action, along with the nature and basis of the claim, to every member of the Association and every entity or person who is a prospective party to the civil action, provided that notice can be given:
 - (1) More than one hundred twenty (120) days prior to the expiration of any pertinent statute of limitations, and
 - (2) Without prejudice to the Association's right to enforce the Governing Documents.
- (g) No such notice need be given prior to the filing of an action in small claims court or an action solely to enforce assessment obligations.
- (h) Prior to initiating any civil action, the Board is not required to:
 - (1) Conduct inspections;

- (2) Maintain inspection records;
 - (3) Exhaust applicable casualty insurance coverage maintained by the Association;
 - (4) Provide an opportunity to cure;
 - (5) Meet with Members, or obtain the consent of the Members except as provided in Civil Code Section 5985 concerning actions against the developer, in which case the provisions of that section shall be followed.
 - (6) Submit any civil claims to Binding or Non-binding Alternative Dispute Resolution proceedings (except in compliance with the provisions of Civil Code Section 5975) or Civil Code Section 6000 pertaining to construction defect litigation against the developer.
- (i) Immediately after initiating the prosecution or defense of any civil action, the Board shall make a reasonable effort, in good faith, to:
- (1) Meet and confer with every person who is a party to the appropriate processes for resolving the civil action, including available Alternative Dispute Resolution proceedings;
 - (2) Provide an opportunity to correct any alleged defect in the Common Area(s), if this is the cause for the action, in order to avoid or reduce any costs or losses which may be incurred by the parties involved in the action;
 - (3) Provide for the scope of discovery, if any is required for the action, to be conducted prior to the inception of any Alternative Dispute Resolution procedure.

14.02 **Injunctive Relief Remedy**

Any breach of any provision of this Declaration, which are to be construed as equitable servitudes, shall constitute a nuisance and shall entitle the Association to an injunction to compel abatement of the nuisance and compliance with the terms of the Declaration, without demonstrating irreparable harm or the inadequacy of legal remedies.

14.03 **Term of Declaration.**

- (a) This Declaration is binding upon all parties for sixty (60) years after the recording date.
- (b) After sixty (60) years, the Declaration will automatically be extended for successive ten (10) year periods, unless the Owners (heirs, successors, representatives) of a majority of subject Units record a signed, written instrument:
 - (1) At least one (1) year before the beginning of any ten (10) year period; and
 - (2) Agreeing to change or terminate this Declaration.

14.04 **Notices.**

Any required notice must be given in writing by:

- (a) Personal delivery to the location of the address of the recipient of the Notice; or
- (b) Mailing by first-class, registered or certified pre-paid U.S. mail (deemed given five (5) days after deposit in the mail);

- (c) Delivery by a reputable overnight courier service such as Federal Express, United Parcel Service, etc. (deemed given upon delivery to the location of the address of the recipient of the Notice); or
- (d) Facsimile transmission (deemed given upon date of transmission upon confirmation of receipt) or Email transmission if consented to by the parties.

14.05 **Partial Invalidity.**

If any of this Declaration is declared invalid or in conflict with any relevant law, the validity of the remainder of this Declaration will remain in full force and effect.

14.06 **Number.**

As required by the context of this Declaration, a singular grammatical reference includes the plural application.

14.07 **Attorneys' Fees.**

In any legal action by an Owner(s) or the Association to enforce any provision of the Governing Documents or for breach of same, the prevailing party shall be awarded reasonable costs (including attorney's fees). An action for breach of the Governing Document shall be deemed an action to enforce said Governing Document.

14.08 **Priorities and Inconsistencies.**

If there are conflicts or inconsistencies between this Declaration and either the Articles of Incorporation, By-laws, or Rules and Regulations of the Association, the terms and provisions of this Declaration shall prevail.

14.09 **Mergers or Consolidations.**

Upon a merger or consolidation of the Association with another association, its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association or, alternatively, the properties, rights and obligations of another association may, by operation of law, be added to the properties, rights and obligations of the Association as a surviving corporation due to merger. The surviving or consolidated association may administer and enforce the covenants, conditions and restrictions established by this Declaration governing the Property, together with the covenants and restrictions established upon any other property as one plan.

IN WITNESS WHEREOF, the undersigned, being the President of the Toy Warehouse Lofts Owners Association has executed this Declaration on behalf of the Association on the day and year first written above.

TOY WAREHOUSE LOFTS OWNERS ASSOCIATION

By: _____
Its: President