Addendum 2: Office Buildout Design Services RFP

The purpose of this Addendum 2 is to provide responses and clarification to questions received by Rethink Waste (SBWMA) from potential proposers regarding SBWMA’s Request for Proposals (RFP) for the Office Buildout Design Services, posted on August 21, 2023. Prospective proposer questions addressed herein include questions submitted during bid period. This Addendum 2 also presents the attendance sheet from the mandatory site visit, held on August 31, 2023. All terms and conditions of the RFP that are not addressed in this Addendum 2 or in other formal addenda issued on behalf of the SBWMA remain unchanged.

The document is organized into the following sections:

- Questions asked by Prospective Proposers
- Mandatory Site Visit Attendance Sheet (August 31, 2023)

1. QUESTIONS ASKED BY PROSPECTIVE PROPOSERS

1.1 Will a furniture inventory be made available to the Architect upon selection to speed up the design process? Or should this be part of our services and time? Please clarify the extent of inventory required of the existing furniture.

**SBWMA Response:** Proposers shall use a combination of existing office and new FF&E in the design of the new office space. SBWMA will provide the existing furniture inventory upon selection and board approval of the consultant by Architectural Design Services contract award.

1.2 What is the project’s construction budget?

**SBWMA Response:** The engineer’s estimate for the entire project budget, which includes construction, construction management, space layout and technical design, permitting, project management, contingency and any support services is approximately $850,000. The construction services will be procured by public bid.

1.3 Is there any landscaping scope in the project?

**SBWMA Response:** There is no landscaping scope in the project.

1.4 Please verify the height of the space.

**SBWMA Response:** Proposers shall use the approximate height of 21 feet (floor concrete deck to ceiling concrete deck) for the purpose of this proposal. The selected consultant shall perform their own field verification for the final design.

1.5 Please clarify where the added new window(s) will be in the exterior façade.

**SBWMA Response:** Where feasible, the SBWMA would like new exterior windows to be included in the design to increase natural light to the entire office unit and proposed mezzanine space. Based on
preliminary structural engineering evaluation, the back wall of the unit seems to be a potentially viable location. There is a breezeway on the other side of the back wall of the unit, which is roofed but open aired. The eastern-most wall is also another potential location for additional windows; this has not been structurally verified. The selected consultant shall validate all potential new window locations in the final design.

1.6 Would you consider bidding the MEP with a BOD as design-build?

**SBWMA Response:** The SBWMA is currently not considering bidding this project as design-build.

1.7 Please clarify what is meant with the term “turnkey”.

**SBWMA Response:** “Turnkey” is meant to be used to describe “all inclusive” unless specific tasks have been deleted by the SBWMA or agreed to by the SBWMA and consultant to be excluded.

1.8 Please provide a calendar of the board meetings and when the proposed approvals for the following milestones would be expected, in order to achieve the proposed end-of-June move-in date.

- Design award of contract
- Phase 3 - Final Concept Design
- Phase 4 - Design Development (60%) submittal
- Phase 6 – Construction Document (90% or 100%) submittal
- Award of General Contractor bid

**SBWMA Response:** The SBWMA Board of Directors (BOD) meetings are usually held on the fourth Thursday of each month from 2pm – 4pm, unless otherwise stated in the Board Meeting Schedule, uploaded to the SBWMA website ([https://rethinkwaste.org/meetings/](https://rethinkwaste.org/meetings/)).

Below are the following planned project milestones that require BOD approval.

- **September 28, 2023:** Award of the contract for the Architect Design services. Further design phases do not require BOD approval.
- **November 16, 2023:** Presentation of the final design and bid documents and approval to go out to bid.
- **January 25, 2024:** Award of the General Contractor bid.

1.9 How often is the Agency Staff available to meet with the Design Team to accomplish the required meetings (approximately 7 to 10 meetings)?

**SBWMA Response:** The SBWMA staff is available to meet on average two (2) times a month to complete this project and has flexibility to meet more if necessary.
1.10 No project budget was included in the RFP, but in the walk-through, a project of $850,000 was indicated. Which of the following items should be considered included in the Project Budget?

- General Contractor bid
- Construction change order contingency/allowance
- Design Professional fee for service
- Design Professional reimbursable cost (printing, mailing, etc.)
- Building Permit fees (Plan Check and or Building Permit, building, electrical, plumbing, mechanical)
- Any other City department fees included as part of getting a building permit (Utility connections, park, and recreation)
- Owner testing and special inspection Laboratory
- Material testing, if required by the Agency
- Owner outside Project Management
- Owner Project Contingency

**SBWMA Response:** The engineer’s estimate of the entire project budget for complete project delivery is approximately $850,000, which includes construction, construction management, design, permitting, project management, contingency and any support services.

1.11 Is the Consultant’s assistance with documentation for California Environmental Quality Act (CEQA) analysis included in the project schedule? Who is the Consultant assisting: the Owner, San Carlos, or an outside consultant?

**SBWMA Response:** The consultant would assist only the SBWMA/owner.

1.12 What is the Owners written program that was the basis for the Addendum 1 floor plans, (number of workstations, IT equipment, storage needs, special equipment, conference room occupancy needs, etc.)?

- Does the space program and preliminary floor plans take into consideration potential future expansion or are they based solely on your current needs?

**SBWMA Response:** The SBWMA provided the following scope to KRJ Design Group to prepare Exhibit H Test-Fit Space Planning Feasibility Study, which takes into consideration foreseeable future expansion needs:

- Preliminary test-fit plan to include first floor Lobby/reception area, 3 private offices, 1 Conference room, 1 Flex conference room/kitchen space, 1 area for conference room chair storage, 2 ADA compliant restrooms, IT equipment room, Electrical Room, HVAC equipment space, path of travel to rear entry, stairs and lift to mezzanine level
- Test-fit to include mezzanine level, to validate code requirements for such and maximum area that can be created in subject space, working with an approximate 852 sq.ft.
- Mezzanine test-fit to include 2nd level landing, area of stair and lift arrival, egress stairs if required, open space for 10 staff (5 mid-level and 5 interns)
- Hoteling staff space for 4 and general storage needs to be included in overall test-fit
1.13 Is new equipment and furnishing design, specification, and purchase a part of the services to be provided by the design team?

**SBWMA Response:** Yes; Consultant shall include new equipment and furnishing design, specifications and purchase as part of the services.

1.14 In the mandatory walk-through, it was mentioned that the Design/Build process had been approved for use on Rethinking Waste project. What disciplines does this apply to:

- Automatic Fire Sprinkler design and documentation
- Mechanical design and documentation
- Plumbing design and documentation
- Electrical design and documentation

**SBWMA Response:** The SBWMA is currently not considering bidding this project as design-build.

1.15 In the Addendum, the height between floor and the bottom of slab of the 2nd floor has been provided, but not the clear height under the existing utilities to remain under the area where the mezzanine is proposed.

- Please confirm the proposed Mezzanine floor height is 10’ above the finish 1st floor.
- Please confirm that the lowest utilities above the mezzanine provides for 8’ height clearance.

**SBWMA Response:** See below photo of the existing utilities, which shows the HVAC duct that is the lowest utility run, approximately 16’ – 6” clear from floor. This HVAC duct is close to the edge of the proposed mezzanine. The selected consultant shall perform their own field verification of the clear height of all existing utilities for the final design.
1.16 Is there additional storage space in the building allowed to be used for this office unit?

**SBWMA Response**: There is no additional storage space in the building outside of the unit.

1.17 Can the SBWMA share a copy of the real estate disclosures?

**SBWMA Response**: In a commercial real estate transaction, there are no disclosure packets. It is the responsibility of the buyer to perform due diligence. The SBWMA does have a copy of the Declarations of Covenants Conditions and Restrictions (CCR) that can be shared. See attached copy of the CCR and first amendment to the CCR.

1.18 Will a cost estimating consultant be required?

**SBWMA Response**: Consultants may either use in-house or 3rd party cost estimators. The SBWMA will take the progress cost estimates very seriously, and it will be a major consideration of the overall satisfaction of the consultant’s performance.
2. SITE VISIT ATTENDANCE SHEET

2.2 Site Visit Attendance Sheet

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DECLARATION OF COVENANTS
CONDITIONS AND RESTRICTIONS
OF
WHEELER PLAZA
A Common Interest Development

SECTION 10.6 OF THIS DOCUMENT CONTAINS
BINDING ARBITRATION PROVISIONS
IN ACCORDANCE WITH THE
FEDERAL ARBITRATION ACT

CONSULT WITH AN ATTORNEY
IF YOU HAVE ANY QUESTIONS ON THESE
PROVISIONS OR ANY OTHER PROVISION OF THIS DOCUMENT

If this document contains any restriction based on race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, familial status, marital status, disability, genetic information, national origin, source of income as defined in subdivision (p) of Section 12955, or ancestry, that restriction violates state and federal fair housing laws and is void, and may be removed pursuant to Section 12956.2 of the Government Code. Lawful restrictions under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status.
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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF WHEELER PLAZA
A Common Interest Development

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF WHEELER PLAZA ("Declaration") is made by WHEELER PLAZA, LLC, a Delaware limited liability company ("Declarant").

ARTICLE 1
APPLICABILITY AND DISCLOSURES

1.1 FACTS: This Declaration is made with reference to the following facts:

1.1.1 Property Owned by Declarant: Declarant is the owner of all the real property and Improvements thereon located in the City of San Carlos, County of San Mateo, State of California, described as follows:

PARCEL ONE (PROJECT COMMON AREA):

Lot 1, as shown on Final Map No. 2016-01, filed for record on June 23, 2016, in Book 140 of Maps at Pages 87 through 93, inclusive, in the Official Records of the County of San Mateo, State of California ("Map"), excepting therefrom Building Common Area Parcel 1, as shown on the condominium plan recorded on June 27, 2019 as Document No. 2019-049956 in the Official Records of the County of San Mateo, State of California ("Condominium Plan").

PARCEL TWO (BUILDING COMMON AREA):


PARCEL THREE (UNITS):


Parcels One, Two, and Three, above, are located on Lot 1, as shown on the Map.

02/01/19
1.1.2 **Nature of Project:** Declarant intends to develop the Project as a Common Interest Development which shall be a condominium project as defined in California Civil Code Section 4125. The Project is intended to be created in conformity with the provisions of the Davis-Stirling Common Interest Development Act (California Civil Code, Section 4000 et seq.). To establish the Project, Declarant desires to impose on the Project these mutually beneficial restrictions, easements, assessments and liens under a comprehensive general plan of improvement and development for the benefit of all of the Owners, the Units and Common Area within the Project. The Project shall be established as a Common Interest Development upon the first conveyance of title to a Condominium subject to this Declaration.

1.2 **APPLICABILITY OF RESTRICTIONS:** Pursuant to California Civil Code Sections 4250 and 5975, Declarant hereby declares that the Project and all Improvements thereon are subject to the provisions of this Declaration. The Project shall be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved subject to the covenants, conditions and restrictions stated in this Declaration. All such covenants, conditions and restrictions are declared to be in furtherance of the plan for the subdivision, development and management of the Project as a Common Interest Development. All of the limitations, easements, uses, obligations, covenants, conditions, and restrictions stated in this Declaration shall run with the Project and shall inure to the benefit of and be binding on all Owners and all other parties having or acquiring any right, title or interest in any part of the Project. Notwithstanding the above, the City-owned parking garage located on Lot 3, as shown on the Map, as well as the entirety of Lot 3, as shown on the Map, shall be exclusively managed and controlled by the City. This Declaration does not encumber Lot 3, as shown on the Map, or the City-owned parking garage located therein.

1.3 **BOUNDARY MODIFICATIONS:** If the boundaries of real property change as a result of one or more subsequently recorded final maps, amended final maps, parcel maps, amended parcel maps, certificates of correction, lot line adjustments and/or records of survey, then, for all purposes of this Declaration:

1.3.1 **Removed From Declaration:** Property which is removed from a Common Area parcel and added to real property which is not subject to this Declaration shall no longer constitute a part of such Common Area and shall no longer be subject to this Declaration.

1.3.2 **Added to Declaration:** Property not subject to this Declaration which is added to a Common Area parcel shall be part of the Common Area parcel to which it is added and shall automatically be subject to all provisions of this Declaration.

1.4 **DISCLOSURES:** The following disclosures were correct as of the date of recordation of this Declaration:

1.4.1 **Notice of Airport in Vicinity:** California Civil Code Section 4255 mandates that the following disclosure be included in this Declaration because the Project is within an airport influence area, also known as an “airport referral area,” which is the area in which current or future airport-related noise, overflight, safety, or airspace protection factors may significantly affect land uses or necessitate restrictions on those uses as determined by an airport land use commission.

NOTICE OF AIRPORT IN VICINITY

This property is presently located in the vicinity of an airport, within what is known as an airport influence area. For that reason, the property may be subject to some of the annoyances
or inconveniences associated with proximity to airport operations (for example: noise, vibration, or odors). Individual sensitivities to those annoyances can vary from person to person. You may wish to consider what airport annoyances, if any, are associated with the property before you complete your purchase and determine whether they are acceptable to you.

1.4.2 Notice of Proximity to Commercial/Industrial/Mixed-Use - Zoned Property: State law requires that the following notice be given: “The Project is located within one mile of a property that is zoned for commercial, industrial, or mixed use. This disclosure must be provided if a search of public records reveals even one parcel of property located within a one mile radius of the Project that is currently zoned for commercial, industrial or mixed use whether or not that property is actually being used for such purposes.”

1.4.3 California Energy Commission Duct Sealing & Testing Requirement: Based on climate zone maps issued by the California Energy Commission (“CEC”), the Project is located in a designated climate zone in which properties are subject to duct sealing and testing requirements set forth by the CEC. According to the CEC, most California homes have improperly sealed central air conditioning and heating system ducts such that approximately thirty percent (30%) of the conditioned air actually leaks outside the home. Effective July 1, 2014, in order to combat this waste of energy and money, the CEC updated its residential duct sealing and testing requirements in the 2013 Building Energy Efficiency Standards (Title 24). Previously, such duct sealing and testing was required only in certain CEC-designated climate zones when a central air conditioner or furnace is installed or replaced. The revised standards now make duct sealing and testing mandatory in all California climate zones when such a system is installed or replaced. Ducts found to leak more than fifteen percent (15%) or more must be repaired. Once a contractor tests and fixes these ducts, you must have an approved third-party verifier determine that the ducts have been properly sealed. The CEC cautions homeowners that a contractor who fails to obtain a required building permit and fails to test and repair your ducts “is violating the law and exposing you to additional costs and liability.” If you do not obtain a permit, you may be required to bring your home into compliance with code requirements for that work and may incur additional penalties and fines that have to be paid prior to selling your home. Remember that you have a duty to disclose whether you obtained required permits for work performed to prospective Buyers and appraisers. Local governments may mandate more stringent requirements. Please note there are specific alternatives that allow high-efficiency equipment and added duct insulation to be installed instead of fixing duct leaks. Please also be advised that there are separate regulations which govern duct insulation levels required by climate zone and HVAC system. For more information on these requirements, please contact the California Energy Commission or visit the official CEC “2013 Building Energy Efficiency Standards” portal at http://www.energy.ca.gov/title24/2013standards/index.html.

1.4.4 Gas and Hazardous Liquid Transmission Pipeline Database Disclosure: State law requires that the following notice be given:

“NOTICE REGARDING GAS AND HAZARDOUS LIQUID TRANSMISSION PIPELINES

This notice is being provided simply to inform you that information about the general location of gas and hazardous liquid transmission pipelines is available to the public via the National Pipeline Mapping System (NPMS) Internet Web site maintained by the United States Department of Transportation at http://www.npms.phmsa.dot.gov/. To seek further information about possible transmission pipelines near the property, you may contact your local gas utility or other pipeline operators in the area. Contact information for pipeline operators is searchable
by ZIP Code and county on the NPMS Internet Web site. (California Civil Code Section 2079.10.5(a).)"

**ARTICLE 2**

**DEFINED TERMS**

Unless otherwise defined or unless the context clearly requires a different meaning, the terms used in this Declaration, the Map, the Condominium Plan and any grant deed to a Condominium shall have the meanings specified in this Article.

2.1 **ADDITIONAL CHARGES:** The term "Additional Charges" shall mean costs, fees, charges and expenditures, including without limitation, attorneys’ fees, late charges, interest and recording and filing fees actually incurred by the Association in collecting and/or enforcing payment of assessments, fines and/or penalties.

2.2 **ALTERATION:** The term "Alteration" shall mean constructing, performing, installing, remodeling, repairing, replacing, demolishing and/or changing any Improvement or changing the color, tone, intensity, shade or hue of any Improvement.

2.3 **ARCHITECTURAL STANDARDS:** The term "Architectural Standards" shall mean the portion of the Operating Rules which specifically address architectural and aesthetic matters.

2.4 **ARTICLES:** The term "Articles" shall mean the Articles of Incorporation of Wheeler Plaza Owners’ Association, which are or shall be filed in the Office of the Secretary of State of the State of California.

2.5 **ASSOCIATION:** The term "Association" shall mean the Wheeler Plaza Owners’ Association, its successors and assigns, a nonprofit mutual benefit corporation incorporated under the laws of the State of California.

2.6 **BOARD:** The term "Board" shall mean the Board of Directors of the Association.

2.7 **BUDGET:** The term "Budget" shall mean a pro forma operating budget prepared by the Board in accordance with Section 6.7 (Budget Preparation).

2.8 **BUILDING COMMON AREA:** The term "Building Common Area" shall mean each Building Common Area Parcel excluding the Units situated within that Building Common Area Parcel.

2.9 **BUILDING COMMON AREA PARCEL:** The term "Building Common Area Parcel" shall mean the three dimensional parcel(s) described in Parcel Two of Section 1.1.1 (Property Owned by Declarant) of this Declaration and all Improvements thereon or therein. The horizontal and vertical boundaries of a Building Common Area Parcel are as shown on the Condominium Plan. Each Building Common Area Parcel includes the earth and airspace encompassed within its boundaries and all Improvements therein. It shall be conclusively presumed that each building shown on the Condominium Plan as being contained within a Building Common Area Parcel is located entirely within the boundaries of that Building Common Area Parcel.
2.10 **BYLAWS**: The term "Bylaws" shall mean the Bylaws of the Association and any amendments thereto.

2.11 **CITY**: The term "City" shall mean the City of San Carlos, California.

2.12 **COMMERCIAL OWNER**: The term "Commercial Owner" shall mean the owner in fee title of Lot 2, as shown on the Map. The term "Commercial Owner" shall also mean any association (as defined in California Civil Code Section 6528) subsequently formed to govern any common interest development (as defined in California Civil Code Section 6534) created on Lot 2, as shown on the Map.

2.13 **COMMERCIAL PROPERTY**: The term "Commercial Property" shall mean Lot 2, as shown on the Map, and all Improvements thereon or therein.

2.14 **COMMON AREA**: The term "Common Area" shall mean all of the Project and Improvements thereon, excluding the Units, and any real property estate or interest owned by the Association. All Common Area shall be divided into Project Common Area and Building Common Area; however, any reference in the Project Documents to Common Area shall include both Project Common Area and Building Common Area unless otherwise specified.

2.15 **CONDOMINIUM**: The term "Condominium" shall mean an estate in real property consisting of an undivided interest in common in a portion of the Building Common Area, a fee interest in a Unit and easements in portions of the Project as provided in this Declaration.

2.16 **CONDOMINIUM PLAN**: The term "Condominium Plan" shall mean the condominium plan prepared in accordance with California Civil Code Section 4285 and recorded on June 27, 2019, as Document No. [insert number] in the Official Records of the County, including any subsequently recorded amendments thereto.

2.17 **COUNTY**: The term "County" shall mean the County of San Mateo, State of California.

2.18 **DECLARANT**: The term "Declarant" shall mean Wheeler Plaza, LLC, a Delaware limited liability company. The term "Declarant" shall also mean any person or entity if (i) a notice signed by Declarant and such person or entity has been recorded in the County in which such person or entity assumes the rights and duties of Declarant to some portion of the Project, or (ii) such person or entity acquires all of the Project then owned by a Declarant which must be more than one (1) Condominium. There may be more than one Declarant at any given time.

2.19 **DECLARATION**: The term "Declaration" shall mean this Declaration of Covenants, Conditions and Restrictions of Wheeler Plaza, and includes any subsequently recorded amendments hereto.

2.20 **DISPUTE**: The term "Dispute" shall mean any claim, issue or controversy that arises from or is related in any way to (i) the Project, (ii) the relationship between Owner and Declarant, or (iii) the relationship between the Association and Declarant, whether contractual, statutory or in tort. The term "Dispute" includes, but is not limited to, claims, issues or controversies that arise from or are related to the purchase, sale, condition, design, construction or materials used in construction of any portion of the Project, the agreement between Declarant and an Owner to purchase a Condominium or any related agreement, disclosures, or alleged deficiencies in construction, design, specifications, surveying, planning, supervision, testing, or observation of construction related to the Owner's Condominium or the Common Area.
Notwithstanding anything to the contrary contained herein, the term "Dispute" expressly excludes (a) all claims brought by any Owner or the Association under Title 7, and (b) all claims and disputes brought by any Owner under any warranty provided by Declarant, including but not limited to any alleged violation of the Fit & Finish Warranty provided to an Owner or the Association by Declarant in accordance with the provisions of California Civil Code Section 900 and any disagreement concerning an Owner’s or the Association’s notification under a warranty, the enforcement and resolution of which shall be governed solely by the dispute resolution provisions provided in the applicable warranty.

2.21 **ELIGIBLE HOLDER:** The term “Eligible Holder” shall mean any First Mortgagee or First Mortgage Insurer who has delivered a written notice to the Association which contains its name, address and the number or address of the Condominium encumbered by the First Mortgage and requests that the Association deliver written notice to it of any or all of the events specified in Section 9.5 (Notices).

2.22 **EXCLUSIVE USE COMMON AREA:** The term “Exclusive Use Common Area” shall mean those portions of the Common Area which are shown on the Condominium Plan and defined in this Section. The provisions of California Civil Code Section 4145(b) shall not be interpreted to create any additional Exclusive Use Common Area.

2.22.1 **Deck:** The term “Deck” shall mean each portion of the Common Area which is shown on the Condominium Plan as an individually numbered space designated with the letter “D” or the word “Deck.” The perimeter boundaries of each Deck are to the interior unfinished surfaces of the fences and/or railings and to the exterior finished surfaces of any Common Area walls enclosing the Deck. The vertical boundaries of each Deck are to the interior unfinished surface of the floor and to a plane extended from the ceiling of the Unit which adjoins the Deck. The approximate dimensions of each Deck are shown on the Condominium Plan. Each Deck includes the airspace encompassed within its boundaries.

2.22.2 **Parking Space:** The term “Parking Space” shall mean each portion of the Common Area which is shown on the Condominium Plan as an individually numbered space designated with the letters “PS” or the words “Parking Space.” The perimeter boundaries of each Parking Space are to the interior finished surfaces of the walls and, where there are no walls, to a vertical plane extended upwards from the lower dimension lines shown on the Condominium Plan. The vertical boundaries are to the finished surface of the ground and the interior finished surface of the ceiling, if in existence, or to a horizontal plane seven (7) feet above the finished floor. The approximate dimensions of each Parking Space are shown on the Condominium Plan. Each Parking Space includes the airspace encompassed within its boundaries.

2.22.3 **Patio:** The term “Patio” shall mean each portion of the Common Area which is shown on the Condominium Plan as an individually numbered space designated with the letter “P” or the word “Patio.” The perimeter boundaries of each Patio are to the interior unfinished surfaces of the fences and/or railings and to the exterior finished surfaces of any Common Area walls enclosing the Patio. The vertical boundaries of each Patio are to the surface of the ground and to a horizontal plane extended from the ceiling of the Unit which adjoins the Patio. The approximate dimensions of each Patio are shown on the Condominium Plan. Each Patio includes the airspace encompassed within its boundaries.

2.22.4 **Storage Space:** The term “Storage Space” shall mean each portion of the Common Area which is shown on the Condominium Plan as an individually numbered space designated with the letter “S” or the words “Storage Space.” The perimeter and vertical boundaries of each Storage Space are to the interior unfinished surfaces of the doors, walls, floor and ceiling. The approximate dimensions of each
Storage Space are shown on the Condominium Plan. Each Storage Space includes the airspace encompassed within its boundaries.

2.23 FIRST MORTGAGE: The term “First Mortgage” shall mean a Mortgage which has priority under the recording statutes of the State of California over all other Mortgages encumbering a specific Condominium.

2.24 FIRST MORTGAGEE: The term “First Mortgagee” shall mean the Mortgagee of a First Mortgage.

2.25 FIRST MORTGAGE INSURER: The term “First Mortgage Insurer” shall mean any person or entity which (i) is an insurer of a First Mortgage, or (ii) is a guarantor of a First Mortgage.

2.26 IMPROVEMENT: The term “Improvement” shall mean anything constructed, installed or planted on real property, including without limitation, buildings, streets, fences, walls, paving, pipes, wires, grading, landscaping and other works of improvement as defined in California Civil Code Section 8050, excluding only those Improvements or portions thereof which are dedicated to the public or a public or quasi-public entity or utility company, and accepted for maintenance by the public, such entity or utility company.

2.27 INSTITUTIONAL MORTGAGEE: The term “Institutional Mortgagee” shall mean the United States Department of Housing and Urban Development, if it is a First Mortgagee or a First Mortgage Insurer. The term “Institutional Mortgagee” shall also mean the United States Department of Veterans Affairs, if it is a First Mortgagee or a First Mortgage Insurer.

2.28 INVITEE: The term “Invitee” shall mean any person whose presence within the Project is approved by or is at the request of the Association or a particular Owner, including, but not limited to, lessees, tenants, and the family, guests, employees, licensees or invitees of Owners, tenants or lessees.

2.29 JOINT MAINTENANCE AGREEMENT: The term “Joint Maintenance Agreement” shall mean the document entitled “Reciprocal Easement, Joint Maintenance and Use Agreement,” entered into by and between the Association and the City, including any subsequently adopted amendments thereto.

2.30 KB HOME: The term “KB HOME” shall mean KB HOME South Bay Inc., a California corporation, and its successors.

2.31 LANDSCAPE MAINTENANCE AGREEMENT: The term “Landscape Maintenance Agreement” shall mean the document entitled “Landscape Maintenance Agreement” (or substantially similar thereto), to be recorded against the real property shown on the Map, including any subsequently recorded amendments thereto.

2.32 MAINTAIN: The term “Maintain,” “Maintaining,” or “Maintained” (but not the word “maintenance”) shall mean taking all actions reasonably necessary to satisfy (a) the requirements and obligations imposed by a Maintenance Manual, (b) all requirements and schedules in any warranty offered by Declarant, (c) all requirements and schedules in any warranties provided by manufacturers of components used within the Common Area or a Condominium, and (d) all commonly accepted maintenance practices to keep an Improvement in first-class condition and repair and to prolong the life of the component materials and construction of the Improvements. Actions include, but are not limited to, regular inspections, painting, maintenance, refinishing, repairing, replacing, and reconstructing the Improvement, and in the case of
landscaping, irrigating and fertilizing the landscaping. The Owners and the Association shall have no responsibility to Maintain any Improvement Maintained by a third party or a public or quasi-public entity or utility company even if the third party or the public or quasi-public entity or utility company fails to perform all actions required by this Section.


2.33.1 Association Maintenance Manual: The term “Association Maintenance Manual” shall mean the documents which establish procedures, practices, specifications, scopes and intervals for the Association to Maintain the Improvements for which the Association is responsible. The initial Association Maintenance Manual will be delivered to the Association concurrently with the first conveyance of Common Area to the Association. There may be more than one (1) Association Maintenance Manual at any given time, each of which applies to different Improvements.

2.33.2 Owner Maintenance Manual: The term “Owner Maintenance Manual” shall mean the document entitled “Homeowner Maintenance Guide” which establishes procedures, practices, specifications, scopes and intervals for an Owner to Maintain the Improvements for which the Owner is responsible. The Owner Maintenance Manual will be given to the Owner of each Condominium by Declarant prior to or when Declarant conveys title to the Condominium. The Maintenance Manual applicable to a specific Condominium may be different from the Maintenance Manual applicable to a different Condominium.

2.34 MAP: The term “Map” shall mean Final Map No. 2016-01, filed for record on June 23, 2016, in Book 140 of Maps at Pages 87 through 93, inclusive, in the Official Records of the County, including any subsequently recorded amended final maps, parcel maps, certificates of correction, lot line adjustments and/or records of survey.

2.35 MASTER DISPUTE RESOLUTION DECLARATION: The term “Master Dispute Resolution Declaration” shall mean an instrument signed by Declarant which is recorded in the County against any portion of the Project and which specifies that it is a “Master Dispute Resolution Declaration” contemplated by this Declaration, including any subsequently recorded amendments thereto. There may be more than one (1) Master Dispute Resolution Declaration at any given time, each of which applies to different Condominiums and/or Common Area.

2.36 MEMBER: The term “Member” shall mean an Owner.

2.37 MORTGAGE: The term “Mortgage” shall mean any duly recorded mortgage or deed of trust encumbering a Condominium.

2.38 MORTGAGEE: The term “Mortgagee” shall mean a Mortgagee under a Mortgage as well as a beneficiary under a deed of trust.

2.39 NOTICE AND HEARING: The term “Notice and Hearing” shall mean the procedure which gives an Owner notice of an alleged violation of the Project Documents and the opportunity for a hearing before the Board.
2.40 OPERATING RULES: The term “Operating Rules” shall mean the rules adopted by the Board, including the Architectural Standards.

2.41 OWNER: The term “Owner” shall mean the holder of record fee title to a Condominium, including Declarant as to each Condominium owned by Declarant. If more than one person owns a single Condominium, the term “Owner” shall mean all owners of that Condominium. The term “Owner” shall also mean a contract purchaser (vendee) under an installment land contract but shall exclude the contract vendor and any person having an interest in a Condominium merely as security for performance of an obligation.

2.42 PROJECT: The term “Project” shall mean the real property described in Section 1.1.1 (Property Owned By Declarant) and all Improvements thereon or therein.

2.43 PROJECT COMMON AREA: The term “Project Common Area” shall mean the real property described in Parcel One of Section 1.1.1 (Property Owned by Declarant) of this Declaration and all Improvements thereon or therein. **[The horizontal and vertical boundaries of a three dimensional parcel of Project Common Area shown on a Condominium Plan are as shown on that Condominium Plan. Each three dimensional parcel of Project Common Area includes the earth and airspace encompassed within its boundaries and all Improvements therein.]

2.44 PROJECT DOCUMENTS: The term “Project Documents” shall mean the Articles, Bylaws, this Declaration and the Operating Rules.

2.45 PUBLIC REPORT: The term “Public Report” shall mean a Final Subdivision Public Report issued by the California Bureau of Real Estate for the Project.

2.46 RESTORE: The term “Restore” shall mean repairing, rebuilding or reconstructing a damaged Improvement to substantially the same condition and appearance in which it existed prior to being damaged.

2.47 STORMWATER AGREEMENT: The term “Stormwater Agreement” shall mean the document entitled “Stormwater Maintenance Agreement,” and recorded on April 6, 2017, as Document No. 2017-030055, in the Official Records of the County, including any subsequently recorded amendments thereto.

2.48 STORMWATER IMPROVEMENTS: The term “Stormwater Improvements” shall mean all Improvements on or in the Project which are described in the Stormwater Agreement and which are intended to function as part of a storm water drainage and quality system serving the Project. The term “Stormwater Improvements” does not include any storm water improvements or portions thereof which are dedicated to the public or a public or quasi-public entity or utility company, and accepted for maintenance by the public, such entity or utility company.

2.49 TITLE 7: The term “Title 7” shall mean Title 7, Part 2 of Division 2 of the California Civil Code (Section 895 et seq.) as amended from time to time.

2.50 UNIT: The term “Unit” refers to a Separate Interest as defined in California Civil Code Section 4185 and shall mean that portion of the Project which is shown on the Condominium Plan as an individually numbered space designated with the letter “U” or the word “Unit”. The boundaries of each Unit shall be to the interior unfinished surfaces of the perimeter walls, floors, ceilings, doors and windows. Each Unit includes the airspace encompassed by its boundaries but does not include load bearing walls. Utility
systems and components thereof and fixtures and appliances which are located wholly within the boundaries of a Unit and which service only that Unit are also part of a Unit. The approximate dimensions of each Unit are shown on the Condominium Plan; however, the existing physical boundaries of a Unit as originally constructed or as reconstructed in accordance with the original construction design shall be conclusively presumed to be its boundaries.

2.51 **VISIBLE**: The term “Visible” shall mean the item described can be seen by a six (6) foot tall person standing on the described area or if no area is described, on any portion of the street which provides access to the Condominium.

### ARTICLE 3

#### REAL PROPERTY RIGHTS AND EASEMENTS

3.1 **NON-SEVERABILITY**: The interests in the Common Area cannot be changed after the conveyance of the first Condominium in the Project. The undivided interests in the Building Common Area, the fee title to the respective Units conveyed therewith and the easements appurtenant thereto are not separable and may not be separately conveyed unless the Condominium Plan is amended in accordance with California Civil Code Section 4295. If the Condominium Plan is amended, any conveyances necessary to cause ownership interests to conform to the amended Condominium Plan shall not violate this Section. Each undivided interest in the Building Common Area and each easement appurtenant to the Unit shall be deemed to be conveyed or encumbered with the respective Unit even though the description in the grant deed or other instrument of conveyance or encumbrance may refer only to the Unit. The ownership interests in the Common Area and Units described in this Article are subject to the easements described, granted and reserved in this Declaration. Each of the easements described, granted or reserved herein shall be established upon the recordation of this Declaration and shall be enforceable as equitable servitudes and covenants running with the land for the use and benefit of the Owners and their Condominiums superior to all other encumbrances applied against or in favor of any portion of the Project.

3.2 **OWNERSHIP OF UNITS**: Title to each Unit in the Project shall be conveyed in fee to an Owner.

3.3 **OWNERSHIP OF COMMON AREA**: The Common Area of the Project shall be conveyed and held as follows:

3.3.1 **Building Common Area**: The Owners of each Unit situated within a particular Building Common Area Parcel shall be conveyed an undivided interest as a tenant in common with the Owners of all other Units situated within that Building Common Area Parcel (excluding all Units contained therein). The tenancy in common interest shall be determined by a fraction, the numerator of which is one (1) and the denominator of which is the number of Units situated within that particular Building Common Area Parcel.

3.3.2 **Project Common Area**: Title to or a legal ownership interest in the Project Common Area shall be conveyed to the Association prior to or concurrently with the conveyance of the first Condominium in the Project to an Owner. The Association shall be deemed to have accepted the Project Common Area conveyed to it when (i) a grant deed conveying title to the Project Common Area has been recorded in the Official Records of the County, and (ii) assessments for the Phase in which the Project Common Area is located have commenced.
3.4 **EASEMENTS:** The easements and rights specified in this Article are hereby created and shall exist whether or not they are also set forth in individual grant deeds to Condominiums. By reference to this Declaration, each grant deed to a Condominium shall be deemed to be conveyed with the benefit of and subject to all applicable easements set forth in this Section.

3.4.1 **Additional Easements:** Notwithstanding anything expressed or implied to the contrary, this Declaration shall be subject to all easements granted by Declarant to install, operate and maintain utilities and drainage facilities necessary or appropriate for the development of the Project.

3.4.2 **Association:** The Association and its duly authorized agents and representatives shall have a non-exclusive right and easement as is necessary or appropriate to perform the duties and obligations of the Association set forth in the Project Documents, including the right to enter upon Building Common Area, Exclusive Use Common Area and Units, subject to the limitations contained in this Declaration.

3.4.3 **Common Area:** Every Owner shall have a non-exclusive right and easement for the ingress, egress, use and enjoyment of the Common Area which shall be appurtenant to and shall pass with the title to every Condominium, subject to the following provisions:

(a) The Joint Use Agreement;

(b) The grant of any exclusive easements to Owners for Exclusive Use Common Area(s);

(c) The right of the Association to grant, convey and dedicate fee title to or easements over all or any portion of the Project Common Area; and

(d) Any easement which affects the Common Area or which is set forth in the deed which conveys the Project Common Area to the Association.

3.4.4 **Encroachment:** Non-exclusive rights and easements are reserved and granted (i) for the benefit of each Unit, as dominant tenement, over, under and across each other Unit and the Common Area, as servient tenements, (ii) for the benefit of the Building Common Area, as dominant tenement, over, under and across the Project Common Area and each Unit, as servient tenements, and (iii) for the benefit of the Project Common Area, as dominant tenement, over, under and across the Building Common Area and each Unit, as servient tenements. Such easements shall be for the purposes of encroachment, support, occupancy and use of such portions of Units and/or Common Area as shall be encroached upon, used and occupied by the dominant tenement as a result of any original construction design, accretion, erosion, deterioration, decay, errors in original construction, movement, settlement, shifting or subsidence of any building or structure or any portion thereof. If any portion of the Project is partially or totally destroyed, the encroachment easement shall exist for any replacement structure which is rebuilt pursuant to the original construction design and which substantially conforms to the legal boundaries shown on the Condominium Plan. The easement for the encroaching Improvement shall exist for as long as the encroachment exists, provided that no easement for encroachment shall be created due to the willful misconduct of the Association or any Owner. Any easement for encroachment may but need not be cured by Alteration of the Improvement.

3.4.5 **Exclusive Use Common Area:** Each Owner shall have an exclusive right and easement for the use, possession and enjoyment of the Deck, Parking Space(s), Patio, and/or Storage Space designated on the Condominium Plan which bears the number that corresponds to that of the Owner's Unit and specifically designated in the individual Condominium grant deed, each of which shall be appurtenant
to and pass with title to the Owners’ Condominium. All easements to Exclusive Use Common Area are subject to the right of the Association to enter in and upon Exclusive Use Common Area as provided by and in accordance with the limitations upon such right as set forth in this Declaration.

3.4.6 Governmental Entities: All governmental and quasi-governmental entities, agencies and utilities and their agents shall have a non-exclusive easement over the Common Area for the purposes of performing their duties within the Project.

3.4.7 Map: The Common Area and Units are subject to all easements and rights of way shown on the Map.

3.4.8 Right of Entry to Inspect: Declarant hereby reserves for itself, and for its agents, employees, contractors, and/or subcontractors (collectively “Declarant Parties”), the right to enter in and upon the Common Area for the purposes of performing an annual inspection of the Common Area and Improvements thereon. The purpose of any inspection shall be to ascertain the condition of Common Area Improvements. Declarant Parties shall give the Association reasonable advance written notice of the date and time of any inspection. During the inspection, the Association shall provide access to the interiors of any Common Area structures. After completing any inspection, Declarant Parties may give the Association a written report which describes the results of the inspection and makes recommendations for action that Declarant Parties believe is appropriate for the Association to take to Maintain Improvements for which the Association is responsible. This right of entry shall exist until the date which is eleven (11) years following the date of completion of the Common Area in the Project.

3.4.9 Right of Entry to Perform Work: Declarant hereby reserves for itself, and for its agents, employees, contractors, and/or subcontractors (collectively “Declarant Parties”), the right to enter in and upon those portions of (a) Common Area, (b) Exclusive Use Common Area and (c) each Unit that are necessary or appropriate (as determined in Declarant Parties’ reasonable discretion) for the purposes of performing repairs or doing other work that (i) has been agreed to by the Association and Declarant Parties or by an Owner and Declarant Parties or (ii) Declarant Parties elects to perform pursuant to California Civil Code Section 918 (or any similar provision provided in a Master Dispute Resolution Declaration). This right of entry includes, but is not limited to, entering into one Unit to perform work which benefits another Unit(s). Declarant Parties shall give all affected parties at least seventy two (72) hours advance notice of the dates and times work will be performed (except in an emergency for which no notice is required). Notice shall be written or verbal.

3.4.10 Right to Photograph: Declarant hereby reserves a non-exclusive easement and right in gross to display, use and distribute for any and all purposes photographs, video recordings and similar reproductions of all Units and Improvements constructed anywhere in the Project; provided, however, Declarant shall have no right to photograph the interior of any Unit after that Unit has been conveyed to an Owner, without the consent of that Owner.

3.4.11 Stormwater Improvements: Each Owner and the Association shall have a non-exclusive right and easement appurtenant to the Common Area and to all Condominiums over, under, through, and across the Project, except Building Common Area and Units, non-exclusive easements for the following purposes: (i) the flow of water in accordance with natural drainage patterns and the drainage patterns, drainage Improvements, and Stormwater Improvements installed or constructed by Declarant, and (ii) using, operating, and Maintaining storm drainage Improvements and Stormwater Improvements, including but not limited to underground pipes, in-ground catch basins, and surface and subsurface storm
drains and inlets. Additionally, this Declaration, each Condominium, and the Common Area shall be subject to all easements granted by Declarant to install, operate and Maintain storm drainage Improvements and/or Stormwater Improvements necessary for the development of the Project.

3.4.12 **Support:** The Association and each Owner shall have a non-exclusive right and easement appurtenant to the Common Area and to all Units through each Unit and the Common Area to support and Maintain the Common Area and all Units.

3.4.13 **Utilities:** Each Owner shall have a non-exclusive right and easement over, under, across and through the Project, except for portions of the Project on which a structure is situated, for utility lines, pipes, wires and conduits installed by Declarant. Additionally, this Declaration and each Condominium and the Common Area shall be subject to all easements granted by Declarant to install, operate and Maintain utilities necessary or appropriate for the development of the Project.

3.5 **JUDICIAL PARTITION:**

3.5.1 **Waiver of Partition:** Except as provided in California Civil Code Section 4610, there shall be no judicial partition of the Project or of any part thereof. Each Owner, and each successor of each Owner, specifically waives and abandons all rights, interests and causes of action for judicial partition of the tenancy-in-common ownership of the Building Common Area. Each Owner agrees that no action for judicial partition of the Project shall be instituted, prosecuted or reduced to judgment, except in compliance with California Civil Code Section 4610(b). If a Condominium is owned by two or more Owners as partners, tenants-in-common, or joint tenants or as community property, nothing contained in this Section shall be deemed to prevent a judicial partition of their co-ownership.

3.5.2 **Power of Attorney:** If there is judicial partition of the Project pursuant to California Civil Code Section 4610(b) or this Declaration, each Owner, for the Owner and the Owner’s successors and assigns, hereby grants to the Association an irrevocable power of attorney to sell the entire Project for the benefit of all of the Owners. The power of sale shall be exercised only after recordation by the Association of a certificate which provides that the Association has the right to exercise the powers provided in this Section and in California Civil Code Section 4610(b).

**ARTICLE 4**  
**USE RESTRICTIONS**

4.1 **ACCESS TO UNITS AND EXCLUSIVE USE COMMON AREA:** Occupants shall cooperate with the Association to provide the Association access to the Unit or to the Exclusive Use Common Area appurtenant to the Unit when requested by the Association as appropriate for the Association to perform its obligations or duties as imposed by this Declaration or applicable laws. If an occupant refuses or fails to provide access to the Association when requested, the Association may utilize any other method available to it to gain alternative access and the costs of gaining alternative access shall be assessed against the Owner of the Unit. All damage that results from or is exacerbated by the denial of access to the Association shall be the sole responsibility of the Owner of the Unit.

4.2 **ALTERATIONS:** Except as otherwise specifically provided in this Declaration, no Alteration may be made to any Improvement until plans have been submitted and approved pursuant to Article 11 (Architectural Control).
4.3 **ANIMALS:** An Owner may keep two (2) customarily uncaged household pets within the Owner’s Unit. Each Owner may also keep a reasonable number of small caged animals, birds or fish. Unless the Operating Rules increase the number or type of animals which may be kept, no other animals or pets are permitted in the Project. The Board shall have the right to prohibit the keeping of any pet which, after Notice and Hearing, is found to be a nuisance to other Owners or to the general public. No animals may be kept for commercial purposes. No dog shall be allowed in the Common Area unless it is under the control of a responsible person by leash. Each Owner or Invitee shall clean up after its pet so that the Common Area is in the same condition it was in immediately preceding its use by any pet permitted on the Common Area by the Owner or Invitee.

4.4 **ANTENNAS AND SATELLITE DISHES:** No outside television antenna, microwave or satellite dish, aerial, or other such device (collectively, “Video Antennas”) with a diameter or diagonal measurement in excess of one (1) meter shall be erected, constructed or placed on any Common Area or Unit. Video Antennas with a diameter or diagonal measurement of one (1) meter or less may be installed only if they conform to the Architectural Standards and, if then required by the Architectural Standards, any necessary approval is obtained in accordance with the provisions of Article 11 (Architectural Control). Reasonable restrictions which do not significantly increase the cost of the Video Antenna system or significantly decrease its efficiency or performance may be imposed.

4.5 **EXTERIOR LIGHTING:** No Owner shall remove, damage or disable any exterior light, regardless of where located, which is either photocell operated or connected to the Association’s electric service.

4.6 **INVITEES:** Each Owner shall be responsible for compliance with the provisions of the Project Documents by that Owner’s Invitees. An Owner shall promptly pay any Reimbursement Assessment levied and/or any fine or penalty imposed against an Owner for violations committed by that Owner’s Invitees.

4.7 **OPERATING RULES:** Owners and their Invitees shall comply with all provisions of this Declaration, the Bylaws and the Operating Rules.

4.8 **PARKING:** Vehicles shall not be parked anywhere in the Project except in compliance with the provisions of this Section. The Operating Rules may expand upon or further clarify the provisions of this Section, provided, however, that all such Operating Rules shall also comply with all relevant provisions (regarding parking) of the Joint Use Agreement.

4.8.1 **City Parking Garage:** The City is the owner of the parking garage located on Lot 3, as shown on the Map, (“City Garage”) and parking therein is regulated by local ordinance. The City Garage is exclusively managed and controlled by the City.

4.8.2 **Commercial Parking Spaces:** The ten (10) marked commercial parking spaces located within the Common Area are for the exclusive use of the occupants of the Commercial Property, and for the guests and Invitees of the Commercial Owner, during the hours of operation of the Commercial Property; Owners, residents, and their Invitees shall not park in the commercial parking spaces during these times. The Operating Rules shall further clarify the hours of operation for the Commercial Property.

4.8.3 **Common Area:** Passenger motor vehicles may be parked only in designated spaces within the Common Area. No part of the Common Area may be used for repair, construction or reconstruction of any vehicle.
4.8.4 **Guest Parking:** No resident may park any vehicles in any space designated as "guest parking."

4.8.5 **Parking Spaces:** An Owner may park their vehicle(s) only in the Parking Space(s) that Owner is entitled to use.

4.8.6 **Removal:** As long as applicable ordinances and laws are observed, including the requirements of California Vehicle Code Section 22658, if applicable, any vehicle which is parked in violation of the provisions of this Declaration may be removed and stored at the sole expense of the Owner of the vehicle.

4.8.7 **Streets:** The streets serving the Project are public and street parking thereon is regulated by local ordinance.

4.8.8 **Vehicle Restrictions:** No boat, trailer, camper, commercial vehicle, mobile home, recreational vehicle or any inoperable vehicle shall be parked or stored on Common Area. For purposes of this Section, the term "commercial vehicle" includes any vehicle defined as a "commercial vehicle" in California Vehicle Code Section 260. The Operating Rules may expand or further clarify the definition of a "commercial vehicle."

4.9 **RENTAL OF UNITS:** An Owner may not rent or lease a Condominium for a period less than thirty (30) days or in violation of any agreement to which the Owner is a party. Any lease or rental agreement shall specify that the tenant is subject to all provisions of the Project Documents and a failure to comply with any provision of the Project Documents shall constitute a default under the lease or rental agreement. Before renting or leasing a Condominium, the Owner shall provide a copy of the Project Documents to each tenant and notify the Board of the lease or rental. All rights to the use and enjoyment of Common Area shall be exercised by the tenant rather than by the Owner of the leased or rented Condominium; however, the Owner shall not be relieved of the obligations and duties imposed by this Declaration.

4.10 **SIGNS:** All signs displayed in the Project shall be attractive and compatible with the design of the Project and shall comply with all applicable state and federal laws and local ordinances. The only signs of any kind which may be displayed to the public view on or from any Unit or the Common Area shall be as follows:

4.10.1 **Declarant:** Signs may be displayed by Declarant on Common Area or unsold Units, as Declarant deems appropriate, advertising Condominiums owned by Declarant for sale or rent;

4.10.2 **Legal Proceedings:** Signs required by legal proceedings may be displayed;

4.10.3 **Non-Commercial:** Non-commercial signs, posters, flags, or banners may be displayed in accordance with the provisions of California Civil Code Section 4710. Any such sign or poster may not exceed nine (9) square feet in size and any such flag or banner may not exceed fifteen (15) square feet in size;

4.10.4 **Project Identification:** Appropriate signs may be displayed by the Association to identify the Project;

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4.10.5 **Sale or Rent:** One (1) sign of reasonable dimensions may be placed within the window of a Unit advertising the Condominium for sale or rent; and

4.10.6 **Signs Approved By Board:** Other signs, posters and notices approved by the Board or specified in the Operating Rules or in this Declaration may be posted in locations designated by the Board.

4.11 **SPORTS EQUIPMENT:** No basketball standards, fixed sports apparatus or similar equipment shall be attached to the exterior of any Unit or permanently placed within any Exclusive Use Common Area, except in accordance with the provision of Article 11 (Architectural Control). Portable or movable basketball equipment or other movable sports apparatus may not remain overnight where Visible from adjacent Units or streets without the prior approval of the Board.

4.12 **STORAGE OF WASTE MATERIALS:** All garbage, trash and accumulated waste material shall be placed in appropriate covered containers. Containers for recyclable materials need not be covered. Any containers provided by the Association may be stored in locations designated by the Board. Containers provided by Owners may be placed where Visible, in the location directed by the local garbage collection company, only on the night before and the day that pick-up is to occur.

4.13 **STORMWATER IMPROVEMENTS:** No Owner or resident shall perform any action which interferes with or otherwise impedes the proper operation or function of any Stormwater Improvement or any drainage system installed on or in the Project, including within any Exclusive Use Common Area that the Owner or resident is entitled to use. No Alteration to any on-site storm drainage Improvement (including but not limited to Stormwater Improvements) may be made without the prior written approval of the City Engineer.

4.14 **TAXES:** Each Owner shall be obligated to pay any taxes or assessments assessed by the County Assessor against that Owner’s Unit and personal property. Until such time as real property taxes have been segregated by the County Assessor, they shall be paid by the respective Owners. The proportionate share of the taxes for a particular Unit shall be determined by dividing the initial Unit sales price or, in the case of unsold Units, the price the Unit is then being offered for sale by Declarant (“Offered Price”), by the total initial sales prices and Offered Prices of all Units. If an Owner fails to pay that Owner’s proportionate share in accordance with the preceding sentence, the Association shall collect such share, including that Owner’s interest and penalties, from the delinquent Owner.

4.15 **USE AND OCCUPANCY OF UNITS:** Each Unit may be used for (i) residential purposes, (ii) uses within Units which cannot be prohibited under federal or state law and (iii) uses permitted by local ordinance (provided that home occupations must be conducted in a manner that does not materially and adversely impact the ability of other Owners to use and enjoy the Project). Otherwise, no business of any kind shall be established, operated, permitted or constructed in any portion of the Project, except for the business of Declarant in completing the development and disposition of the Condominiums in the Project. No Unit shall be permanently occupied by any more than two (2) persons per bedroom. No Owner may permit or cause anything to be done in or kept in a Unit which might obstruct or interfere with the rights of other Owners or which would be noxious, harmful or unreasonably offensive to other Owners. Each Owner shall comply with all of the requirements of all federal, state and local governmental authorities, and all laws, ordinances, rules and regulations applicable to the Owner’s Condominium.

4.16 **USE OF COMMON AREA:** All use of Common Area is subject to the Operating Rules. All persons residing within the Project may enjoy the use of all facilities in the Common Area as long as they
abide by the terms of the Project Documents. There shall be no obstruction of any part of the Common Area. Nothing shall be stored or kept in the Common Area (excluding Exclusive Use Common Area) without the prior consent of the Board. Nothing shall be done in or kept in the Common Area which will increase the rate of insurance on the Common Area without the prior consent of the Board. No Owner shall permit anything to be physically done in or kept in the Common Area or any other part of the Project which might result in the cancellation of insurance on any part of the Common Area, which would interfere with rights of other Owners, or which would be a nuisance, noxious, harmful or unreasonably offensive to other Owners. No Owner or Invitee shall perform any act which results in damage to the Common Area. Access to roofs shall be restricted to persons authorized by the Board. The provisions of this Declaration concerning using, Maintaining and managing the Common Area are subject to any rights or limitations established by any easements or other encumbrances which encumber the Common Area.

4.17 WINDOW COVERINGS: All drapes, window shades or other window coverings installed in the windows of Units which are Visible from the exterior of the Unit shall comply with the Operating Rules, if applicable. Any drapes or other window covering installed by Declarant in model residences or in compliance with the Operating Rules may remain for the useful life thereof. All window coverings shall be installed within ninety (90) days after the conveyance of the Unit unless the Operating Rules provide otherwise.

ARTICLE 5
MAINTENANCE OBLIGATIONS

5.1 MAINTAINING COMMON AREA AND IMPROVEMENTS: Except as otherwise specifically provided in this Declaration, the Association shall Maintain the Common Area and all Improvements situated in, upon or under the Common Area (excluding Exclusive Use Common Area). The Association shall provide for all services and cause all acts to be done which may be necessary or appropriate to Maintain the Common Area and Improvements in first-class condition.

5.1.1 Regular Inspections: The Association shall regularly inspect all major components of the Common Area at least once each year. One of the primary purposes of the inspection shall be to determine how to extend the life of Common Area Improvements and to prevent damage to such Improvements resulting from the Association's neglect or the failure to properly and adequately Maintain.

5.1.2 Association Maintenance Manual: The Association shall Maintain the Project in compliance with all applicable requirements imposed by the Association Maintenance Manual.

5.1.3 Records: The Association shall keep appropriate records to document that it has performed all inspections and Maintained all Improvements in compliance with the Association Maintenance Manual.

5.1.4 Perimeter Walls and Fences: Unless otherwise provided in Section 5.5 (Maintaining Exclusive Use Common Area), fences and walls which separate the Project from property located outside the boundaries of the Project shall be Maintained by the Association.

5.1.5 Stormwater Improvements: The Association shall Maintain all Stormwater Improvements, wherever located, irrespective of who has rights to use the Stormwater Improvements, and in accordance with any applicable provisions of (i) the Association Maintenance Manual, and (ii) the
Stormwater Agreement. The preceding sentence is not intended to preclude any action by an Owner against any other Owner, person or entity to recover for damage caused by another Owner, person or entity to the Stormwater Improvements. The Association shall promptly Restore any Stormwater Improvement damaged by fire or other casualty. The Association shall inspect and clean all Stormwater Improvements situated on or in the Common Area at least twice each year; once before the rainy season starts (October 1), and once in January. Additional cleaning may be required by the City Engineer. The Association shall ensure that all Stormwater Improvements are in good working order at all times and clear of any blockage.

5.1.6 Sidewalks: The Association shall Maintain all sidewalks and pedestrian walkways serving the Project (including but not limited to those portions of the Common Area which are shown as "PAE" or "Public Access Easement" on the Map), including but not limited to regular sweeping to prevent the accumulation of litter and debris. If the sidewalks and walkways are pressure washed, all debris must be trapped and collected in order to prevent its entry to the storm drainage system; provided, however, no cleaning agent(s) may be discharged into the storm drainage system. Discharges to the sanitary sewer and storm drainage system are subject to the review, approval, and conditions of the wastewater treatment plant receiving the discharge.

5.1.7 Parking Garage: The Association shall Maintain the subterranean parking garage located within the Common Area, including but not limited to regular sweeping to prevent the accumulation of litter and debris. If the parking garage is pressure washed, all debris must be trapped and collected in order to prevent its entry to the storm drainage system; provided, however, no cleaning agent(s) may be discharged into the storm drainage system. Discharges to the sanitary sewer and storm drainage system are subject to the review, approval, and conditions of the wastewater treatment plant receiving the discharge.

5.2 ALTERATIONS TO COMMON AREA (EXCLUDING EXCLUSIVE USE COMMON AREA):

5.2.1 Approval: Except as provided in Section 5.2.3 (Alterations Pursuant to Civil Code Section 4760), Alterations to any Improvements situated in, upon or under the Common Area (excluding Exclusive Use Common Area) may be made only by the Association. A proposal for any such Alteration to an Improvement may be made at any meeting. A proposal may be adopted by the Board, subject to the limitations contained in the Bylaws.

5.2.2 Funding: Expenditures to Maintain an existing capital Improvement for which reserves have been collected may be made from the Reserve Account. Subject to the limitations set forth in Section 6.5 (Limitations on Assessments), the Board may levy a Special Assessment to fund any Alteration of an Improvement for which no reserve has been collected.

5.2.3 Alterations Pursuant to Civil Code Section 4760: An Owner may make Alterations to the Common Area and to Exclusive Use Common Area in accordance with the provisions and limitations set forth in California Civil Code Section 4760(a)(2). Any such Alterations to Common Area or Exclusive Use Common Area shall be made in accordance with the provisions of Article 11 (Architectural Control).

5.3 MAINTAINING UNITS: Each Owner shall Maintain the Owner’s Unit, including all fixtures, appliances and appurtenances. Maintenance shall be performed in compliance with the provisions of the Owner Maintenance Manual. The Association may adopt Operating Rules which further clarify those Improvements which are to be Maintained by an Owner and those which are to be Maintained by the Association.
5.3.1 **Interior Surfaces:** Each Owner shall Maintain the interior surfaces of the ceilings, floors and the walls of the Owner’s Unit. Altering finishes on the interior walls of Units is not subject to the provisions of Article 11 (Architectural Control).

5.3.2 **Doors:** Each Owner shall Maintain all doors, door hardware and door locks, which serve only the Owner’s Unit. Any Alteration to any such Improvement which is Visible is subject to the provisions of Article 11 (Architectural Control).

5.3.3 **Electrical System:** Each Owner shall Maintain all fixtures, panels, switches, outlets, circuit breakers, fuses, fans and similar electrical Improvements which are situated within the Owner’s Unit or which are directly accessible from the Owner’s Unit if the components are mounted in a wall. The Association shall Maintain electrical wiring and all other electrical system components which are situated within a wall or which are outside the boundaries of Units. Any Alteration to an electrical Improvement situated entirely within an Owner’s Unit is not subject to the provisions of Article 11 (Architectural Control).

5.3.4 **Fire Suppression System:** The Association shall Maintain the fire suppression systems situated within the Project, including but not limited to the fire sprinkler heads situated within Units. The fire suppression system shall be Maintained at all times in accordance with any applicable maintenance standards imposed by the Association’s insurance carriers or the Operating Rules. The Association, the Association’s insurance carriers and their respective agents, contractors and employees, shall have the right to enter the Units to inspect and Maintain fire sprinkler heads and other components of the fire suppression system during normal business hours with not less than ten (10) days advance written notice. Owners shall not paint over or otherwise obstruct or impair the functioning of any portion of the fire suppression system situated within the Owner's Unit.

5.3.5 **Glass:** Each Owner shall clean the interior glass surfaces of all doors, windows and skylights serving the Owner’s Unit. Each Owner shall also clean the exterior glass surfaces of windows and doors serving the Owner’s Unit which can be cleaned while standing on the ground, on a walkway designed for pedestrian use or on Exclusive Use Common Area the Owner is entitled to use. All replacement of glass shall be performed by the Owner of the Unit or by the Association at the expense of the Owner of the Unit. The Association shall clean the exterior glass surfaces of skylights and the exterior glass surfaces of all windows of Units which are accessible only by ladders or specialized cleaning equipment.

5.3.6 **Mechanical and Other Equipment:** Each Owner shall Maintain any furnace, hot water heater, air conditioner (including condensers and compressors) and appliances which serve only the Owner’s Unit, no matter where the equipment is located. Any replacement condenser or compressor must be approved by the Board unless it is the same model originally installed by Declarant or it is a model specified in the Operating Rules as an approved replacement. Each Owner shall Maintain any exterior dryer vent which serves only that Owner’s Unit, no matter where located, unless located more than eight feet (8') above the adjoining ground or floor surface.

5.3.7 **Plumbing:** Each Owner shall Maintain all showers, bathtubs, sinks, shower heads, tub spouts and stoppers, faucets, shut-off valves, supply lines, tanks, and similar plumbing components situated within the Owner’s Unit. The Association shall Maintain all water pipes and other plumbing components which bring water into a Unit and which are situated within a wall or which are outside the boundaries of Units. Any Alteration to any plumbing Improvement situated entirely within an Owner’s Unit is not subject to the provisions of Article 11 (Architectural Control).
5.3.8 **Roof Access and Access to Other Access Restricted Areas:** An Owner must obtain permission from the Association before accessing any roof or other portion of the Common Area which is not readily accessible to perform maintenance. Entry shall be limited to normal business hours and the Association shall have the right to accompany the Owner or any employee or contractor retained by the Owner during the entry period. The Owner shall reimburse the Association for any costs incurred by the Association to accompany the Owner, employee or contractor, and for any damage caused as a result of such entry.

5.3.9 **Screens:** Each Owner shall Maintain all screens covering doors and windows which serve only the Owner’s Unit. Any Alteration to a screen is subject to the provisions of Article 11 (Architectural Control).

5.3.10 **Sanitary Sewer:** Each Owner shall Maintain all toilets, collars, rings, traps, tanks, drains and similar sanitary sewer components situated within a Unit. The Association shall Maintain sanitary sewer pipes and other components situated within a wall or outside the boundaries of Units. If the Association incurs expenses to clear a drain(s) and the Association determines that (i) the condition was caused by an Owner or an Owner’s Invitee(s) improperly using the sanitary sewer system, or (ii) the clog is entirely within portions of the plumbing system which are required to be Maintained by an Owner, the Association may levy a Reimbursement Assessment against the Owner of the Unit. Any Alteration to any sanitary sewer Improvement situated entirely within an Owner’s Unit is not subject to the provisions of Article 11 (Architectural Control).

5.4 **ALTERATIONS TO UNITS:**

5.4.1 **Generally:** Alterations may be made to the interiors of Units, including Common Area physically contained within the Unit (excluding structural walls and load bearing walls), if (a) the Alterations do not impair the structural integrity of the Unit or of the building containing the Unit, (b) the Alteration complies with all provisions of Article 4 (Use Restrictions) and Article 5 (Maintenance Obligations), and (c) the Owner complies with all laws and ordinances regarding Alterations.

5.4.2 **Floor Coverings:** No Alteration may be made to any floor covering in a Unit or on a Deck or Patio without first obtaining approval pursuant to Article 11 (Architectural Control). The Association shall not approve any Alteration to a floor covering which may degrade the acoustical standard of the original floor covering installed by Declarant. The Association may require the Owner to produce a letter from an acoustical engineer which describes the existing floor covering and the proposed new floor covering and states that noise generated when the new floor covering is installed will be the same as or less than the noise generated while using the existing floor covering.

5.4.3 **Penetration of Ceilings and Perimeter Walls:** The ceiling and perimeter walls have been designed to satisfy specific building code requirements. Unless approved in accordance with the provisions of Article 11 (Architectural Control) or expressly permitted in the Operating Rules, Owners may not install any speakers, lighting or other equipment within the ceilings or perimeter walls of a Unit or cut, drill or otherwise penetrate the ceiling or perimeter walls within their Units. The preceding sentence shall not prohibit penetrations less than one-half inch (½”) in diameter (i) to display objects on walls using picture hangers, (ii) to hang lighting that is not recessed, or (iii) to install towel rods and toilet paper holders.

5.5 **MAINTAINING EXCLUSIVE USE COMMON AREA:** The responsibility for Maintaining Exclusive Use Common Area shall be as set forth in this Section. The Association may adopt an Operating
Rule which further clarifies the responsibilities for maintaining an improvement if this Declaration is silent or ambiguous on the issue.

5.5.1 **Fences Enclosing Patios:** The Association shall paint the exterior surfaces and provide structural repair and replacement of any fences enclosing Patios.

5.5.2 **Floors:** The Owner entitled to use a Deck shall Maintain the Deck floor. The Owner entitled to use a Patio shall Maintain the concrete slab or other Patio floor material.

5.5.3 **Parking Spaces:** The Association shall stripe and clean Parking Spaces.

5.5.4 **Railings:** The Association shall paint and provide structural repair and replacement of any railings enclosing Decks and/or Patios.

5.5.5 **Walls:** The Association shall paint the surfaces and provide structural repair and replacement of any exterior building walls which wholly or partially enclose Decks, Parking Spaces, Storage Spaces, or Patios.

5.6 **ALTERATIONS TO EXCLUSIVE USE COMMON AREA:** No Alteration may be made to Exclusive Use Common Area until it has been approved by the Board and in accordance with the provisions of Article 11 (Architectural Control). The Board shall act on any written proposals for Alterations to Exclusive Use Common Area in accordance with the architectural control provisions contained in this Declaration and/or in the Operating Rules. The cost of an Alteration to Exclusive Use Common Area shall be paid by the Owner who has obtained the approval, unless otherwise approved by the Members.

5.7 **LANDSCAPING:** All landscaping in the Project shall be Maintained in a manner consistent with the standards of design and quality as originally established by Declarant and in accordance with the Maintenance Manual and the Landscape Maintenance Agreement. All landscaping in the Project shall be Maintained with a minimal use of fertilizers and pesticides, in order to reduce urban runoff pollution. All landscaping shall be kept in a neat and orderly condition. Any weeds shall be removed and any diseased or dead lawn, trees, ground cover or shrubbery shall be removed and replaced. All lawn areas shall be neatly mowed and trees and shrubs shall be neatly trimmed. Other specific restrictions on landscaping may be established in the Operating Rules. Irrigation systems, if any, shall be kept in good working condition to ensure continued regular watering of landscape areas, and health and vitality of landscape materials.

5.7.1 **Common Area:** The Association shall Maintain all landscaping located on Common Area, excluding Exclusive Use Common Area, and in accordance with the relevant provisions of the Landscape Maintenance Agreement. The Association shall Maintain all landscaping located within the public right-of-way which adjoins Common Area.

5.7.2 **Exclusive Use Common Area:** Each Owner shall Maintain all landscaping located within the Owner’s Exclusive Use Common Area, if any.

5.8 **ASSOCIATION’S RIGHT TO ENTER AND MAINTAIN:** If an Owner fails to Maintain an Improvement which that Owner is obligated to Maintain pursuant to this Declaration, and if the Association determines, after Notice and Hearing is provided pursuant to the provisions of the Bylaws, that work must be performed to Maintain the Improvement to preserve the attractiveness, quality, nature, safety and/or value of the Project, the Association may Maintain the Improvement at the expense of the Owner which shall be
charged to the Owner as a Reimbursement Assessment. In order to effectuate the provisions of this
Declaration, the Association may enter any Unit, Exclusive Use Common Area or Building Common Area
whenever entry is necessary or appropriate to Maintain an Improvement which the Association is authorized
to undertake pursuant to this Section. Entry within a Unit or Exclusive Use Common Area shall be made
with as little inconvenience to an Owner as practicable and only after reasonable advance written notice of
not less than forty-eight (48) hours, except in emergency situations.

5.9 DAMAGE AND DESTRUCTION: Except as provided in Section 5.9.7 (Single Unit
Exception), if fire or other casualty damage extends to any Common Area or to any other Improvement which
is insured under a policy held by the Association (“Damaged Improvement”), the Association shall proceed
with the filing and adjustment of all claims arising under such policy (“Policy”). The Association shall
represent all Owners in such proceedings. The insurance proceeds shall be paid to and held by the
Association for the benefit of the Owners and their Mortgagors and must be applied as provided in this
Section. Any insurance proceeds remaining after applying them in accordance with this Section shall be
contributed to the Reserve Account described in Section 6.6 (Accounts and Reviews). The insurance
proceeds may be used to secure the Damaged Improvement so that it does not pose a threat to public safety.

5.9.1 Preliminary Bids: The Board shall obtain preliminary bids to restore the Damaged
Improvements from responsible licensed contractors selected by the Board.

5.9.2 Restore, Reconstruct or Sell: The Damaged Improvement shall be Restored unless
(a) one hundred percent (100%) of the Owners whose Units were directly affected by the damage (“Affected
Owners”), (b) a majority of the Owners (including the Affected Owners), (c) fifty-one percent (51%) of the
Eligible Holders and (d) fifty-one percent (51%) of the First Mortgagees agree to (i) not rebuild, (ii) utilize
an alternative plan of reconstruction (“Alternative Plan”), or (iii) sell all or a portion of the Project. Any
proposal to sell all or a portion of the Project must specify how the sale proceeds and any insurance proceeds
allocable to the portion being sold are to be distributed among Owners and their respective Mortgagees;
provided however, distributions among Owners and their respective Mortgagees must be in proportion to the
respective fair market values of the Condominiums as determined in accordance with the provisions of
Section 5.9.5 (Sale of Property).

5.9.3 Funding: If the Damaged Improvement is to be Restored or reconstructed pursuant
to an Alternative Plan but the insurance proceeds are insufficient to pay the costs of the work, the Board shall
obtain the additional funds needed through a combination of the following: (a) utilizing Reserve Account
funds designated for the repair or replacement of the capital improvement(s) which has been damaged, (b)
levying a Special Assessment against all Owners, (c) transferring money from a Reserve Account in
accordance with the limitations imposed by California Civil Code Section 5515, (d) borrowing, (e) using
other assets, and (f) deferring selected replacement or repairs.

5.9.4 Bids: If the Damaged Improvement is to be Restored or reconstructed pursuant to
an Alternative Plan, the Board shall obtain bids to perform the work from responsible licensed contractors
selected by the Board (which may or may not be the same contractors selected pursuant to Section 5.9.1
(Preliminary Bids)); and the Board, on behalf of the Association and Owners, shall contract with the
contractor whose bid the Board deems to be the most reasonable. The contractor shall provide a completion
bond naming the Association and each Owner as beneficiaries.

5.9.5 Sale of Property: If all or a portion of the Project is to be sold pursuant to
Section 5.9.2 (Restore, Reconstruct or Sell), the Board is empowered to make the sale on terms to be
determined by the Board. Fair market values shall be determined as of the point in time immediately preceding the damage by an independent appraisal made by an independent real estate appraiser with a Member of the Appraisal Institute certificate or the equivalent as selected by the Board and shall take into consideration any recorded restrictions which affect the marketability of any of the Condominiums.

5.9.6 Reallocations of Common Area Interests: If a Building Common Area parcel contains fewer Units after the proceedings described in this Section 5.9 are concluded, the interests in the Building Common Area parcel shall be reallocated among the remaining Units according to the formula set forth in Section 3.3.1 (Building Common Area).

5.9.7 Single Unit Exception: If fire or other casualty damage is limited to a single Unit and coverage is available under an insurance policy held by the Association, the Owner may elect to have the Association adjust the claim under the Association's policy, ("Damaged Unit"). If the Owner so elects, (a) the preceding provisions of this Section 5.9 do not apply, (b) the Association shall proceed with the filing and adjustment of the claim in consultation with the Owner of the Damaged Unit and (c) the Owner shall pay the applicable deductible. The insurance proceeds shall be paid to the Owner of the Damaged Unit and the Owner's Mortgagee.

5.10 CONDEMNATION: All proceeds from condemnation of any portion of the Project shall be distributed as provided in this Section. The Board shall select an independent real estate appraiser with a Member of the Appraisal Institute Certificate or the equivalent to conduct all appraisals and determine all valuations required by this Section. The appraisals shall take into consideration any recorded restrictions which affect the marketability of the Condominiums. The Association shall represent the interests of all Owners in all condemnation proceedings. The entire award shall be paid to the Association and deposited into the Current Operation Account until distributed. All allocations to Owners shall be based upon one (1) share for each Condominium owned by that Owner which is entitled to an allocation. If it cannot be readily determined which portions of an award are to be distributed pursuant to Section 5.10.1 (Units) and Section 5.10.2 (Residential Buildings Excluding Units), the Board shall determine which portions of the award are to be distributed pursuant to each of these Sections. Priority shall first be given to making the distributions pursuant to Section 5.10.1 (Units), second to the distributions required by Section 5.10.2 (Residential Buildings Excluding Units), and last to the election made pursuant to Section 5.10.3 (Restore, Reconstruct or Sell). In no event may the total award allocated to the Owner of any Condominium pursuant to this Section 5.10 exceed the value of that Owner's Condominium immediately before the condemnation.

5.10.1 Units: Any portion of the award allocable to Units or Exclusive Use Common Area shall be apportioned among the Owners thereof based upon the difference in value of the Condominiums immediately before and immediately after the condemnation and shall be paid to the Owners and their Mortgagees.

5.10.2 Residential Buildings Excluding Units: Any portion of the award allocable to a residential building which is not allocable pursuant to Section 5.10.1 (Units) shall be apportioned among the Owners thereof based upon the relative values of the Condominiums in that residential building immediately before the condemnation and shall be paid to the Owners and their Mortgagees.

5.10.3 Restore, Reconstruct or Sell: After the condemnation proceeding is concluded and proceeds have been distributed pursuant to Section 5.10.1 (Units) and Section 5.10.2 (Residential Buildings Excluding Units), any proceeds which remain shall be used to Restore the Project unless (a) a majority of the Owners, (b) fifty-one percent (51%) of the Eligible Holders, and (c) fifty-one percent (51%) of the First
Mortgagees agree to (i) not Restore, (ii) utilize an alternative plan of reconstruction, or (iii) sell the remaining portions of the Project. If a portion of the Project is to be sold, the Board is empowered to make the sale on terms to be determined by the Board and the proceeds shall be apportioned equally among all Owners. Any proceeds to be distributed shall be apportioned equally among the Owners of Condominiums and shall be paid to those Owners and their Mortgagees.

5.10.4 Reallocation of Common Area Interests: If a Building Common Area parcel contains fewer Units after the proceedings described in this Section 5.10 are concluded, the interests in the Building Common Area parcel shall be reallocated amongst the remaining Units according to the formula set forth in Section 3.3.1 (Building Common Area).

5.11 MECHANIC’S LIENS: If a notice of mechanic’s lien is filed against the Project for labor or material alleged to have been furnished to or delivered for any Owner within the Project or at that Owner’s Unit, the Owner shall immediately cause the lien to be discharged by payment, bond or otherwise. If the Owner fails to discharge the lien, the Board may provide Notice and Hearing to the Owner to determine the effect of the lien and any offsets or defenses thereto. At the hearing, if the Board determines that the lien adversely and improperly affects and encumbers the ownership interests of other Owners and that no adequate protection of the interests of other Owners has been provided, the Board may cause the lien to be discharged by payment, bond or otherwise. The Board shall then levy a Reimbursement Assessment against the Owner(s) responsible for the existence of the lien together with any Additional Charges incurred. If the Board determines that the lien does not adversely affect the interests of other Owners, it may take whatever other action may be necessary or appropriate to properly protect the interests of the Owners.

ARTICLE 6
ASSESSMENTS AND BUDGETS

6.1 COVENANTS TO PAY: Declarant and each Owner covenant and agree to pay to the Association the assessments and any Additional Charges levied pursuant to this Article.

6.1.1 Liability for Payment: The obligation to pay assessments shall run with the land so that each successive record Owner of a Condominium shall in turn be liable to pay all such assessments. No Owner may waive or otherwise escape personal liability for assessments or release the Owner’s Condominium from the liens and charges hereof by non-use of the Common Area, abandonment of the Condominium or any other attempt to renounce rights in the Common Area or the facilities or services within the Project. Each assessment shall constitute a separate assessment and shall also be a separate, distinct and personal obligation of the Owner of the Condominium at the time when the assessment was levied and shall bind the Owner’s heirs, devisees, personal representatives and assigns. Any assessment not paid within fifteen (15) days after its due date is delinquent. The personal obligation of an Owner for delinquent assessments shall not pass to a successive Owner unless the personal obligation is expressly assumed by the successive Owner. No such assumption of personal liability by a successor Owner (including a contract purchaser under an installment land contract) shall relieve any Owner from personal liability for delinquent assessments. After an Owner transfers fee title of record to a Condominium, the Owner shall not be liable for any charge thereafter levied against that Condominium.

6.1.2 Funds Held in Trust: The assessments collected by the Association shall be held by the Association for and on behalf of each Owner and shall be used solely to operate and Maintain the Project as provided in this Declaration.
6.1.3 Offsets: No offsets against any assessment shall be permitted for any reason, including, without limitation, any claim that the Association is not properly discharging its duties.

6.2 REGULAR ASSESSMENTS:

6.2.1 Payment of Regular Assessments: Regular Assessments for each fiscal year shall be established when the Board approves the Budget for that fiscal year. Regular Assessments shall be levied on a fiscal year basis; however, each Owner shall be entitled to pay the Regular Assessment in twelve (12) equal monthly installments, one installment payable on the first day of each calendar month during the fiscal year, as long as the Owner is not delinquent in the payment of any monthly installment. If an Owner fails to pay any monthly installment by the sixtieth (60th) day after the date the installment was due, the Board may terminate that Owner’s right to pay the Regular Assessment in monthly installments and declare the then unpaid balance of the Regular Assessment for that year immediately due and payable. Regular Assessments shall commence for all Condominiums on the first day of the first month following the month in which the first Condominium is conveyed to an Owner other than a Declarant.

6.2.2 Allocation of Regular Assessments: The total amount of the Association’s anticipated revenue attributable to Regular Assessments as reflected in the Budget for that fiscal year shall be allocated among the Condominiums as provided in this Section. Those items in the Budget designated as current operating expenses for insurance premiums, window washing, trash collection, and utilities (gas, domestic water, and sanitary sewer) and reserves for painting and the replacement of the building exteriors, water boiler and heating system, trash system, and the roofing system shall be allocated to and assessed among the Condominiums in the same proportion that the square footage of the Unit to be assessed bears to the total square footage of all Units subject to assessment. For purposes of this Section, each Unit shall be conclusively presumed to contain the number of square feet allocated to that Unit as set forth in the pro forma operating Budget described in the Public Report authorizing the sale of that Condominium. All other items in the Budget shall be allocated to and assessed among all Owners equally.

6.2.3 Exemptions from Regular Assessment: Notwithstanding the provisions of Section 6.2.1 (Payment of Regular Assessments) and Section 6.2.2 (Allocation of Regular Assessments), the Board shall exempt each Owner of a Condominium which satisfies paragraph (a), below, and may exempt all Owners if paragraph (b), below, is satisfied, from the payment of a portion of the Regular Assessment levied against that Condominium as described in those paragraphs.

(a) Condominium Buildings: An Owner of a Condominium is exempt from payment of that portion of the Regular Assessment which is allocated for defraying operating expenses and reserves directly attributable to the existence and use of buildings containing Units until the first to occur of the following events: (i) a notice of completion of construction of the Building in which the Owner’s Unit is contained has been recorded; (ii) the Owner’s Condominium is occupied or otherwise used; or (iii) the structural components of the Building in which the Owner’s Unit is contained are complete.

(b) Other Common Area: Each Owner may be exempted from payment of that portion of the Regular Assessment which is allocated for defraying operating expenses and reserves directly attributable to the existence and use of a common facility (including landscaping) that is not complete at the time Regular Assessments commence until the first to occur of the following events: (i) a notice of completion of the common facility is recorded; (ii) the common facility has been placed into use; or (iii) in the case of landscaping, the landscaping is installed and no one other than the Association has any obligation to maintain the landscaping.
6.2.4 Non-Waiver of Assessments: If before the expiration of any fiscal year the Association fails to fix Regular Assessments for the next fiscal year, the Regular Assessment established for the preceding year shall continue until a new Regular Assessment is fixed.

6.3 SPECIAL ASSESSMENTS: Subject to the limitations set forth in Section 6.5 (Limitations on Assessments), Special Assessments may be levied in addition to Regular Assessments for (i) constructing capital improvements, (ii) correcting an inadequacy in the Current Operation Account, (iii) defraying, in whole or in part, the cost of any construction, reconstruction, unexpected repair or replacement of improvements in the Common Area, or (iv) paying for such other matters as the Board may deem appropriate for the Project. Special Assessments shall be levied in the same manner as Regular Assessments.

6.4 REIMBURSEMENT ASSESSMENTS: The Association shall levy a Reimbursement Assessment against an Owner to (a) reimburse the Association for the costs of repairing damage caused by that Owner or that Owner’s Invitee or (b) if a failure to comply with the Project Documents has resulted in (i) an expenditure of monies, including attorneys’ fees, by the Association to bring the Owner or the Owner’s Condominium or Improvements into compliance or (ii) the imposition of a fine or penalty. A Reimbursement Assessment shall be due and payable to the Association when levied. A Reimbursement Assessment shall not be levied by the Association until Notice and Hearing has been provided in accordance with the Bylaws. Reimbursement Assessments may not be enforced by lien.

6.5 LIMITATIONS ON ASSESSMENTS: No Special Assessment or increase in Regular Assessment shall be levied by the Board in violation of California Civil Code Section 5605, except as permitted by California Civil Code Section 5610. The Board shall provide notice of any Special Assessment or any increase in Regular Assessment as required by California Civil Code Section 5615.

6.6 ACCOUNTS AND REVIEWS:

6.6.1 Types of Accounts: Assessments collected by the Association shall be deposited into at least two (2) separate accounts with a responsible financial institution, which accounts shall be clearly designated as (i) the Current Operation Account and (ii) the Reserve Account. The Board shall deposit those portions of the assessments collected for current maintenance and operation into the Current Operation Account and shall deposit those portions of the assessments collected as reserves for replacement and deferred maintenance of major components which the Association is obligated to Maintain into the Reserve Account.

6.6.2 Reserve Account: The Association shall expend funds from the Reserve Account only for the purposes set forth in California Civil Code Section 5510(b) or California Civil Code Section 5515, subject to strict compliance with the limitations set forth in California Civil Code Section 5520, if applicable. Withdrawal of funds from the Reserve Account shall require the signatures of either two (2) Directors or one (1) Director and one (1) officer of the Association who is not a Director.

6.6.3 Current Operation Account: Except as provided in Section 6.6.2 (Reserve Account) all costs properly payable by the Association shall be paid from the Current Operation Account.

6.6.4 Board Review of Accounts and Finances: At least quarterly, the Board shall: (i) cause a current reconciliation of the Association’s Operating Account(s) to be made and review the same; (ii) cause a current reconciliation of the Association’s Reserve Account to be made and review the same; (iii) review the current year’s actual reserve revenues and expenses compared to the current year’s Budget;
(iv) review the most current account statements prepared by the financial institution where the Association has its Operation and Reserve Accounts; and (v) review an income and expense statement for the Association’s Operation and Reserve Accounts.

6.6.5 **Accountant Review of Financial Statements:** If the gross income to the Association in any fiscal year exceeds seventy-five thousand dollars ($75,000) (or any different amount then set forth in California Civil Code Section 5305), the Board shall have the Association’s financial statements for that fiscal year reviewed by a licensee of the California Board of Accountancy in compliance with the requirements of California Civil Code Section 5305. A summary of the review shall be distributed as required by Section 6.8.3 (Accountant Review).

6.7 **Budget Preparation:** At least thirty (30) days before the end of each fiscal year, the Board shall prepare a pro forma operating budget ("Budget") for the following fiscal year which shows estimated revenue and expenses on a fiscal year basis. For the first fiscal year, the Budget shall be substantially based upon the operating budget accepted by the California Bureau of Real Estate. After a new Phase has been annexed, the Board shall approve a Budget, which is substantially based upon the operating Budget accepted by the California Bureau of Real Estate in connection with the Public Report for that Phase, for the remainder of the current fiscal year for use upon the commencement of Regular Assessments against Lots in the new Phase. The Budget or a summary of the budget shall be distributed as required by Section 6.8.1 (Annual Budget Report). The Budget shall also include the Association’s proportionate share of costs and reserves pursuant to the terms of the Joint Use Agreement.

6.8 **DISTRIBUTION OF BUDGET, FINANCIAL STATEMENTS AND REPORTS:**

6.8.1 **Annual Budget Report:** The Board shall annually prepare and distribute to the Members an annual budget report in compliance with the requirements of California Civil Code Section 5300. The annual budget report shall include the Budget and the summaries or statements listed in subdivision (b) of California Civil Code Section 5300. A summary of the annual budget report may be distributed in lieu of the entire report if the requirements set forth in California Civil Code Section 5320 are satisfied. As of the date of recordation of this Declaration, the annual budget report must be distributed within thirty (30) to ninety (90) days before the end of each fiscal year.

6.8.2 **Annual Policy Statement:** The Board shall annually prepare and distribute to the Members an annual policy statement in compliance with the requirements of California Civil Code Section 5310. The annual policy statement shall be accompanied by the disclosures required by California Civil Code Sections 5730, 5920 and 5965. A summary of the annual policy statement may be distributed in lieu of the entire statement if the requirements set forth in California Civil Code Section 5320 are satisfied. As of the date of recordation of this Declaration, the annual policy statement must be distributed within thirty (30) to ninety (90) days before the end of each fiscal year.

6.8.3 **Accountant Review:** A summary of any review of the Association’s financial statements required by Section 6.6.5 (Accountant Review of Financial Statements) shall be distributed to the Members in compliance with the requirements of California Civil Code Section 5305. As of the date of recordation of this Declaration, the review of financial statements must be distributed within one hundred twenty (120) days after the end of each fiscal year.

6.9 **Reserve Account Study:** The Board shall (i) cause a study of the Reserve Account to be conducted at least once every three (3) years, (ii) review or cause the study to be reviewed annually and
(iii) consider and implement necessary or appropriate adjustments to the Board’s analysis of the Reserve Account requirements as a result of that review in compliance with the provisions of California Civil Code Section 5500.

6.10 ENFORCEMENT OF ASSESSMENTS:

6.10.1 Notice of Delinquent Assessment: The Association may record a notice of delinquent assessment as authorized by California Civil Code Section 5675 against an Owner’s Condominium for failure to pay assessments. No such notice of delinquent assessment may be recorded until (a) all of the requirements of California Civil Code Sections 5660 and 5673 have been satisfied, (b) the Association has offered to “meet and confer” as required by California Civil Code Section 5670 and, (c) if the Owner accepts the offer to “meet and confer,” the Association has participated in the dispute resolution procedures applicable to the Association and its Members pursuant to California Civil Code Section 5905.

6.10.2 Procedures: In addition to all other remedies provided by law, the Association, or its authorized representative, may enforce the obligations of the Owners to pay each assessment provided for in this Declaration in any manner provided by law or by either or both of the following procedures:

(a) By Suit: The Association may commence and prosecute a suit at law against any Owner personally obligated to pay a delinquent assessment. The suit shall be prosecuted in the name of the Association. Any judgment rendered in any action shall include the amount of the delinquency, and such Additional Charges and/or any other amounts as the court may award. A proceeding to recover a judgment for unpaid assessments may be prosecuted without the necessity of foreclosing or waiving the lien established herein.

(b) By Lien: The Association or a trustee nominated by the Association may commence and prosecute proceedings to foreclose the lien established by recording a notice of delinquent assessment as provided in Section 6.10.1 (Notice of Delinquent Assessment) at any time after expiration of thirty (30) days following the recording in accordance with the provisions of California Civil Code Section 5700, subject to the limitations set forth in California Civil Code Section 5705.

6.10.3 Additional Charges: In addition to any other amounts due or any other relief or remedy obtained against an Owner who is delinquent in the payment of any assessments, each Owner agrees to pay such Additional Charges as the Association may incur or levy in collecting the monies due and delinquent from that Owner. All Additional Charges shall be included in any judgment in any suit or action brought to enforce collection of delinquent assessments or may be levied against a Condominium as a Reimbursement Assessment. Additional Charges shall include, but not be limited to, the following:

(a) Attorneys’ Fees: Reasonable attorneys’ fees and costs incurred in the event an attorney(s) is employed to collect any assessment or sum due, whether by suit or otherwise;

(b) Late Charges: A late charge in an amount to be fixed by the Board in accordance with the then current laws of the State of California to compensate the Association for additional collection costs incurred in the event any assessment or other sum is not paid when due or within any “grace” period established by law;

(c) Costs of Suit: Costs of suit and court costs incurred as are allowed by the court;
(d) **Interest**: Interest on the delinquent assessment and Additional Charges at a rate fixed by the Board in accordance with the then current laws of the State of California; and

(e) **Other**: Any such other additional costs that the Association may incur in the process of collecting delinquent assessments or sums.

6.10.4 **Satisfaction of Lien**: All amounts paid by an Owner toward a delinquent assessment shall be credited first to reduce the principal amount of the debt. Within twenty-one (21) days of payment or other satisfaction of a delinquent assessment for which a notice of delinquent assessment was recorded as provided in Section 6.10.1 (Notice of Delinquent Assessment), the Association shall record a certificate stating the satisfaction and release of the assessment lien as required by California Civil Code Section 5685.

6.10.5 **Lien Eliminated By Foreclosure**: If the Association has recorded a Notice of Delinquent Assessment and the lien is eliminated as a result of a foreclosure of a Mortgage or a transfer pursuant to the remedies provided in the Mortgage, the new Owner of the Condominium shall pay to the Association a pro-rata share of the Regular Assessment for each month remaining in the Association’s fiscal year after the date of the foreclosure or transfer pursuant to the remedies provided in the Mortgage.

6.10.6 **Waiver of Homestead Protections**: Each Owner, does hereby waive, to the extent permitted by law, the protections of any declared homestead or homestead exemption or redemption laws under the laws of California as applied to any action to enforce or collect assessments levied by the Association.

6.11 **SUBORDINATION OF ASSESSMENT LIEN**: Notwithstanding any provision to the contrary, the liens for assessments created pursuant to this Declaration shall be subject and subordinate to and shall not affect the rights of the holder of a First Mortgage made in good faith and for value. Upon the foreclosure of any First Mortgage on a Condominium, any lien for assessments which became due prior to such foreclosure shall be extinguished; provided, however, that after such foreclosure there shall be a lien on the interest of the purchaser at the foreclosure sale to secure all assessments, whether Regular or Special, charged to such Condominium after the date of such foreclosure sale, which lien shall have the same effect and shall be enforced in the same manner as provided herein. For purposes of this Section, a Mortgage may be given in good faith or for value even though the Mortgagee has constructive or actual knowledge of the assessment lien provisions of this Declaration.

### ARTICLE 7

**THE ASSOCIATION**

7.1 **THE ORGANIZATION**: The Association is a nonprofit mutual benefit corporation. Its affairs shall be governed by and it shall have the powers set forth in the Project Documents.

7.2 **MEMBERSHIP**: Each Owner (including Declarant for so long as Declarant is an Owner), by virtue of being an Owner, shall be a Member of the Association. No other person shall be accepted as a Member. Association membership is appurtenant to and may not be separated from the ownership of a Condominium. Membership shall terminate upon termination of Condominium ownership. Ownership of a Condominium shall be the sole qualification for Association membership. Membership shall not be transferred, pledged or alienated in any way except upon transfer of title to the Owner’s Condominium (and then only to the transferee of title to such Condominium). Any attempt to make a prohibited transfer is void.
Membership shall not be related to the use or non-use of the Common Area and may not be renounced. The rights, duties, privileges and obligations of all Members shall be as provided in the Project Documents.

7.3 **VOTING:** Any action required by law or by the Project Documents to be approved by the Owners, the Members or each class of Members shall be approved, if at all, in accordance with the procedures set forth in the Bylaws.

7.4 **OPERATING RULES:** Operating Rules may be adopted and changed in accordance with the provisions of California Civil Code Division 4, Part 5, Chapter 3, Article 5 (Sections 4340 et seq.). In all votes held pursuant to California Civil Code Section 4365(c) Class A Members shall be entitled to cast Class A votes, Class B Members shall be entitled to cast Class B votes and all votes shall be counted pursuant to the provisions of Section 4.3.3 (Of the Members) of the Bylaws.

7.4.1 **Effect on Maintenance Responsibilities:** Operating Rules may address any matter that is related to the operation or management of the Project and must be consistent with the then current law and the Project Documents. Operating Rules may not reduce any standard established by this Declaration unless mandated by then current law. However, Operating Rules may clarify maintenance responsibilities if the provisions of this Declaration which affect an improvement are ambiguous, contradictory or improperly describe the Improvement.

7.4.2 **Architectural Standards:** Architectural Standards may include, but are not limited to, (a) standards and procedures for architectural review, (b) guidelines for architectural design, placement of buildings, color schemes, exterior finishes and materials, landscaping, fences, and similar features, and (c) a schedule of fees for processing submittals which shall not exceed the amount necessary to defray all costs incurred in processing the submittals.

7.5 **TRANSFERS OF COMMON AREA:** The Board shall have the exclusive power and right in the name of the Association to grant, convey, dedicate, mortgage, or otherwise transfer (collectively referred to as "Transfer") to any Owner or other person or entity, fee title, easements, exclusive use easements, security rights or other rights or licenses in, on, over or under the Project Common Area, subject only to the following limitations:

7.5.1 **Exclusive Use Rights to Owners:** Transfers to Owners which are subject to the provisions of California Civil Code Section 4600 require membership approval ("4600 Transfer"). A 4600 Transfer must be approved by the Members in accordance with the Secret Ballot Procedure described in Section 2.6 (Secret Ballot Procedure) of the Bylaws and the membership approval shall be deemed to satisfy the membership approval requirement of Section 4600.

7.5.2 **Value of Property Being Sold:** Any sale of Common Area during a fiscal year which has an aggregate fair market value greater than five percent (5%) of the budgeted gross expenses of the Association requires the approval of each class of Members in accordance with the provisions of Section 3.3 (Limitations on Powers of Board) of the Bylaws. The Board may rely upon an appraisal provided to it or obtained by it at the time of the sale. If the sale is also a 4600 Transfer, the Secret Ballot Procedure must be used and the approval of each class of Members in accordance with the provisions of Section 3.3 (Limitations on Powers of Board) of the Bylaws shall be deemed to satisfy the membership approval requirement of Section 4600.

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7.5.3 Building Common Area, Units and Exclusive Use Common Area: Transfers of Building Common Area require the approval of the Owners of seventy-five percent (75%) of the Units located within the Building Common Area. Transfers of any portion of a Unit or Exclusive Use Common Area require the approval of the Owner of the Unit or Exclusive Use Common Area.

The Board is hereby granted the power and right, in the names of all Owners of any Building Common Area which is to be Transferred, as their attorneys-in-fact, to execute any deed, easement, license or other instrument appropriate to make a Transfer which is approved in accordance with this Section 7.5.

7.6 INSURANCE: The Board shall make every reasonable effort to obtain and keep in full force and effect the insurance policies as provided in this Section. If the Board is unable to purchase a policy or if the Board believes that the cost of the policy is unreasonable, the Board shall call a special meeting of Members to determine what action to take. The Board shall comply with any resolution concerning insurance coverage adopted at such a meeting.

7.6.1 General Provisions and Limitations: All insurance policies shall be subject to and, where applicable, shall contain the following provisions and limitations:

(a) Underwriter: All policies (except earthquake insurance) shall be written with a company legally qualified to do business in the State of California and (i) holding a “B” or better general policyholder’s rating and a “6” or better financial performance index rating as established by Best’s Insurance Reports, (ii) reinsured by a company described in (i), above, or (iii) if such a company is not available, the best rating possible or its equivalent.

(b) Named Insured: Unless otherwise provided in this Section, the named insured shall be the Association or its authorized representative, as a trustee for the Owners and Mortgagees, as their interests may appear.

(c) Certificate of Insurance: Provision shall be made for the issuance, upon request, of a certificate of insurance to each Owner and that Owner’s Mortgagee which shall specify the amount of such insurance attributable to that particular Owner’s Condominium.

(d) Authority to Negotiate: Exclusive authority to adjust and negotiate losses under policies obtained by the Association and to perform all other functions necessary or appropriate to accomplish these purposes, shall be vested in the Board or such other authorized representative as the Board may designate, including but not limited to an insurance trustee with whom the Association has entered into an insurance trust agreement; provided, however, that no Mortgagee having an interest in such losses may be prohibited from participating in any settlement negotiations related thereto.

(e) Contribution: In no event shall the Association’s insurance coverage be brought into contribution with insurance purchased by Owners or their Mortgagees.

(f) General Provisions: To the extent possible, the Board shall make every reasonable effort to secure insurance policies providing for the following:

(i) A waiver of subrogation by the insurer as to any claims against the Board, the manager, the Owners and their respective servants, agents and guests;
(ii) That the policy will be primary, even if an Owner has other insurance which covers the same loss;

(iii) That no policy may be cancelled or substantially modified without at least thirty (30) days prior written notice to the Association and to each First Mortgagee listed as a scheduled holder;

(iv) An Agreed Amount Endorsement, if the policy contains a coinsurance clause;

(v) A Guaranteed Replacement Cost or Replacement Cost Endorsement;

(vi) An inflation guard endorsement;

(vii) That the coverage is not prejudiced by any act or neglect of an individual Owner who is not authorized to act on behalf of the Association; and

(viii) A recognition of an insurance trust agreement.

(g) **Term:** The period of each policy shall not exceed three (3) years. Any policy for a term greater than one (1) year must permit short rate cancellation by the insureds.

(b) **Deductible:** The policy may contain a reasonable deductible and the amount of the deductible shall be added to the face amount of the policy in determining whether the insurance equals replacement cost.

(i) **Standard Mortgage Clause:** All policies shall contain the standard mortgage clause, or equivalent endorsement (without contribution), which is commonly accepted by private institutional mortgage investors in the area in which the Project is located.

7.6.2 **Types of Coverage:** Unless the Association determines otherwise pursuant to Section 7.6 (Insurance), the Board shall obtain at least the following insurance policies in the amounts specified:

(a) **Property Insurance:** A Special Form or “All-Risk” policy of property insurance for all insurable Common Area Improvements, including fixtures and building service equipment, and personal property owned by the Association, against loss or damage by fire or other casualty, in an amount equal to one hundred percent (100%) of the full replacement cost (without respect to depreciation) of the Common Area and exclusive of land, foundations, excavation and other items normally excluded from coverage. A Replacement Cost Endorsement shall be part of the policy. If the Project contains one or more steam boilers, the policy shall cover (or an additional insurance policy shall be obtained that covers) loss or damage resulting from steam boiler equipment accidents in an amount not less than fifty thousand dollars ($50,000) per accident per location.

(b) **Liability Insurance:** A combined single limit policy of comprehensive general liability insurance in an amount not less than Three Million Dollars ($3,000,000.00) covering the Common Area and damage or injury, including but not limited to liability arising from employment contracts and liability for the death of a person or property damage arising out of a single occurrence, caused by the negligence of the Association, the Board or any of its agents or the Owners against liability to the public or to any Owner incident to the use of or resulting from an accident or intentional or unintentional act of an
Owner or a third party occurring in or about any Common Area. If available, each policy shall contain a cross liability endorsement in which the rights of the named insured shall not be prejudiced with respect to any action by one named insured against another named insured.

(c) **Worker’s Compensation:** Worker’s compensation insurance to the extent necessary to comply with all applicable laws of the State of California or the regulations of any governmental body or authority having jurisdiction over the Project.

(d) **Fidelity Bond:** A fidelity bond naming the Board, the Owners, the Association and such other persons as the Board may designate as obligees, in an amount equal to all funds in the Reserve Account plus the amount of the Budget for the current fiscal year. The fidelity bond shall contain a waiver of any defense based on the exclusion of persons serving without compensation and a provision which requires ten (10) days written notice to the Association prior to cancellation or termination of the bond.

(e) **Directors and Officers:** Errors and omissions insurance covering individual liability of Directors and officers for their negligent acts or omissions while acting in their capacities as Directors and officers in an amount equal to at least the minimum amount specified in California Civil Code Section 5800(a)(4).

(f) **Other Association Insurance:** All insurance required by law and any other insurance that the Board determines to be necessary or appropriate to fully protect the interests of the Owners.

7.6.3 **Annual Review:** The Board shall review the adequacy of all insurance, including the amount of liability coverage and the amount of property damage coverage, at least once every year. At least once every three years, the review shall include a replacement cost appraisal of all insurable Common Area Improvements without respect to depreciation. The Board shall adjust the policies to provide the amounts and types of coverage and protection that are customarily carried by prudent owners of similar property in the area in which the Project is situated.

7.6.4 **Insurance by Owner:** Each Owner is responsible for determining and obtaining the type and amount of insurance needed to insure the Owner’s personal liability and all Improvements (which existed at the time of purchase of the Unit and which are subsequently added) and personal property located within the Owner’s Unit. The insurance policies carried by the Association are not intended to cover any Improvement or any personal property situated within an individual Unit. However, if a policy carried by the Association offers coverage for damage to any Improvement or personal property within a single Unit, the Owner may elect to have the Association adjust the claim under the Association’s insurance policy pursuant to Section 5.9.7 (Single Unit Exception). Owners shall not procure insurance coverage which decreases the amount which the Association, on behalf of all Owners and their Mortgagees, may realize under any insurance policy the Association may have in effect at any time.

7.7 **ANNUAL BUDGET REPORT AND ANNUAL POLICY STATEMENT:** The Association shall annually distribute to the Members an annual budget report in compliance with the requirements of Section 6.8.1 (Annual Budget Report) and an annual policy statement in compliance with the requirements of Section 6.8.2 (Annual Policy Statement).

7.8 **MONETARY PENALTIES:** The Board may adopt a schedule of monetary penalties as permitted by California Civil Code Section 5850 provided it is not inconsistent with the Project Documents. The Board shall include a copy of the schedule in the annual policy statement required by Section 6.8.2
(Annual Policy Statement). Each time the schedule is modified, the Board shall again deliver a copy to each Owner in compliance with the requirements of California Civil Code Section 4040.

7.9 DOCUMENTS FOR DISTRIBUTION TO PROSPECTIVE PURCHASERS: Upon written request by a Member, the Association shall provide the Member with a copy of any or all items described in California Civil Code Section 4525(a). Upon receipt of such request, the Association shall provide a disclosure on the form described in California Civil Code Section 4528 with a written or electronic estimate of the fees that will be assessed for providing the requested documents. Within ten (10) days of the mailing or delivery of such request, the Association shall provide the requested documents. The items required to be made available pursuant to California Civil Code Sections 4525(a) and 4530 may be kept in electronic form and the Member shall have the option of receiving the items by electronic transmission or machine readable storage media if the Association keeps the items in electronic form. At the time of delivery of the requested documents, the Association shall provide the Member with a copy of the completed form specified in California Civil Code Section 4528. The Association may collect a reasonable fee based upon the Association's actual cost to procure, prepare, reproduce and deliver the requested items.

7.10 AUTHORITY TO REPRESENT ASSOCIATION: Neither an Owner nor the Association (including its officers and Directors) may represent that the Association or the Members are in favor of or against any proposed residential, commercial, recreational or industrial development or a governmental approval connected with any such development, including, but not by way of limitation, zoning or re-zoning decision, specific or general plan amendment or decision, tentative or final map approval or use permit, without the approval of each class of Members.

ARTICLE 8
RIGHTS OF DECLARANT

8.1 LIMITATIONS OF RESTRICTIONS: Declarant is undertaking the work of developing Condominiums and other Improvements within the Project. The completion of the development and the marketing, sale, lease, rental and/or other disposition of the Condominiums is essential to the establishment and welfare of the Project as a residential community. In order that the work may be completed and the Project established as a fully occupied residential community as rapidly as possible, nothing in this Declaration shall be interpreted to deny Declarant the rights set forth in this Article.

8.2 RIGHTS OF ACCESS AND COMPLETION OF CONSTRUCTION: Until the fifth (5th) anniversary of the original issuance of the Public Report, Declarant, its contractors and subcontractors shall have the right to: (i) obtain reasonable access over and across the Common Area of the Project and/or do within any Unit owned or controlled by it whatever is reasonably necessary or appropriate in connection with the completion of the Project; (ii) use portions of the Project as staging or storage areas for materials and equipment; and (iii) erect, construct and use on the Common Area of the Project and/or within any Unit owned or controlled by it such structures as may be reasonably necessary or advisable for the conduct of its business to complete the work, establish the Project as a residential community and dispose of the Project in parcels by sale, lease, rental or otherwise. Each Owner acknowledges that: (a) the construction of the Project may occur over an extended period of time; (b) the Owner’s quiet use and enjoyment of the Owner’s Condominium may be disturbed as a result of the noise, dust, vibrations and other nuisances associated with construction activities; and (c) the nuisances will continue until the completion of the construction of the entire Project.
8.3 SIZE AND APPEARANCE OF PROJECT: Declarant shall not be prevented from changing the exterior appearance of Common Area structures, the landscaping or any other matter directly or indirectly connected with the Project in any manner deemed desirable by Declarant, if Declarant obtains all governmental consents required by law.

8.4 MARKETING RIGHTS: Declarant has the right to: (i) construct, establish and use model homes, signs, banners, flags, inflatable balloons, blimps, sales offices, sales and construction trailers, leasing offices, rental offices, storage areas, parking lots and related facilities in any Units owned or controlled by Declarant or in Common Area within the Project as is appropriate in the opinion of Declarant for the sale, lease, rental or other disposition of the Condominiums in the Project and real property in any other neighborhood in the vicinity of the Project in which Declarant is constructing and selling the same or a similar product type ("Related Units"); (ii) make reasonable use of the Common Area and facilities for the sale, lease, rental or other disposition of Condominiums and Related Units; (iii) use any Units owned or controlled by Declarant in accordance with any promotional programs established from time to time by Declarant; and (iv) conduct its business of disposing of Condominiums and Related Units by sale, lease, rental or otherwise; provided, however, Declarant shall pay reasonable rent for the use of any Common Area facilities to the Association if Declarant’s use of those Common Area facilities materially interferes with the full use and enjoyment of the Common Area facilities by Owners.

8.5 RIGHTS TO RESTRICT ACCESS: Declarant expressly reserves the right to restrict access to any portion of the Project on which construction or staging activity is occurring, or materials are stored. Access may be restricted by signs, personnel, fences or other barriers or by other reasonable means. Restrictions imposed pursuant to this Section 8.5 are not subject to the rental payment provisions of Section 8.4 (Marketing Rights).

ARTICLE 9
RIGHTS OF MORTGAGEES

9.1 CONFLICT: Notwithstanding any contrary provision in the Project Documents, the provisions of this Article shall control with respect to the rights and obligations of Mortgagees specified herein.

9.2 AUDITED FINANCIAL STATEMENTS: If an audited financial statement for the immediately preceding fiscal year is available, the Association shall provide a copy to any Mortgagee who makes a written request for it. If an Institutional Mortgagee makes a written request for an audited financial statement for the immediately preceding fiscal year, the Association shall prepare and provide the audited financial statement within one hundred twenty (120) days of the request.

9.3 AGREEMENTS FOR DECLARANT SERVICES: Any agreement providing for services of Declarant shall be for a term not to exceed one (1) year without the approval of fifty-one percent (51%) of each class of Members; provided, however, that in no event shall such an agreement exceed a term of three (3) years. Any such agreement is terminable by the Association without cause and without payment of a termination fee upon ninety (90) days written notice.

9.4 INSPECTION OF BOOKS AND RECORDS: Upon request, any Owner, First Mortgagee or First Mortgage Insurer shall be entitled to inspect and copy the books, records and financial statements of the Association, the Project Documents and any amendments thereto during normal business hours.
9.5 PROTOCOL: The Association shall give timely written notice of each of the following events to each Eligible Holder:

9.5.1 Amendments: Any proposed amendment to the Bylaws, Declaration or Condominium Plan effecting a change in:

(a) The boundaries of any Unit or Exclusive Use Common Area;

(b) The interest(s) of an Owner in Common Area or Exclusive Use Common Area

(c) The allocation of assessments to Units;

(d) The number of votes that may be cast by the Owner(s) of a Unit; or

(e) The uses which may be made of Units or Common Area.

9.5.2 Termination of Project: Any proposed termination of the Project.

9.5.3 Loss: Any condemnation loss or casualty loss which affects the Condominium in which the Eligible Holder has an interest or a material portion of the Project.

9.5.4 Delinquency: Any delinquency in the payment of assessments or charges owed by the Owner of a Condominium in which the Eligible Holder has an interest, if the delinquency is not cured within sixty (60) days after its due date.

9.5.5 Insurance: Any lapse, cancellation or material modification of any Association insurance policy; or

9.5.6 Specific Actions: Any proposal to take any action for which this Declaration expressly requires the consent of a specified percentage of First Mortgagees or First Mortgage Insurers.

9.6 RESERVE ACCOUNT: The Reserve Account described in Section 6.6 (Accounts and Reviews) shall be funded by Regular Assessments at a level which is adequate to replace those Improvements that the Association is obligated to Maintain.

9.7 MORTGAGE PROTECTION: A breach of any of the conditions or the enforcement of any lien provisions contained in this Declaration shall not defeat or render invalid the lien of any First Mortgage made in good faith and for value as to any Condominium in the Project; but all of the covenants, conditions and restrictions contained in this Declaration shall be binding upon and effective against any Owner of a Condominium if the Condominium is acquired by foreclosure, trustee’s sale or otherwise.

9.8 MORTGAGEE VOTING: Each provision of this Declaration which requires the approval of First Mortgagees or Eligible Holders entitles the First Mortgagee or Eligible Holder to cast one (1) vote for each Condominium encumbered by a First Mortgage owned by the First Mortgagee or Eligible Holder. If an action is subject to multiple approvals, each Eligible Holder who casts a vote will be deemed to have cast the same vote as a First Mortgagee.
ARTICLE 10
AMENDMENTS AND ENFORCEMENT RIGHTS

10.1 AMENDMENTS: Prior to the conveyance by Declarant of the first Condominium, this Declaration may be amended by Declarant alone. After the conveyance by Declarant of the first Condominium, this Declaration may be amended if each of the following requirements is satisfied:

10.1.1 Eligible Holder Approval: The approval of fifty-one percent (51%) of the Eligible Holders must be obtained to amend any provision of this Declaration or the Bylaws which establishes, provides for, governs or regulates any of the following subjects:

(a) Voting;

(b) Assessments, assessment liens or subordination of such liens;

(c) Reserves for maintenance, repair and replacement of Common Area or Exclusive Use Common Area;

(d) Insurance or fidelity bonds;

(e) Rights to use the Common Area;

(f) Responsibilities for maintenance and repair of any portion of the Project;

(g) Expansion or contraction of the Project, or the addition, annexation or withdrawal of Property to or from the Project;

(h) Boundaries of any Unit or Exclusive Use Common Area;

(i) The interest of an Owner in Common Area or Exclusive Use Common Area;

(j) Convertibility of Units into Common Area or of Common Area into Units;

(k) Leasing of Condominiums;

(l) Imposition of any right of first refusal or similar restriction on the right of an Owner to sell, transfer or otherwise convey the Owner’s Condominium;

(m) Establishment of self-management by the Association where professional management has been required by any First Mortgage Insurer; or

(n) The provisions of Section 6.11 (Subordination of Assessment Lien), Article 9 (Rights of Mortgagees), this Section 10.1.1, and any other provision in the Project Documents which confers voting rights on First Mortgagees or First Mortgage Insurers.
10.1.2 **First Mortgagee Approval**: The approval of fifty-one percent (51%) of the First Mortgagees must be obtained to amend any provision of this Declaration or the Bylaws which establishes, provides for, governs or regulates any of the following subjects:

(a) Any amendment of a material and adverse nature to Mortgagees; or

(b) The provisions of Section 6.11 (Subordination of Assessment Lien), Article 9 (Rights of Mortgagees), and this Section 10.1.2 and any other provision in the Project Documents which confers voting rights on First Mortgagees or First Mortgage Insurers.

Any amendment or addition to the Declaration or Bylaws regarding any of the foregoing subjects shall not be considered material and need not be approved by First Mortgagees if the amendment or addition is solely for the purposes of correcting technical errors or for clarification. Any First Mortgagee who receives a written request to approve the taking of any action under the Project Documents which the First Mortgagee has a right to approve and who does not deliver or have its response postmarked within sixty (60) days of the date contained within the written request shall be deemed to approve the action. All notices or other communications made pursuant hereto shall be in writing and shall be deemed properly delivered, given or served when (i) personally delivered against receipted copy; or (ii) mailed by certified or registered mail, postage prepaid, return receipt requested, in either case (i) or (ii) to the parties at their last known address.

10.1.3 **Approval of Each Class**: The approval of sixty-seven percent (67%) of each class of Members must be obtained for approval of an action which is subject to Section 10.1.1 (Eligible Holder Approval). The approval of each class of Members must be obtained for an approval of an action which is subject to Section 10.1.2 (First Mortgagee Approval). If an action is subject to the provisions of both Sections 10.1.1 (Eligible Holder Approval) and 10.1.2 (First Mortgagee Approval), Members shall cast votes under Section 10.1.1 (Eligible Holder Approval) and those votes shall be deemed to have been cast under Section 10.1.2 (First Mortgagee Approval) as well. For all other provisions of this Declaration, the approval of each class of Member must be obtained in accordance with the procedure described in Section 2.6 (Secret Ballot Procedure) of the Bylaws; provided, however, that no provision of this Declaration which provides for a vote of more than fifty-one percent (51%) may be amended by a vote less than the percentage specified in the Section to be amended.

10.1.4 **Development Rights**: The provisions of Article 8 (Rights of Declarant) and this Section 10.1.4 may not be amended without the consent of Declarant until all of the Condominiums in the Project owned by Declarant have been conveyed.

10.1.5 **Architectural Control**: The provisions of Section 11.1.3 (Declarant Exemption) and this Section 10.1.5 may not be amended without the consent of Declarant until all of the Condominiums in the Project owned by Declarant have been conveyed.

10.1.6 **Disputes**: The provisions of Section 2.20 (Dispute), Section 2.32 (Maintain), Section 2.33 (Maintenance Manual), Section 2.35 (Master Dispute Resolution Declaration), Section 2.49 (Title 7), Section 3.4.8 (Right of Entry to Inspect), Section 3.4.9 (Right of Entry to Perform Work), Section 3.4.10 (Right to Photograph), Section 10.1.7 (Unilateral Amendment and Prospective Application), Section 10.5 (Disputes), Section 10.6 (Mandatory Binding Arbitration), and this Section 10.1.6 may not be amended nor shall other provisions be adopted that purport to supersede them without the consent of Declarant.
10.1.7 Unilateral Amendment and Prospective Application: Declarant shall have the right to change the provisions of this Declaration under the following circumstances: (a) statutory changes are adopted or the law is changed through the decision of a court (collectively “New Law”) and the New Law imposes a new requirement on Owners or the Association, invalidates a provision of this Declaration, results in the inability to enforce a provision of this Declaration or prevents the operation of a provision of this Declaration, or (b) the Federal National Mortgage Association (Fannie Mae), the Federal Home Loan Mortgage Corporation (Freddie Mac), the Federal Housing Administration (FHA), or the United States Department of Veterans’ Affairs (VA) require changes to this Declaration as a condition of providing mortgage financing or mortgage insurance (collectively, “Financing Condition”). To amend this Declaration to effectuate changes as a result of any such New Law or FinancingCondition, Declarant must record a document that (i) describes the Project, (ii) references this Section 10.1.7, (iii) describes the New Law or Financing Condition (or both), (iv) describes the Sections in this Declaration that are affected by the New Law or Financing Condition, and (v) contains the new provisions.

10.1.8 Rights of City: The provisions of Sections 2.31 (Landscape Maintenance Agreement), 2.47 (Stormwater Agreement), 2.48 (Stormwater Improvements), 3.411 (Stormwater Improvements), Section 4.8 (Parking) and its sub-sections, 4.13 (Stormwater Improvements), 5.1 (Maintaining Common Area and Improvements) and its sub-sections, 5.7 (Landscaping) and its sub-sections, and this Section 10.1.8 may not be amended, nor shall other provisions be adopted that purport to supersede them, without the prior written consent of the City.

10.2 Restatement: After an amendment is duly approved in accordance with the requirements of Section 10.1 (Amendments), the Board may prepare a restatement of the Declaration and record the restatement of the Declaration which restates the entire text of the original document, with these exceptions: (a) changes incorporating all amendments approved by the Owners; (b) changes made to rearrange or delete the text for consistency with the approved amendments; and (c) changes made to delete material no longer legally effective or legally required. Upon recodification of the restatement, the restatement shall supersede the Declaration and all prior amendments in their entirety, without, however, affecting the priority of the Declaration in the chain of title to all properties that are subject to the Declaration, as established by the Declaration’s initial date of recordation.

10.3 Recordation: Any amendment to this Declaration shall be effective upon the recordation in the Official Records of the County of either (a) a restatement approved by the Board as provided above which includes a statement executed by the President and Secretary of the Association which certifies that the required percentage of Members has approved all amendments made by the restatement and that the form of the restatement was duly approved by a resolution of the Board, or (b) an amending instrument which sets forth the terms of the amendment and includes a statement executed by the President and Secretary of the Association which certifies that the required percentage of Members has approved all amendments made by the amending instrument.

10.4 Enforcement:

10.4.1 Rights to Enforce: Subject to the provisions of Section 10.5 (Disputes) and Section 10.6 (Mandatory Binding Arbitration), Declarant, the Association and/or any Owner shall have the power to enforce the provisions of the Project Documents in any manner provided by law or in equity and in any manner provided in this Declaration. In addition to instituting appropriate legal action, the Association may temporarily suspend an Owner’s voting rights and/or levy a fine against an Owner in a standard amount to be determined by the Board from time to time. No determination of whether a violation has occurred may
be made until Notice and Hearing has been provided to the Owner pursuant to the Bylaws. If legal action is instituted by the Association, any judgment rendered shall include all appropriate Additional Charges. Notwithstanding anything to the contrary contained in this Declaration, the Association has no power to cause a forfeiture or abridgement of an Owner’s right to the full use and enjoyment of the Owner’s Condominium, including access thereto, due to the Owner’s failure to comply with the provisions of the Project Documents unless the loss or forfeiture is the result of an order of a court or an order pursuant to a final and binding arbitration decision. The provisions of this Declaration are equitable servitudes, enforceable by any Owner, Declarant or the Association against the Association, Declarant or any other Owner or resident in the Project. Except as otherwise provided, Declarant, the Association or any Owner(s) has the right to enforce, in any manner permitted by law or in equity, any and all of the provisions of the Project Documents, including any decision made by the Association, upon the Owners, Declarant, the Association or upon any property in the Project.

10.4.2 Request to Enforce: If any Owner believes that the Association should take action to enforce any claimed violation of this Declaration, the Owner shall notify the Board in writing of the claimed violation and the Owner’s request that the Association take steps to enforce the provision which the Owner claims has been violated. Upon receipt of a request, the Board shall review the matter and shall determine what enforcement action, if any, is appropriate. Neither the Board nor the Association (including its Directors and officers) shall have any obligation to enforce the provision which the Owner claims has been violated if the Board decides not to take any enforcement action.

10.4.3 Violation of Law: The Association may treat any Owner’s violation of any state, municipal or local law, ordinance or regulation in the same manner as a violation of the Project Documents by making such violation subject to any or all of the enforcement procedures set forth in this Declaration, as long as the Association complies with the Notice and Hearing requirements.

10.4.4 Remedies Cumulative: Each remedy provided in this Declaration is cumulative and not exclusive.

10.4.5 No Waiver: The failure to enforce the provisions of any covenant, condition or restriction contained in this Declaration will not constitute a waiver of any right to enforce any such provisions or any other provisions of this Declaration.

10.5 DISPUTES:

10.5.1 Actions Against Declarant: At least ninety (90) days prior to the initiation of any civil action, including arbitration, by the Association against Declarant, the Board shall provide written notice to each Member specifying (a) that a meeting of the Board will be held to discuss problems that may lead to the filing of a civil action or arbitration, (b) the options, including civil actions, that are available to address the problems, and (c) the time and place of the Board meeting. Before the Association institutes any action against Declarant, the Board must obtain the approval of the Members other than Declarant.

10.5.2 Warranty Claims: The resolution and enforcement of all claims brought by any Owner or the Association under any warranty provided by Declarant, including but not limited to any alleged violation of the Fit & Finish Warranty provided to an Owner or the Association by Declarant in accordance with the provisions of California Civil Code Section 900 and any disagreement concerning an Owner’s or the Association’s notification under a warranty shall be governed solely by the dispute resolution provisions provided in the applicable warranty.
10.5.3 **Title 7 Claims:** Any disputes between any Owner and Declarant or between the Association and Declarant regarding any matters that arise from or are in any way related to Title 7, whether contractual, statutory or tort, including, but not limited to, the condition, design, construction or materials used in construction of any portion of the Project or any deficiency, as that term is defined in California Civil Code Section 896, shall be resolved in accordance with the procedures described in the applicable Master Dispute Resolution Declaration.

10.5.4 **Civil Code Section 5900:** This Section does not apply to any claim that is subject to the provisions of Section 10.5.2 (Warranty Claims) or Section 10.5.3 (Title 7 Claims). Any Dispute between the Association and a Member which is described in California Civil Code Section 5900(a) shall be addressed in accordance with the provisions of California Civil Code Sections 5915(b) and (c). If the Dispute is not resolved in accordance with the procedures set forth in California Civil Code Sections 5915(b) and (c), then the Dispute shall be addressed in accordance with the provisions of California Civil Code Section 5930. If an Owner fails to comply with the alternative dispute resolution requirements of California Civil Code Section 5930, the Owner may lose the Owner's rights to sue the Association or another Owner to enforce the Project Documents or applicable law. If at any point it appears that the Dispute arises from or is in any way related to a warranty or Title 7 Claim, then such dispute shall then be resolved in accordance with the procedures described in the applicable warranty or Master Dispute Resolution Declaration and not in accordance with the provisions of this Section 10.5.4.

10.6 **MANDATORY BINDING ARBITRATION:** Subject to the provisions of Section 10.5.1 (Actions Against Declarant), any Dispute involving Declarant that is not (a) subject to the provisions of Section 10.5.2 (Warranty Claims) or Section 10.5.3 (Title 7 Claims), and (b) which is either not subject to Section 10.5.4 (Civil Code Section 5900) or finally resolved by the procedures described in Section 10.5.4 shall be resolved in accordance with the provisions of this Section 10.6.

10.6.1 **Mediation:** Owner, the Association and Declarant agree to submit any and all Disputes to mediation before commencing arbitration. The cost of mediation shall be paid by Declarant. Each party to the mediation shall bear its own attorneys’ fees and costs in connection with such mediation.

10.6.2 **Arbitration:** Notwithstanding California Code of Civil Procedure Section 1298.7, if a Dispute is not resolved through mediation, Owner, the Association and Declarant shall resolve the Dispute exclusively through binding arbitration conducted in accordance with the rules for residential construction then in effect for the American Arbitration Association (“AAA”). If the rules for residential construction do not exist, then the AAA Commercial Arbitration Rules shall apply.

(a) **Selection of Arbitrator:** There shall be only one (1) arbitrator who shall be selected by mutual agreement of the parties. If the parties are unable to agree on an arbitrator within ten (10) days after any party initiates the arbitration, a neutral and impartial arbitrator shall be selected by the AAA. The parties shall have the right to reasonably challenge the arbitrator selected to preside over the arbitration proceedings for bias.

(b) **Applicable Law and Remedies:** Venue for the arbitration shall be in the County, unless the parties mutually agree to another venue at the time the arbitration is initiated. The arbitrator shall apply California substantive law in rendering a final decision. The arbitrator shall have the power to grant all legal and equitable remedies and award compensatory damages. The arbitration shall commence and conclude promptly, in accordance with the commercial rules of the AAA. The parties may, by mutual agreement, authorize the limitation or prohibition of punitive damages.
(c) Resolution Opportunity: When the arbitrator is prepared to make the award, the arbitrator shall first so inform the parties, who shall have ten (10) days to attempt to resolve the matter by a binding agreement between them. If the parties resolve the matter, the arbitrator shall not make any award. If the parties do not so resolve the matter within the ten (10) day period, the arbitrator shall make the award on the eleventh day following the arbitrator’s notice of being prepared to make the award.

(d) Fees and Costs: Declarant shall promptly pay the fees necessary to initiate the arbitration proceedings. The arbitrator may award the prevailing party those costs that would be awarded to the prevailing party under California law if the matter had been resolved by court trial. In addition, to the extent permitted by law, the arbitrator may award or divide the post-initiation arbitration fees and costs to prosecute and complete the arbitration as the arbitrator finds just and reasonable. If the arbitrator makes no award or division of such post-initiation arbitration fees and costs, the parties shall divide them equally, with each party bearing one-half (½) of such fees and costs of the arbitration, to the extent permitted by law. Notwithstanding anything herein to the contrary, the parties shall each bear their own costs, expenses and attorneys’ fees.

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

(f) Final and Binding Award: The parties agree to be bound by the decision of the arbitrator, which shall be final and non-appealable.

(g) Judgment by a Court: Judgment upon the decision rendered by the arbitrator may be entered in any court having proper jurisdiction or application may be made to such court for judicial acceptance of the award and an order of enforcement.

(h) Federal Arbitration Act: Because many of the materials and products incorporated into the home are manufactured in other states, the development and conveyance of the Property evidences a transaction involving interstate commerce and the Federal Arbitration Act (9 U.S.C. § 1 et seq.) now in effect and as it may be hereafter amended will govern the interpretation and enforcement of the arbitration provisions set forth herein.

10.6.3 AGREEMENT TO ARBITRATE: Declarant, the Association and each Owner agree to have any dispute decided by neutral arbitration in accordance with the Federal Arbitration Act and the California Arbitration Act, to the extent the California Arbitration Act is consistent with the Federal Arbitration Act. Declarant, the Association and each Owner agree that by submitting to neutral arbitration, they are each giving up all rights they might possess to have the dispute litigated in a court or jury trial. Declarant, the Association and Owner are also giving up judicial rights to discovery and appeal, unless those rights are specifically included in this “Arbitration of Disputes” provision. If Declarant, the Association or Owner refuse to submit to arbitration after agreeing
TO THIS PROVISION, DECLARANT, THE ASSOCIATION OR OWNER MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE.

ARTICLE 11
ARCHITECTURAL CONTROL

11.1 APPLICABILITY:

11.1.1 Generally: Except as otherwise provided in this Declaration, proposals for Alterations (which includes all landscaping) are subject to the provisions of this Article and may not be made until approved in accordance with the provisions of this Article.

11.1.2 Exceptions: The provisions of this Declaration requiring architectural approvals do not apply to (a) repainting or refinishing any Improvement in the same color, hue, intensity, tone, and shade, (b) repairing or replacing an Improvement with the same Improvement originally installed by Declarat, (c) repairing or replacing a component of an Improvement with the same component originally installed by Declarat, (d) repairing or replacing a product with the same product originally installed by Declarat, (e) any Alteration which is specified in the Operating Rules as a pre-approved Alteration, or (f) Lot 3, as shown on the Map, or any Improvements therein, including but not limited to the City’s parking garage. The provisions of this Declaration requiring architectural approvals do not include any Alteration which this Declaration expressly states is not subject to the provisions of this Article. The Architectural Standards may establish additional exceptions from time to time.

11.1.3 Declarant Exemption: The provisions of this Declaration requiring architectural approvals do not apply to the original construction of any Improvements by Declarat, its agents, contractors or employees.

11.1.4 Relationship to Governmental Approvals: Proposals for Alterations may also be subject to review and approval by state or local governmental entities or agencies. Satisfying the provisions of this Declaration does not automatically satisfy any requirement for governmental approval, permitting or inspection. All approvals, permits and inspections which are required under local, state or federal law for any proposed Alteration are the responsibility of the Owner and must be obtained by the Owner in addition to the approvals required by this Declaration.

11.2 RESERVATION TO DECLARANT: Notwithstanding the power of the Board to appoint committees, Declarat hereby reserves to itself the right to appoint an Architectural Committee in accordance with the provisions of this Article.

11.3 MEMBERS: The Architectural Committee ("Committee") shall initially consist of a chairman and two (2) additional members. Persons appointed to the Committee by the Board shall be Members of the Association. Persons appointed to the Committee by Declarat need not be Members of the Association. All members will serve until the expiration of the term for which they were appointed, if specified by the Board, or until they resign or are replaced.

11.3.1 Declarant's Right to Appoint: Declarat may appoint all of the original members of the Committee and all replacements until the first anniversary of the issuance of the Public Report for the
Project. After the date which is one (1) year from the date of issuance of the Public Report for the Project, Declarant may appoint all but one (1) member of the Committee. Declarant’s right to appoint Committee members shall terminate when title to ninety percent (90%) of the total of all Condominiums in the Project have been conveyed or the fifth (5th) anniversary of the issuance of the Public Report for the Project, whichever occurs first.

11.3.2 Board’s Initial Right to Appoint: On the first anniversary of the date of issuance of the Public Report for the Project, the Board shall have the power to appoint one member of the Committee. A Declarant appointed member must resign if there is then no vacant Committee seat.

11.3.3 Vacancies: The Board may appoint a replacement for any member of the Committee originally appointed by the Board who resigns or otherwise fails to act. Declarant may appoint a replacement for any member of the Committee originally appointed by Declarant who resigns or otherwise fails to act, unless such member resigns in order to enable the Board to appoint a member as provided in Section 11.3.2 (Board’s Initial Right to Appoint). If Declarant fails to appoint a replacement it is authorized to appoint within fifteen (15) days after receiving notice of the vacancy, the Board shall appoint the replacement.

11.3.4 Rights of Board: When Declarant’s right to appoint members of the Committee terminates:

(a) The Board has the right to appoint, remove and replace all of the members of the Committee, as the Board determines in its discretion; and

(b) The Board may increase the number of Committee members or decide to dissolve the Committee and undertake the Committee’s responsibilities. If the Board decides to dissolve the Committee, it may adopt a resolution and appoint a new Committee at any time in the future.

11.4 DUTIES AND POWERS:

11.4.1 Duties: The Committee shall review and approve, conditionally approve, or deny all plans, submittals, applications and requests made or tendered to it by Owners or their agents, pursuant to the provisions of this Declaration. In connection therewith, the Committee may investigate and consider the architecture, design, layout, landscaping, energy conservation measures, water conservation measures, fence or wall detail, and other features of the proposed Improvements.

11.4.2 Powers: The Committee may adopt procedures for the transaction of business, scheduling of meetings, conduct of meetings and related matters. The Committee may also adopt criteria, consistent with the purpose and intent of this Declaration to be used in making its determination to approve, conditionally approve or deny any matter submitted to it for decision.

11.4.3 Consultants: With the consent of the Board, the Committee may hire and the Association shall pay consulting architects, landscape architects, urban designers, engineers, inspectors, and/or attorneys in order to advise and assist the Committee in performing its duties.

11.5 APPLICATION FOR APPROVAL OF IMPROVEMENTS: Except as provided in Section 11.1.2 (Exceptions) and Section 11.1.3 (Declarant Exemption), any Owner who wants to perform any Alteration for which approval is required shall notify the Committee in writing of the nature of the
proposed work and shall furnish such information as may be required by the Architectural Standards or reasonably requested by the Committee.

11.6 **BASIS FOR APPROVAL OF IMPROVEMENTS:** As conditions precedent to approval of any matter submitted to it, the Committee must ordinarily be able to find that (i) the plans and specifications conform to this Declaration and to the Architectural Standards in effect at the time the proposal was submitted and (ii) the proposed Alteration will be aesthetically consistent with the other Improvements in the Project as to harmony of exterior design, landscaping, color schemes, exterior finishes, visibility with respect to existing structures and environment, and placement of structures with respect to topography and finished grade elevation. The Association may not disapprove an application for approval based on a provision of the Project Documents that has been superseded by a law or regulation that is applicable to the Project.

11.7 **FORM OF APPROVALS, CONDITIONAL APPROVALS AND DENIALS:** All approvals, conditional approvals and denials must be in writing. Any proposal which has not been approved, conditionally approved or rejected in writing within sixty (60) days from the date of submission will be deemed approved. Any denial of a proposal must (a) state the reasons for the decision and (b) if the decision was made by the Committee (rather than the Board), notice of the appeal rights provided in Section 11.12 (Appeal of Decision of Committee).

11.8 **WORK:** Upon approval of the Committee, the Owner must diligently proceed with the commencement and completion of all work so approved. Completion of the work approved must occur within one (1) year following the approval of the work unless the Committee grants an extension. This Section shall not be interpreted to extend any other time period imposed by this Declaration. If the Owner fails to complete the work within the required time period, the Committee may notify the Owner in writing of the non-compliance and proceed in accordance with the provisions of Section 11.10 (Failure to Remedy the Non-Compliance).

11.9 **DETERMINATION OF COMPLIANCE:** Any work performed, whether or not the Owner obtained proper approvals, may be inspected and a determination of compliance made as follows:

11.9.1 **Notice of Completion:** Upon the completion of any work performed by an Owner for which approval was required, the Owner must give written notice of completion to the Committee.

11.9.2 **Inspection:** Within sixty (60) days after the Committee’s receipt of the Owner’s notice of completion, or, if the Owner fails to give a written notice of completion to the Committee within the completion period specified in Section 11.8 (Work), a designee of the Committee may inspect the work performed and determine whether it was performed and completed in substantial compliance with the approval granted. If the Committee finds that the work was not performed or completed in substantial compliance with the approval granted or if the Committee finds that the approval required was not obtained, the Committee shall notify the Owner in writing of the non-compliance. The notice shall specify the particulars of non-compliance and require the Owner to remedy the non-compliance.

11.10 **FAILURE TO REMEDY THE NON-COMPLIANCE:** If the Committee has determined that an Owner has not constructed an Improvement consistently with the specifications of the approval granted or within the time permitted for completion and if the Owner fails to remedy such non-compliance in accordance with the provisions of the notice of non-compliance, then after the expiration of thirty (30) days from the date of such notification, the Committee shall notify the Board, and the Board shall provide Notice
and Hearing to consider the Owner’s continuing non-compliance. At the Hearing, if the Board finds that there is no valid reason for the continuing non-compliance, the Board shall determine the estimated costs of correcting it. The Board shall then require the Owner to remedy or remove the same within a period of not more than forty-five (45) days from the date of the Board’s determination. If the Owner does not comply with the Board’s ruling within such period or within any extension of such period as the Board, in its discretion, may grant, the Board may either remove the non-complying Improvement or remedy the non-compliance. The costs of such action shall be assessed against the Owner as a Reimbursement Assessment.

11.11 WAIVER: Approval of any plans, drawings or specifications for any work proposed, or for any other matter requiring approval shall not be deemed to constitute a waiver of any right to deny approval of any similar plan, drawing, specification or matter subsequently submitted for approval.

11.12 APPEAL OF DECISION OF COMMITTEE: This Section does not apply if the Board has dissolved the Committee or during the period of time that a majority of the Members of the Committee have been appointed by Declarant. If the Owner who applied or who the Committee determined should have applied for approval of an Alteration disputes the jurisdiction or powers of the Committee, the interpretation or application of an Architectural Standard or a decision of the Committee applicable to the denial or conditional approval of the Owner’s application for a proposed Alteration (collectively referred to as “Decision”), that Owner may appeal such Decision to the Board. Any request to the Board for appeal of a Decision must be written. Within twenty (20) days of receipt by the Board of an Owner’s written appeal request, the Board shall notify the Owner of the time, date and place of the Board meeting at which the appeal of the Decision of the Committee will take place. The notice shall be given at least fifteen (15) days prior to the date set for the hearing and may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered seventy-two (72) hours after it has been deposited in the United States mail, first-class, postage prepaid, addressed to the Owner at the address given by the Owner to the Board for the purpose of service of notices or to the address of the Owner’s Condominium if no other address has been provided. After the meeting has taken place, the Board shall notify the Owner of its determination. The determination of the Board shall become effective not less than five (5) days after the date of the hearing. The determination of the Board shall be final.

11.13 NO LIABILITY: If members of the Committee have acted in good faith, neither the Committee nor any member will be liable to the Association or to any Owner for any damage, loss or prejudice suffered or claimed due to: (a) the approval or disapproval of any plans, drawings and specifications, whether or not defective; (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings, and specifications; (c) the development of any property within the Project; or (d) the execution and filing of any estoppel certificate, whether or not the facts therein are correct.

11.14 EVIDENCE OF APPROVAL OR DISAPPROVAL: After a determination of compliance is made pursuant to Section 11.9 (Determination of Compliance), the Board may issue a written Notice of Architectural Determination. The Notice of Architectural Determination must be executed by any two (2) Directors and shall certify that as of the date of the Notice either (i) the work completed complies with the provisions of this Declaration and the approval(s) issued by the Committee (“Notice of Approval”) or (ii) the work completed does not comply with the provisions of this Declaration or the approval(s) issued by the Committee (“Notice of Disapproval”). A Notice of Disapproval must also identify the particulars of the non-compliance. Any successor in interest of the Owner will be entitled to rely on a Notice of Architectural Determination with respect to the matters set forth. Each Owner must disclose to the Owner’s subsequent purchaser any Notice of Disapproval unless the Owner has a subsequently issued Notice of Approval which covers the same Alteration. The Notice of Architectural Determination will be conclusive as between the
Association, the Committee, Declarant and all Owners and such persons deriving any interest through any of them. Any Owner may make a written request that the Board prepare and execute a Notice of Architectural Determination, and the Board must do so within sixty (60) days of its receipt of the request.

**ARTICLE 12**

**MISCELLANEOUS PROVISIONS**

12.1 **BINDING:** This Declaration is for the benefit of and binding upon all Owners, their respective heirs, legatees, devisees, executors, administrators, guardians, conservators, successors, purchasers, tenants, encumbrancers, donees, grantees, mortgagees, lien holders and assigns.

12.2 **BONDED OBLIGATIONS:** When Common Area Improvements have not been completed prior to the issuance of the original Public Report to which the Common Area is subject and the Association is the obligee under a bond or other arrangement ("Bond") to secure performance of the commitment of Declarant to complete the Improvements, the following provisions apply.

12.2.1 **Action by Members:** If the Board decides not to act or fails to initiate action to enforce bonded obligations, then upon receipt by the Board of a petition for a special meeting signed by Members entitled to cast five percent (5%) or more of the total number of votes which may be cast by the Members, the Board shall call a special meeting of the Members. If the Board has failed to initiate action, the Members shall determine whether they wish to initiate action. If the Board has decided not to initiate action, the Members shall determine whether to override the Board’s decision. The meeting shall be held not less than thirty-five (35) nor more than forty-five (45) days after receipt of the petition by the Board. At the meeting, the approval of the Members, excluding the vote of Declarant, to take action to enforce the obligations under the Bond shall be deemed to be the decision of the Association. The Board shall thereafter implement the decision by initiating and pursuing appropriate action in the name of the Association.

12.2.2 **Improvements Complete:** If all Improvements in the planned construction statement appended to the Bond are covered by one or more recorded notices of completion, the Board shall execute whatever documents are required by the surety to release the Bond.

12.2.3 **Improvements Not Complete:** If a notice of completion has not been filed within sixty (60) days after the completion date specified for that Improvement in the planned construction statement appended to the Bond, the Board shall consider and vote on the question of action by the Association to enforce the obligations under the Bond. If the Association has given a written extension for the completion of any Common Area Improvements, the Board shall consider and vote whether to take action if a notice of completion has not been filed within thirty (30) days after the expiration of the most recent extension.

12.2.4 **Release of Bond:** On satisfaction of Declarant’s obligation to complete the Common Area Improvements, the Association shall acknowledge in writing that it approves the release of the Bond and shall execute any other documents as may be reasonably necessary to effect the release of the Bond. The Association may not condition its approval on the satisfaction of any condition other than completion of the Common Area Improvements. If the Association breaches any of the foregoing obligations, it will be liable to Declarant for any damages incurred thereby, including reasonable attorneys’ fees. Any dispute between Declarant and the Association regarding the completion of Common Area Improvements shall be resolved in accordance with the provisions of the escrow instructions which accompany the Bond.
12.3 CONFLICT: To the extent there are conflicts or inconsistencies between a Maintenance Manual and this Declaration, the provision which requires the highest standard of Maintenance shall prevail. In the event of any conflicts or inconsistencies between this Declaration and the Bylaws or the Operating Rules, this Declaration shall prevail.

12.4 CONSTRUCTION OF PROVISIONS: The provisions of this Declaration are to be liberally construed to effect its purpose of creating a uniform plan for the development and operation of a condominium project pursuant to the provisions of the Davis-Stirling Common Interest Development Act, California Civil Code Section 4000 et seq.

12.5 DOCUMENTS TO BE GIVEN TO PURCHASERS: As soon as practical before transferring title to the Condominium, the Owner shall give to the purchaser (i) the Owner Maintenance Manual, (ii) copies of all documents and statements required by California Civil Code Section 4525(a), and (iii) the most recent annual audited financial statement of the Association, if one is available.

12.6 EXHIBITS: All exhibits, if any, attached to this Declaration are incorporated by this reference as though fully set forth herein.

12.7 GENDER, NUMBER AND CAPTIONS: As used herein, the singular includes the plural and masculine pronouns include feminine pronouns, where appropriate. The title and captions of each paragraph hereof are not a part thereof and shall not affect the construction or interpretation of any part hereof.

12.8 REQUIRED ACTIONS OF ASSOCIATION: The Association shall at all times take all reasonable actions necessary for the Association to comply with the terms of this Declaration or to otherwise carry out the intent of this Declaration.

12.9 SEVERABILITY OF PROVISIONS: The provisions hereof shall be deemed independent and severable, and the validity or enforceability of any one provision will not affect the validity or enforceability of any other provision hereof.

12.10 SUCCESSOR STATUTES: Any reference in the Project Documents to a statute will be deemed a reference to any amended or successor statute.
12.11 TERM OF DECLARATION: Except as provided in Section 5.9 (Damage and Destruction) or Section 5.10 (Condemnation), this Declaration will continue for a term of fifty (50) years from its date of recordation and will be automatically extended for successive periods of ten (10) years until sixty-seven percent (67%) of the Owners approve a termination of this Declaration, and the consent of the City is obtained.

IN WITNESS WHEREOF, the undersigned has executed this Declaration on the 4th day of FEBRUARY, 2019.

DECLARANT:

WHEELER PLAZA, LLC,
a Delaware limited liability company

By: [Signature]

Name: [Name]

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

STATE OF CALIFORNIA
COUNTY OF Contra Costa } ss.

On FEB 4, 2019, before me, DEE S. BUMANLAG, Notary Public, personally appeared PAY PANEL who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument, the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

[Signature]

[Notary Public - California]
Contra Costa County
Commission # 2257627
My Comm. Expires Oct 8, 2022
EXHIBITS

NONE
SUBORDINATION AND CONSENT

THE CITY OF SAN CARLOS, a municipal corporation ("Lender"), as Beneficiary under the deed of trust ("Deed of Trust") executed by Wheeler Plaza, LLC, a Delaware limited liability company, and recorded on September 9, 2016, as Document No. 2016-092010, in the Official Records of the County of San Mateo, State of California, hereby subordinates the lien of the Deed of Trust to the lien of the Declaration of Covenants, Conditions and Restrictions of Wheeler Plaza ("Declaration"), to which this Subordination and Consent is attached to the same extent and with the same force and effect as though the Declaration, and any proper amendments thereto, had been executed and recorded prior to the execution and recordation of the Deed of Trust.

DATED: 4/1/19

THE CITY OF SAN CARLOS,
a municipal corporation

By:  

Name:  

Title:  

02/01/19
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

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

STATE OF CALIFORNIA )
COUNTY OF SAN MATEO )

On _____________ before me, Theresa M. Peyton-Rehn, Notary Public
Date

Personally appeared _______________ Jeff Maltbie
Name(s) of Signer(s)

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

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

WITNESS my hand and official seal.

Signature _______________
Signature of Notary Public

Place Notary Seal Above
SUBORDINATION AND CONSENT

FIRST REPUBLIC BANK ("Lender"), as Beneficiary under the deed of trust ("Deed of Trust") executed by Wheeler Plaza, LLC, a Delaware limited liability company, and recorded on February 2, 2017, as Document No. 2017-010794, in the Official Records of the County of San Mateo, State of California, hereby subordinates the lien of the Deed of Trust to the lien of the Declaration of Covenants, Conditions and Restrictions of Wheeler Plaza ("Declaration"), to which this Subordination and Consent is attached to the same extent and with the same force and effect as though the Declaration, and any proper amendments thereto, had been executed and recorded prior to the execution and recordation of the Deed of Trust.

DATED: ________ February 8, 2019 ________

FIRST REPUBLIC BANK

By: __________________________

Name: Lisa Plaster

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

STATE OF CALIFORNIA
COUNTY OF San Francisco

On February 8, 2019, before me, W W Sisneros, Notary Public, personally appeared Lisa Plaster, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument, the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature

W W Sisneros
Notary Public - California
San Francisco County
Commission # 23998/1
My Comm. Expires May 23, 2022

02/01/19
FIRST AMENDMENT TO
DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS
OF
WHEELER PLAZA

1. WHEELER PLAZA, LLC, a Delaware limited liability company ("Declarant"), hereby makes this First Amendment to Declaration of Covenants, Conditions, and Restrictions of Wheeler Plaza ("Amendment") on the terms and conditions herein stated.

2. Declarant is the owner of all the real property and improvements thereon located in the City of San Carlos, County of San Mateo, State of California, described as:

PARCEL ONE (PROJECT COMMON AREA):

Lot 1, as shown on Final Map No. 2016-01, filed for record on June 23, 2016, in Book 140 of Maps at Pages 87 through 93, inclusive, in the Official Records of the County of San Mateo, State of California ("Map"), excepting therefrom Building Common Area Parcel 1, as shown on the condominium plan recorded on June 27, 2019, as Document No. 2019-049956, in the Official Records of the County of San Mateo, State of California ("Condominium Plan").

PARCEL TWO (BUILDING COMMON AREA):


PARCEL THREE (UNITS):

Parcels One, Two, and Three, above, are located on Lot 1, as shown on the Map.

3. The Declaration of Covenants, Conditions, and Restrictions of Wheeler Plaza was recorded on June 27, 2019, as Document No. 2019-049957, in the Official Records of the County of San Mateo, State of California, ("Declaration"). The Declaration is hereby amended by this Amendment.

4. All of the capitalized terms in this Amendment shall have the same meanings given them in the Declaration unless this Amendment provides otherwise.

5. Section 3.4.5 (Exclusive Use Common Area) of the Declaration is deleted in its entirety and the following new Section 3.4.5 is substituted in lieu thereof:

3.4.5 Exclusive Use Common Area: Each Owner shall have an exclusive right and easement for the use, possession, and enjoyment of the Deck, Parking Space(s), Patio, and/or Storage Space specifically designated in the individual Condominium grant deed, each of which shall be appurtenant to and pass with title to the Owner's Condominium. All easements to Exclusive Use Common Area are subject to the right of the Association to enter in and upon Exclusive Use Common Area as provided by and in accordance with the limitations upon such right as set forth in this Declaration.

6. Except as expressly stated herein, all of the provisions of the Declaration are restated and affirmed and shall remain in full force and effect.

7. This Amendment shall be effective upon the date of its recordation in the Official Records of the County of San Mateo, State of California.

IN WITNESS WHEREOF, the undersigned has executed this First Amendment to Declaration of Covenants, Conditions, and Restrictions of Wheeler Plaza on Oct. 3, 2019.

DECLARANT:

WHEELER PLAZA, LLC,
a Delaware limited liability company

By: [Signature]
Name: [Name]
Title: [Title]
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA
COUNTY OF CONTRA COSTA ss.

On OCT. 3, 2019, before me, DEE S. BUMANLAG, Notary Public, personally appeared RAY PANER, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument, the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

DEE S. BUMANLAG
Notary Public - California
Contracosta County
Commission # 2257627
My Comm. Expires Oct 8, 2022

Signature

10/01/19