

9.7 Regular Assessment.

9.7.1 Calculation of Estimated Requirement. Prior to the beginning of each fiscal year, the Board shall estimate the net funds required by the Association for such fiscal year to manage, administer, operate, and maintain the Project; to conduct the affairs of the Association; and to perform all of the Association's duties in accordance with the Governing Documents, including a reasonable amount allocated to contingencies and to a reserve fund for restoration, repair, and/or replacement of those components for which the Association is responsible and which must be repaired or replaced on a periodic basis. The amount of estimated required funds shall constitute the Regular Assessment.

9.7.2 Allocation of Regular Assessment. The Board shall allocate and assess the Regular Assessment among the Condominiums in proportion to the percentage interests in Common Area allocated to each Unit as set forth in Exhibit B. Notwithstanding the foregoing, if the Regular Assessment includes charges for commonly metered utilities supplied to the Common Area or to the Units and any Owner-installed or tenant-installed alteration to a Unit or any business use conducted within the Common Area or within a Unit results in disproportionate electrical, water, or other utility usage for that Unit, the Board may allocate such commonly metered utility costs as the Board determines is reasonable and equitable. **[NOTE TO BOARD: This sentence is included for the Board's consideration IF ANY COMMONLY METERED UTILITY SERVICE TO THE UNITS IS INCLUDED IN THE REGULAR ASSESSMENT. It is intended to permit the Board to equitably allocate commonly metered utilities if particular Units use a disproportionately large amount of the particular utility service that is not separately metered and is included in the assessments. Please let us know if there are such commonly metered utility services to the Units and if you want to include this language.]**

9.7.3 Payment of Regular Assessment. Unless the Board shall designate otherwise, Regular Assessments shall be levied on an annual basis and shall be paid in twelve (12) equal monthly installments during the fiscal year, and each installment shall be due and payable on the first day of each month.

9.7.4 Notice of Regular Assessment. Not less than thirty (30) days and not more than ninety (90) days prior to the beginning of each fiscal year, the Board shall send to each Owner a notice of the amount of the Regular Assessment allocated to his or her Condominium, except that

if there is an increase in the Regular Assessment over the previous year, in compliance with *Civil Code* section 5615, the notice shall be provided to the Owner by Individual Delivery not less than thirty (30) days and not more than sixty (60) days before the due date of the increased Regular Assessment.

9.7.5 Permitted Increase in Regular Assessment. Pursuant to *Civil Code* section 5605(b), except as otherwise provided by law, the Board shall not increase the Regular Assessment for any fiscal year above the amount of the Regular Assessment for the preceding fiscal year by more than twenty percent (20%) (or such other limitation on the increase as may be imposed by law), except upon the affirmative vote of a majority of Members voting on any such increase in the Regular Assessment, provided that a quorum is established. For purposes of the preceding sentence and to the extent required pursuant to *Civil Code* section 5605(c), a quorum shall mean more than fifty percent (50%) of the Members of the Association, notwithstanding any lower quorum requirement which may be set forth in the Bylaws.

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9.7.6 Revised Regular Assessment. Subject to the provisions of Section 9.7.5 ("Permitted Increase in Regular Assessment") or as otherwise permitted by law, if at any time during the course of any year, the Board determines the amount of the Regular Assessment to be inadequate, by reason of a revision of its estimate of either expenses or income or otherwise, the Board shall have the right, at a regular or special meeting of the Board, to revise the Regular Assessment for the balance of the fiscal year. To the extent required by *Civil Code* section 5615, notice of any such increase shall be given to the Members by Individual Delivery and such revised Regular Assessment shall become effective on the first day of the next month that is at least thirty (30) days and not more than sixty (60) days after the date of such notice.

9.7.7 Failure to Fix Regular Assessment. The failure or omission by the Board to fix or levy any Regular Assessment before the expiration of any fiscal year, for that fiscal year or the next fiscal year, shall not be deemed either a waiver or a modification in any respect of the provisions of this Declaration, or a release of any Owner from the obligation to pay Assessments or any installment thereof for that or any subsequent year, but the amount of the Regular Assessment fixed for the preceding fiscal year shall be the amount of the Regular Assessment for the ensuing fiscal year until a new Regular Assessment is levied.

9.8 Special Assessments.

9.8.1 Purpose of Special Assessments. If at any time during any fiscal year the Regular Assessment proves inadequate for any reason, including nonpayment of any Owner's share thereof or the unexpected repair, replacement, or reconstruction of improvements located in the Project, or if funds are otherwise required for any authorized activity of the Association, the Board may levy a Special Assessment in the amount of such actual or estimated inadequacy or cost.

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9.8.2 Permitted Amount of Special Assessments. Except in the case of an emergency situation as defined in *Civil Code* section 5610, in any fiscal year the Board may not levy Special Assessments which, in the aggregate, exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year (or such other limitation on the amount as may be imposed by law), except upon the affirmative vote of a majority of the Members voting on any such Special Assessment, provided that a quorum is established. For purposes of the preceding sentence and to the extent required pursuant to *Civil Code* section 5605(c), a quorum shall mean more than fifty percent (50%) of the Members of the Association, notwithstanding any lower quorum requirement which may be set forth in the Bylaws.

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9.8.3 Allocation of Special Assessments. Special Assessments shall be allocated and assessed among the ~~Condominiums~~ Members in the same manner as Regular Assessments.

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9.8.4 Notice of Special Assessment. Upon the imposition of a Special Assessment or an increase in a Special Assessment, in compliance with *Civil Code* section 5615, notice thereof shall be given by Individual Delivery to each Owner not less than thirty (30) days and not more than sixty (60) days prior to the due date of the Special Assessment.

9.8.5 Payment of Special Assessments; Cost of Payment Plans. Special Assessments shall be payable in a lump sum or in installments as may be determined by the Board with regard to each Special Assessment when it is imposed. If the Association incurs additional expenses because of a payment method selected by an Owner (for example, but not limited to, paying a Special Assessment in installments instead of in a lump sum), the Association may charge such expense to the Owner as an Additional Charge or as a Reimbursement Assessment. Nothing in this Section 9.8.5 shall be deemed to obligate the Association to offer or permit alternate payment plans.

9.9 Application of Surplus Funds (IRS Resolution). If, as of the end of any fiscal year, there is an excess of membership income over membership expenses as defined in Internal Revenue Code section 277 for the year ended, the Board shall determine, without the need for a Member vote, whether such excess shall be applied to reserves and deposited in the Association's Reserve Account or shall be applied against the subsequent tax year's Member Assessments as provided in Internal Revenue Service Revenue Ruling 70-604. If the Board does not determine to so apply such excess membership income to reserves or to the subsequent year's Member Assessments, any other lawful disposition of such excess income shall be as determined by the vote of the Members.

9.10 Reimbursement Assessments. The Board, after notice and a hearing as provided for in Section 14.11 ("Notices: Content, Delivery") and Section 14.12 ("Hearing Called by the Board; Executive Session; Open Meeting"), may levy a Reimbursement Assessment against an Owner and his or her ~~Condominium~~ ^{Unit} (S12)

- (a) To reimburse the Association for costs incurred to maintain, repair, or replace property (including property within a Unit) when such damage is due to the act or neglect of such Owner, his or her Contract Purchaser, or member of his or her household, pet, tenant, invitee, or guest, or as otherwise provided in the Governing Documents;
- (b) If the failure of such Owner, his or her Contract Purchaser, or member of his or her household, pet, tenant, invitee, or guest to comply with any provision of the Governing Documents has necessitated or resulted in an expenditure of funds by the Association to deal with such lack of compliance or to bring such person or the ~~Condominium~~ ^{Unit} into compliance; S12
- (c) To reimburse the Association for any costs of collecting from an Owner any amount the Owner is obligated to pay the Association.

Without limiting the generality of the foregoing, and to the fullest extent permitted by law, all costs including attorney fees, incurred by the Association to enforce Section 6.12 ("Restriction on Businesses"), Section 6.27 ("Animals"), Section 9.18 ("Assignment of Rents As Security for Payment"), and Section 14.6 ("Injunctions"), or to defend any claim arising or alleged to arise from any of the foregoing sections, shall be reimbursed to the Association as a Reimbursement Assessment. Any Reimbursement Assessment shall be due and payable to the Association when levied.

9.11 Enforcement Assessments. Subject to the requirements set forth in Section 14.8 ("Imposing Sanctions"), the Board may levy an Enforcement Assessment (and any fine or monetary penalty imposed by the Board in accordance with the provisions of the Governing Documents shall be deemed to be such an

Enforcement Assessment), for violation of any of the provisions of the Governing Documents. Any Enforcement Assessment shall be due and payable to the Association when levied. ✓

9.12 No Offsets. All Assessments levied by the Board shall be payable in the full amount specified, including any Additional Charges imposed as provided by the terms of this Declaration, and no offsets against any such amounts shall be permitted for any reason whatsoever, including without limitation a claim that the Association has failed to properly exercise its duties of maintenance or enforcement. ✓

9.13 Bad Checks. An Owner who writes a check to the Association on insufficient funds shall be charged a service fee in the amount permitted by *Civil Code* section 1719 and may be liable for damages to the Association in an amount equal to three (3) times the amount of the bad check, as provided by statute. ✓

9.14 Delinquent Assessments; Acceleration in the Event of Delinquency. Any installment or other portion of an Assessment not received within fifteen (15) days after its due date shall be delinquent and, to the fullest extent permitted by law including *Civil Code* section 5650(d), shall be subject to a late charge and, thirty (30) days after the due date, interest not to exceed the maximum rate permitted by law, as well as all other Additional Charges. If any monthly installment of the Regular Assessment or any installment of a Special Assessment that has been levied or is permitted to be paid on an installment basis is delinquent for a period of sixty (60) days, the Association may, but shall not be obligated to, declare the entire balance of the Regular Assessment or the Special Assessment immediately due and payable together with all other delinquent amounts. ✓

9.15 Enforcement by Action at Law or Foreclosure. The Board, on behalf of the Association, may enforce the payment of any delinquent Assessment plus Additional Charges by bringing an action at law against any Owner personally obligated to pay the same, or by foreclosing the lien against the Owner's ~~Condominium~~ by judicial or non-judicial foreclosure, to the fullest extent permitted by law. To the extent prohibited by *Civil Code* section 5725(b), the amount of an Enforcement Assessment may not become a lien that is enforceable by non-judicial foreclosure. ✓

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9.15.1 Pre-lien Notice. At least thirty (30) days prior to recording a notice of delinquent assessment against a ~~Condominium~~ to collect a debt that is past due, the Association shall provide written notice to the Owner(s) of the ~~Condominium~~, as required by *Civil Code* section 5660 ("Pre-lien Notice"). ✓

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9.15.2 Prior to Recording a Lien. Prior to recording a notice of delinquent assessment, the Association shall comply with all applicable requirements imposed by law, including offering to participate in internal dispute resolution (Section 14.16 of this Declaration) or alternative dispute resolution (Section 14.17 of this Declaration) to the extent required pursuant to *Civil Code* section 5670 and making the decision to record a lien for delinquent Assessments at an open meeting of the Board, to the extent required pursuant to *Civil Code* section 5673.

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9.15.3 Owner's Right to Discuss Payment Plan. To the extent provided in *Civil Code* section 5665, an Owner may submit to the Board a written request to discuss a payment plan for a debt noticed in a pre-lien notice. If the Owner's written request is mailed to the Board (as evidenced by a postmark or receipt of mailing) within fifteen (15) days after the postmark on the pre-lien notice, the Board shall meet with the Owner within forty-five (45) days of the postmark date of the Owner's written request, unless there is not a regularly scheduled Board meeting within the period, in which case the Board, in its discretion, may hold a special meeting in executive session to meet with the Owner or may designate a committee of one (1) or more Board members to meet with the Owner.

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9.15.4 Notice of Delinquent Assessment. The amount of the past due debt noticed in the pre-lien notice shall be a lien from and after the recording of a notice of delinquent assessment. No later than ten (10) days after recordation, a copy of the notice of delinquent assessment shall be mailed by certified mail in compliance with *Civil Code* section 5675 to every person whose name is shown as an Owner of the ~~Condominium~~ in the Association records or in such manner and to such persons as may be required by applicable law.

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9.15.5 Delinquent Assessments of Less Than \$1,800. To the extent provided in *Civil Code* section 5720(b), delinquent Assessments totaling less than One Thousand Eight Hundred Dollars (\$1,800) that are less than twelve (12) months delinquent may not be collected by judicial or non-judicial foreclosure, but may be collected in any other manner provided by law including a civil action in small claims court to the extent provided in *Civil Code* section 5720(b)(1) or recording a lien as provided in *Civil Code* section 5720(b)(2). Prior to recording such a lien the Association shall offer to participate in internal dispute resolution (Section 14.16) to the extent required by *Civil Code* section 5720(b)(2).

9.15.6 Initiating Foreclosure. As provided in *Civil Code* section 5700(a), no procedures shall be initiated to foreclose the lien securing any noticed past due debt under this Article 9 until after the expiration of thirty (30) days following the recording of a notice of delinquent assessment. To the extent required pursuant to *Civil Code* section 5705(b), the Association shall offer to participate in internal dispute resolution (Section 14.16 of this Declaration) or alternative dispute resolution (Section 14.17 of this Declaration). To the extent required by *Civil Code* section 5705(c), a decision to initiate foreclosure shall be made only by the Board in an executive session meeting. ✓

9.15.7 Amount Due and Payable. Except with respect to the amount of any Enforcement Assessment, upon the recording of the notice of delinquent assessment referred to above, the Association may, at its option, declare the entire balance of all sums then due or to become due from the Owner, immediately due and payable, which total sum may then be included in any suit, action, or other procedure initiated to collect said sums, including all Additional Charges. ✓

9.15.8 Notice of Initiating Foreclosure. To the extent required pursuant to *Civil Code* section 5705(d), the Association shall provide written notice of initiating foreclosure to the record Owner of the Condominium, including notice by personal service to any resident Owner. ✓ *Handwritten notes: "Handwritten", "Change", "Section", "Resident"*

9.16 Power of Sale. Each Owner does hereby appoint the Association as trustee to enforce and to foreclose any lien which is established pursuant to the terms of this Declaration, by private power of sale, as provided in Division III, Part 4, Title 14, Chapter 2, Article 1, (Section 2920 and following) of the *Civil Code* of the State of California, and does further grant to the Board of Directors, on behalf of the Association, the authority and power to sell the Condominium of such Owner in the event of any default in payment of any Assessments or Additional Charges levied against such Condominium, for lawful money of the United States, to the highest bidder, to satisfy said lien. The Association, as trustee for the remaining Owners, or any other Owner, may purchase the Condominium at said sale. ✓ *Handwritten scribbles*

9.17 Right of Redemption. To the extent provided pursuant to *Civil Code* section 5715(b), a non-judicial foreclosure to collect delinquent Assessments shall be subject to a right of redemption. ✓

9.18 Assignment of Rents As Security for Payment. As security for the payment of all liens provided for under this Declaration, each Owner hereby gives to and confers upon the Association the right, power, and authority during the continuance of such ownership to collect the rents, issues, and profits of the Owner's Condominium, reserving unto the Owner the right, prior to any default by such Owner in performance of that Owner's obligations under the Governing ✓

✓ Documents in payment of any indebtedness to the Association, to collect and retain such rents, issues, and profits as they become due and payable. Upon any such default, the Association may (i) instruct the tenant to pay rent to the Association as and when such rents become due or (ii) at any time upon ten (10) days' written notice to such Owner (either in person, by agent, or by a receiver to be appointed by a court, and without regard to the adequacy of any security for such indebtedness) in its own name sue for or otherwise collect such rents, issues, and profits, including those past due and unpaid, and in either event apply the same, less costs and expenses of operation and collection, including reasonable attorney fees, upon any such indebtedness, and in such order as the Association may determine or as required by applicable law. Owner waives the giving of any and all notices required by the laws of the State of California in order for the Association to exercise the rights provided by this **Section 9.18**. The collection of such rents, issues, and profits, and the application thereof as aforesaid, shall not cure or waive any default under the Governing Documents or invalidate any act done pursuant to this Declaration. The assignment of rents and powers described in this **Section 9.18** shall not affect, but shall in all respects be subordinate to, the rights and power of the holder of any First Mortgage on any Condominium, or any part thereof, to do the same or similar acts.

✓ 9.19 Remedies Are Cumulative. The Board may commence any procedure for the collection of delinquent Assessments upon its own decision. The remedies provided in this Declaration for collection of delinquent Assessments shall be cumulative and not exclusive; that is, the Association may use one (1) or more or all of the available remedies to collect delinquent Assessments to the fullest extent permitted by law.

✓ 9.20 Partial Payments. The Association's acceptance of a partial payment, whether voluntary or involuntary, shall not prevent the Association from pursuing any or all of its available collection remedies.

✓ 9.21 Certificate of Satisfaction and Release of Lien. Upon payment in full of a delinquent Assessment, including any Additional Charges, or the satisfaction thereof, the Board shall cause to be recorded, in the same manner as the notice of delinquent assessment, a further certificate stating the satisfaction thereof and the release of the lien.

✓ 9.22 Subordination to Lien of First Mortgage. Except as otherwise expressly provided by law, the lien securing each of the Assessments provided for under this Declaration shall have priority as of the date of recordation of the notice of delinquent assessment as provided in **Section 9.15.4**, over all other liens and encumbrances applicable to the Condominiums; *provided, however*, that such Assessment lien shall be subordinate to the lien of any First Mortgage recorded against the Condominium prior to the date the notice of delinquent assessment was recorded; and *provided, further*, that such subordination shall apply only to

the Assessments which have become due and payable prior to the sale of such property pursuant to a decree of foreclosure of any such First Mortgage, or pursuant to a power of sale contained in any such First Mortgage. Such foreclosure sale shall not relieve such property from liability for any Assessments and Additional Charges becoming due after the sale of such property pursuant to a decree of foreclosure of any such First Mortgage, or pursuant to a power of sale contained in any such First Mortgage, nor from the lien of any subsequent Assessment, including Assessments levied against all Condominiums proportionately to compensate for the unpaid Assessments and Additional Charges, which shall constitute a lien upon the purchased Condominium in accordance with this Article 9.

9.23 Waiver of Exemptions. Each Owner, to the extent permitted by law, does hereby waive, to the extent of any liens created pursuant to this Declaration, the benefit of any homestead or exemption laws of the State of California in effect at the time any Assessment or installment thereof becomes delinquent or any lien is imposed pursuant to the terms of this Declaration.

9.24 Property Exempt from Assessments. The following property subject to this Declaration shall be exempt from the Assessments, Additional Charges, and liens created herein:

- (a) All property dedicated to and accepted by the City or County or other local public authority and devoted to public use;
- (b) Any Condominium which is owned by the Association as a result of the Association having acquired such Condominium through foreclosure; *provided, however*, that such exemption shall apply only during the period in which the Association is record owner of such Condominium; and
- (c) All Common Area.

ARTICLE 10 MAINTENANCE OF PROPERTY

10.1 Association's Responsibility for Common Area Generally. The Association shall manage, operate and maintain the Common Area in accordance with the provisions of the Governing Documents and all applicable municipal, state, and federal laws, statutes and ordinances. The Association shall Maintain, Repair and restore and Replace (when necessary) all of the Common Area and all facilities, improvements, equipment, hardscape, including concrete planters, wooden planter boxes, landscaping and irrigation thereon, furniture, fixtures and appliances in all Common Areas, and all property that may be acquired by the Association. The Association shall Maintain, Repair and Replace the structure

✓ and grounds surrounding all Units, including bearing walls, and roofing; fencing, balconies, decks, planter boxes and railings thereon, sidewalks, pathways and railings, mailboxes and mailbox structures, exterior lighting; exterior irrigation systems; window glass and exterior doors (including glass therein), columns, girders, subfloors; roofs, skylights, rain gutters and downspouts; foundations; storage buildings, conduits, ductwork, pipes, plumbing, wires and other utility installations required to provide or transport power, light, telephone, television and Internet service, gas, water, sewage and drainage; fire extinguishers; easement areas and areas subject to grants for passage, repair or maintenance; and all exterior sewer, water or other utilities serving the property. The allocation of responsibility for maintenance of certain specific items shall be as provided in Exhibit C, attached hereto.

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10.1.1 Association's Responsibility Inclusive. Maintenance shall include, without limitation, painting, cleaning, upkeep, Maintaining, Repairing and Replacing of all such areas.

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10.1.2 Association Is Not Responsible for Repairs Necessitated by Owner's Conduct. The responsibility of the Association for Maintenance, Repair and Replacement shall not extend to repairs or replacements arising out of or caused by the willful or negligent act or omission of an Owner, or his or her household members, guests, tenants or invitees or the Owner's pets. However, when the repair is covered by the insurance carried by the Association, the Association shall be responsible for making the repairs, and the responsible Owner shall pay any deductible pursuant to the insurance policy. Any repairs arising out of or caused by the willful or negligent act or omission of an Owner, or his or her household members, guests, tenants or invitees, or the Owner's pets, the cost of which is not covered by insurance carried by the Association, shall be made by the responsible Owner; *provided, however,* that the person actually making the repairs and the method of repair shall be subject to the approval of the Board. If the Owner fails to make such payment, then the Association may make such payment and shall charge the amount of such payment to the responsible Owner as a Reimbursement Assessment in accordance with Article 9 ("Assessments and Liens") which charge shall be subject to a late charge as provided in Article 9 and which shall bear interest at the rate of twelve percent (12%) per annum (but no greater than the maximum rate allowed by law) until paid in full. If the responsible Owner fails to take the necessary steps to make the repairs within a reasonable time under the circumstances, the Association shall make the repairs and charge the cost thereof to the responsible Owner as a Reimbursement Assessment, which cost shall be subject to a late charge as provided in Article 9 and which shall bear interest at the rate of twelve percent (12%) per annum (but no greater than the maximum

rate authorized by law) until paid in full. If an Owner disputes his or her responsibility for the repairs, the Owner shall be entitled to notice and a hearing as provided in Article 14 ("Enforcements; Notice; Hearings") before any charge may be imposed.

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10.1.3 Association's Responsibility for Damage Caused by Wood-destroying Pests. The Association shall have the Common Area periodically inspected for wood-destroying pests and organisms and shall take appropriate corrective measures therefor. The Association shall have the authority to require the temporary removal of Residents of a Unit as may be necessary in connection with the treatment of wood-destroying pests or organisms, pursuant to the procedures described in *Civil Code* section 4780 or any successor statute. The costs of any temporary relocation shall be borne by each Owner of a Unit who is required to temporarily relocate.

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10.1.4 Landscape Maintenance. Landscaping maintenance shall include regular fertilization, irrigation, pruning, and other prudent garden management practices necessary to promote a healthy weed-free environment for optimum plant growth. The Association shall remove and replace all dying or dead vegetation. The Association shall take appropriate steps to maintain the irrigation of the landscaping and to prevent damage resulting from misdirected and/or excessive watering.

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

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10.1.6 Owner's or Resident's Responsibility. Each Owner and Resident shall fully cooperate with the agents of the Association in the performance of the Association's maintenance and repair obligations described in this Article 10. Such cooperation shall include, but is not limited to, immediate notification to the Board or its managing agent of any maintenance or repair problems for which the Association is responsible and access to the Owner's or Resident's dwelling and Exclusive Use Common Area as may be necessary to inspect and, if appropriate, to perform any necessary Maintenance or Repairs.

10.1.7 Damage from Water Leak or Overflow from Unit. In the event of any water leak or overflow from any Unit that damages any Common Area or another Unit, the Owner and Residents of the Unit that is the source of the water leak or overflow (the "Responsible Owner") shall cooperate with the Association in the inspection and correction of the problem. Cooperation shall include access to the dwelling to inspect and to correct the problem and/or repair any damage. The Responsible Owner shall reimburse the Association for its repair cost to the extent the cost is not paid through insurance maintained by the Association (provided that the Board shall have complete discretion as to the filing of claims with the Association's insurer), and the Association may levy a Reimbursement Assessment to recover the cost. If the damage may be covered by insurance maintained by the Association, the Association shall submit an appropriate claim. Any deductible amount shall be paid by the Responsible Owner.

10.2 Inspection and Maintenance Guidelines. The Board shall adopt inspection and maintenance guidelines for the periodic inspections and maintenance of the Common Area improvements and landscaping, including but not limited to, foundations, gutters, downspouts, siding, roofs and trim, balconies, decks, window caulking, utility equipment, and sanitary sewer and storm drainage facilities maintained by the Association, streets, parking areas, recreational facilities, and the irrigation system. The Board periodically and at least once every three (3) years shall review and update the inspection guidelines. The Board shall take all appropriate steps to implement and comply with the inspection and maintenance guidelines.

10.2.1 Annual Professional Inspections. The Association shall cause professional inspections of all infrastructures to be regularly made at least annually, and for appropriate items or events, more often. Inspections will include a review of all repair records since the previous inspection.

10.2.2 Annual Report to Members. The inspections shall be reported at the annual membership meeting and in writing, and shall include plans for

cleaning, Maintenance, Repair, Replacement, etc. (if any), as well as estimates of the costs. The reports shall address any noted deterioration which may require future attention. The reports may also report on supplemental specialized investigations (i.e., elevator, termite, pool, mechanical, arborist, geologist, structural, etc.).

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

10.3 Owner's Responsibility for Maintenance and Repair. Except for those portions of the Project which the Association is required to Maintain and Repair, each Condominium Owner shall, at his or her sole cost and expense, Maintain and Repair his or her Unit, keeping the same in good condition. Each Owner's responsibility shall include, but shall not necessarily be limited to, Maintenance, Repair and Replacement of the following items within such Owner's Unit and the cost thereof: interior surfaces of all perimeter and interior walls, ceilings and floors (including carpeting, tile, wall paper, paint or other covering); garbage disposals, ranges, refrigerators, dishwashers, washing machines and dryers, light fixtures, smoke and carbon monoxide detectors, and any and all other appliances of any nature whatsoever; heating, ventilating and air-conditioning equipment servicing such Unit (although such equipment may be located in part outside such Unit); exterior door hardware, gaskets and seals, interior doors, including all hardware on the doors; cabinets; plumbing and other fixtures of any nature whatsoever; light bulbs; and "built-in" features, fireplaces, if any, and any furniture and furnishings. Each Owner shall Maintain, Repair and Replace any smoke or carbon monoxide detectors located in the Owner's Unit. Each Owner shall keep the Exclusive Use Common Area appurtenant to the Owner's Condominium in a clean and neat condition at all times. Each Owner shall have the exclusive right to paint, plaster, panel, tile, wax, paper or otherwise refinish and decorate the inner surfaces of the walls, ceilings, floors, and doors bounding his or her Unit. In the event an Owner fails to maintain the interior of his or her Unit in a manner which the Board deems necessary to preserve the appearance and value of the Project, the Board may notify Owner of the work required and the Owner shall complete such work within sixty (60) days from the giving of such notice. Use of chemicals that may damage the drain pipes and fixtures is strictly forbidden.

10.4 Owner's Responsibility Regarding Mold. In order to reduce the presence of mold, fungi, spores, pollens and other botanical substances, or other allergens (collectively "Mold") within the Unit, the Owners shall inspect the interior of their Units not less frequently than once each quarter to check for water leaks or other

✓ breaches of the watertight integrity of the improvements, and for the presence of Mold. If any water leaks and/or Mold are detected within the Unit, the Owner shall immediately take appropriate corrective steps to repair the leak, and/or remove the Mold and to maintain proper ventilation within enclosed areas, and to maintain humidity levels to reduce the risk of Mold growth, and take such prudent steps as may be appropriate to prevent Mold growth, or eliminate any existing Mold. Any Mold or other infestation detected shall be noted to the Board in writing for appropriate action.

✓ 10.5 Owner's Failure to Maintain. In the event the Owner fails to carry out such maintenance within one (1) week, the Board may, following notice and hearing as provided in the Bylaws, cause such work to be done and charge the cost of the work to such Owner to the Association as a Reimbursement Assessment which, until paid in full, shall be subject to a late charge as provided in Article 9 ("Assessments and Liens") and shall bear interest at the rate of twelve percent (12%) per annum (but no greater than the maximum rate authorized by law).

ARTICLE 11 INSURANCE

✓ 11.1 Insurance Coverage to Be Maintained by Association. The Association shall procure and maintain, as a common expense of all Owners, the types of insurance described in Section 11.3 ("Hazard Insurance to Be Maintained by Association"), Section 11.4 ("Commercial General Liability Insurance to Be Maintained by Association"), and Section 11.5 ("Other Insurance to Be Maintained by Association"), if and to the extent such insurance, with the coverages described below, is available at a reasonable premium cost.

✓ 11.2 Premiums. The costs of insurance obtained by the Association shall be a common expense of the Association, shall be included in the Regular Assessment, and shall be paid for out of the operating fund of the Association.

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✓ 11.3 Hazard Insurance to Be Maintained by Association. The Association shall obtain and maintain a master hazard policy insuring all improvements, equipment and fixtures in the Project (including the Units as originally constructed) with policy limits of either: (a) full replacement value of the covered improvements or (b) no less than eighty percent (80%) of replacement cost of the covered improvements, ~~excluding foundations and footings in either instances,~~ unless otherwise required by FNMA or FHLMC requirements as set forth in Section 11.6 ("Amount, Term, and Coverage"). The following endorsements should be included in any such master hazard policy, if commercially reasonable to obtain:

(a) Changes in building codes ("ordinance or law endorsement");

- (b) Inflation guard coverage;
- (c) Demolition coverage;
- (d) "Agreed-amount" endorsement (to eliminate a coinsurance problem);
- (e) Replacement cost endorsement; and
- (f) Primary coverage endorsement.

11.4 Commercial General Liability Insurance to Be Maintained by Association. The Association shall maintain commercial general liability insurance insuring the Association, its officers and directors, its manager, and the Owners against any liability incident to ownership, maintenance, and repair of the Common Area, but excluding the liability of an Owner incident to personal bodily injury and property damage occurring within that Owner's Unit or in any other Unit or upon the Common Area resulting from the negligence of that Owner. The limits of liability shall be set by the Board but shall in no event be less than Three Million Dollars (\$3,000,000) or any higher applicable limit set forth in *Civil Code* section 5805.

11.4.1 Scope of Coverage. Such liability insurance policy shall insure against bodily injury, death, or property damage occurring in, on or about any portion of the Common Area and if available and at a reasonable cost as determined by the Board shall include:

- (i) water damage liability,
- (ii) hired and non-owned vehicle coverage, theft and collision coverage,
- (iii) liability for property of others,
- (iv) elevator liability coverage, ~~if applicable,~~
- (v) off-premises employee coverage, and
- (vi) such other risks as are customarily covered in condominium projects.

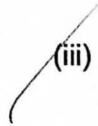
11.4.2 Other Provisions. If available and at a reasonable cost as determined by the Board, such liability insurance policy:

- (i) shall contain a waiver of subrogation as to claims against the Association, the Board members, the Owners and members of

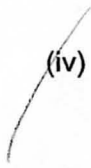


the Owner's family who reside with such Owner, except in cases of arson or fraud;

(ii) shall contain a waiver of the defense of invalidity on account of the conduct of any Owner over which the Board has "no control;"



(iii) shall require that at least thirty (30) days' prior written notice be given to the Association by the insurer before cancellation except that in the case of cancellation for nonpayment of premiums or for fraud the notice shall be given no less than ten (10) days prior to the effective date of the cancellation;



(iv) shall provide that in no event shall the insurance be brought into contribution with insurance purchased individually by Owners or their Mortgagees; except to the extent that such policy shall be used to pay the property deductible for an insured loss under the Association hazard policy;



(v) shall exclude policies obtained by the individual Owners from consideration under any "other insurance" clause; and



(vi) shall contain a provision requiring the insurer to defend lawsuits for which there is coverage under the policy even if the allegations are fraudulent, but authorizing the insurer to make such investigation and settlement of any claim or suit within the policy limit as it deems expedient.

11.5 Other Insurance to Be Maintained by Association.

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11.5.1 Directors' and Officers' Insurance. The Association shall maintain directors' and officers' liability insurance with limits to be set by the Board but in no event less than One Million Dollars (\$1,000,000) or any higher applicable limit set forth in Civil Code section 5800, and containing a cross-liability endorsement and waiver of subrogation as to the Association, the officers, and the directors, and the agents and employees of any of them. Coverage for prior acts, to the extent obtainable, shall be included.

11.5.2 Workers' Compensation Insurance. The Association shall maintain workers' compensation insurance to the extent necessary to comply with any applicable laws and may carry such insurance at any time as determined by the Board.

11.5.3 Fidelity Bond. The Association shall maintain a standard fidelity bond or insurance covering dishonest acts on the part of officers and directors of the Association, the manager, and any employees or volunteers who are responsible to handle funds of the Association. ✓

11.5.4 Earthquake Insurance. The Association shall maintain earthquake insurance to the extent required by law, and if not required by law, then to the extent available at commercially reasonable rates in the opinion of the Board. ✓ OK Swm 11/17/19

11.5.5 Other Insurance. The Association may maintain at any time and from time to time any other insurance and bonds as the Board may from time to time deem necessary or desirable. ✓

11.6 Amount, Term, and Coverage. The amount, term, and coverage of any policy required hereunder (including the type of endorsements, the amount of the deductible, the named insureds, the loss payees, standard Mortgage clauses, notices of changes or cancellations, and the insurance company rating) shall satisfy the minimum requirements imposed for this type of project by the Federal National Mortgage Association ("FNMA") and the Federal Home Loan Mortgage Corporation ("FHLMC") or any successor to either of those entities (except for earthquake insurance, the purchase of which shall be within the discretion of the Board, as provided in Section 11.5.4 ("Earthquake Insurance"). If the FNMA or FHLMC requirements conflict, the more stringent requirement shall be met. ~~If FNMA or FHLMC do not impose requirements on any policy required hereunder, the term, amount and coverage of such policy shall be no less than that which is~~ 11. customary for similar policies on similar projects in the area. The Board shall adopt a policy regarding payment of deductibles on any insurance coverage. Unless the Board determines otherwise, the Association shall pay deductibles required under any insurance claims from Association funds, unless insufficient funds are available to the Association from the Association's accounts or from funds borrowed by the Association in accordance with this Declaration, in which event the Association shall levy a Special Assessment, in accordance with Section 9.7 ("Regular Assessment") and Section 9.8 ("Special Assessments") of this Declaration, with respect to the amount of any such deductible which exceeds funds available to the Association from Association funds or from borrowing. ✓

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

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

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

11.10 Insurance to Be Maintained by Owner. Owners shall have the following obligations and rights to carry individual insurance:

11.10.1 HO6 Condominium Owner's Policy. Each Owner shall be responsible, at his or her sole expense, to carry an "HO6 Condominium Owner's Policy" or the equivalent insurance covering the following risks which are not covered by the insurance policies carried by the Association:

- (i) the Owner's individual liability for damage to property or injury to the person of others occurring within the Unit or the appurtenant Exclusive Use Common Area, in an amount not less than Three Hundred Thousand Dollars (\$300,000) for each occurrence or in such other amount as the Board may establish from time to time by Rule;
- (ii) property damage to contents and personal property within the Owner's Condominium in such amount as the Owner shall determine is adequate but not less than Seventy Thousand Dollars (\$70,000);
- (iii) insurance on Owner upgrades and betterments (as discussed below in Section 11.10.2 ("Insurance for Upgrades")) in such amount as the Owner shall determine is adequate to cover damage to upgrades and betterments to the extent the cost is not covered by the master property insurance policy;
- (iv) additional living expenses, loss of use, and loss of rental income;
- (v) loss assessment coverage in an amount not less than Fifty Thousand Dollars (\$50,000); and
- (vi) insurance to pay the deductible under the blanket insurance policy carried by the Association pursuant to Section 11.3

("Hazard Insurance to Be Maintained by Association") in an amount not less than the deductible under that policy or such amount as the Owner shall determine is adequate.

11.10.2 Insurance for Upgrades. The hazard insurance carried by the Association pursuant to Section 11.3 ("Hazard Insurance to Be Maintained by Association") is not intended to cover Owner-installed upgrades or betterments to the extent the replacement cost thereof made after the original construction exceeds the replacement cost of the original improvements. Each Owner shall be entitled to separately insure upgrades or betterments made by the Owner to the Unit or the Exclusive Use Common Area. Any such policy shall contain a waiver of subrogation as to any and all claims against the Association, its officers and directors, the manager, and the Owners and a waiver of all defenses based upon acts of the insureds or the existence of co-insurance. Any Owner obtaining such separate insurance shall deposit with the Board a duplicate copy or a certificate of insurance of each such policy.

11.10.3 No Overlapping Coverage. No Owner shall obtain or maintain any policy of insurance that reduces the amount of coverage under any policy obtained or maintained by the Association pursuant to Section 11.3 ("Hazard Insurance to Be Maintained by Association"), Section 11.4 ("Commercial General Liability Insurance to Be Maintained by Association"), or Section 11.5 ("Other Insurance to Be Maintained by Association"). If any Owner violates the provisions of this Section 11.10.3, any diminution in insurance proceeds otherwise payable to the Association that results from the existence of such other insurance will be chargeable to the Owner who acquired such other insurance and each Owner hereby assigns to the Association the proceeds of any such policy to the extent any such decrease in proceeds in fact occurs (such proceeds to be applied pursuant to the Declaration as if produced by the Association's coverage). Such Owner will be liable to the Association to the extent of any diminution and the Association shall levy a Reimbursement Assessment against such Owner in the amount of such diminution.

11.10.4 Other Owner-maintained Insurance. Each Owner shall be responsible, at his or her sole cost and expense, to obtain such other insurance, as the Owner shall determine is adequate to cover such other risks as the Owner shall determine.

11.10.5 Evidence of Insurance; No Obligation of Association. Upon request from the Board, each Owner shall provide evidence of such insurance ~~annually~~. If an Owner fails to obtain any insurance he or she is

obligated or permitted to obtain pursuant to this Declaration, nothing in this Declaration shall be construed to impose any obligation whatsoever on the Association to insure that which the Owner does not insure. The right of the Board to request evidence of insurance that an Owner is obligated to carry pursuant to this Declaration shall not be deemed to impose a duty on the Board or the Association to request such evidence of insurance or impose on the Association any liability to any person arising or claimed to arise out of any action or inaction by the Board, the Association or anyone acting on the Association's or the Board's behalf with respect to verifying any Owner's compliance with the Owner's obligation to carry insurance.

11.11 HO4 Renter's Policy. Each Owner who rents or leases a Unit shall require the tenant to purchase and maintain in force during the tenancy an "HO4 Renter's Policy" or the equivalent with a minimum personal liability limit of Three Hundred Thousand Dollars (\$300,000). If a tenant fails to obtain any insurance he or she is obligated or permitted to obtain pursuant to this Declaration, nothing in this Declaration shall be construed to impose any obligation whatsoever on the Association to insure that which the tenant does not insure. Upon request from the Board, each Owner shall provide evidence of such tenant's insurance annually.

11.12 Insurance Proceeds. Proceeds of all insurance policies owned by the Association shall be received by the Association and shall be distributed to the Association, the Owners, and their Mortgagees subject to the provisions of the Declaration as their interest may appear; *provided, however*, that whenever repair or reconstruction is required, the proceeds of any insurance received by the Association as a result of any loss shall be applied to such repair or reconstruction.

11.13 Responsibility for Payment of Deductible.

11.13.1 Damage to Common Area. Subject to the provisions of Section 6.17 ("Owner's Liability to Association for Negligent Damage"), in the event of damage to the Common Area (including Exclusive Use Common Area) that is covered by the hazard insurance policy maintained by the Association pursuant to Section 11.3 ("Hazard Insurance to Be Maintained by Association"), the deductible shall be paid by the Association.

11.13.2 Damage to Unit. In the event of damage to a Unit that is covered by the hazard insurance policy maintained by the Association pursuant to Section 11.3 ("Hazard Insurance to Be Maintained by Association"), the Owner of the damaged Unit shall pay the deductible. In the event of earthquake damage to a Unit that is covered by an earthquake

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insurance policy maintained by the Association for the benefit of the Units, the deductible under such earthquake insurance policy shall be assessed as a Reimbursement Assessment equally against all Unit Owners.

11.13.3 Allocation of Deductible. In the event of a single casualty that results in damage to Common Area and to one (1) or more Units which damage is covered by the hazard insurance carried by the Association pursuant to Section 11.3 ("Hazard Insurance to Be Maintained by Association"), the obligation to pay the deductible shall be allocated between the Association and the affected Unit Owner(s) in proportion to the claim settlement amount received by each party; *provided, however,* if the repair is the result of the willful or negligent act or omission of an Owner and the cost of the repair is covered by insurance carried by the Association, the Association shall make the repairs and the Owner shall pay any deductible payable under the policy. If the Owner fails to make the payment, the Association may make such payment and charge the amount to the responsible Owner as a Reimbursement Assessment pursuant to Section 9.10 ("Reimbursement Assessments").

11.13.4 Tort Damages. Nothing in this Section 11.13.4 shall be deemed to affect any person's right to recover the amount of any deductible paid by such person from any other person responsible for the loss under tort or other theories of liability.

11.14 Owner's Liability for Conditions Affecting Insurance. As provided in Section 6.25 ("Conditions Affecting Insurance"), the responsible Unit Owner shall be liable to the Association if anything is done, placed, or kept within the Project that increases the rate of insurance or results in the cancellation of insurance under any insurance policy maintained by the Association.

11.15 Insurance Carriers. All insurance policies carried by the Association shall be written by companies that are not prohibited from doing business in the State of California.

11.16 Annual Review of Policies. The limits and coverage of all insurance policies carried by the Association shall be reviewed at least annually by the Board and increased or decreased in its discretion.

11.17 Coverage Not Available; Disclaimer. In the event any insurance policy or any endorsement listed in Section 11.3 ("Hazard Insurance to Be Maintained by Association"), Section 11.4 ("Commercial General Liability Insurance to Be Maintained by Association"), and Section 11.5 ("Other Insurance to Be Maintained by Association") is for any reason not available, then the Association

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✓ shall obtain such other or substitute policy or endorsement as may be available which provides, as nearly as possible, the coverage described above. The Association, and its directors and officers, shall have no liability to any Unit Owner if, after good faith effort, it is unable to obtain or maintain the insurance required pursuant to Section 11.3, Section 11.4, or Section 11.5 because the insurance is no longer available or, if available, can be obtained or maintained only at a cost that the Board in its sole discretion determines is unreasonable under the circumstances, or the Members fail to approve any Special Assessment or increase in the Regular Assessment needed to fund the insurance premiums. In accordance with *Civil Code* section 5810, as soon as reasonably practicable, the Association shall notify the Members by Individual Notice if any of the policies described in Section 7.5.8 of the Bylaws ("Summary of Association's Insurance Policies") have lapsed or been canceled, and are not immediately renewed, restored, or replaced, or if there is a significant change, such as a reduction in coverage or limits or an increase in the deductible for any of those policies. If the Association receives any notice of non-renewal of a policy described in Section 7.5.8 of the Bylaws and replacement coverage will not be in effect by the date the existing coverage will lapse, the Association shall immediately notify the Members by Individual Notice.

✓ 11.18 Copies of Policies. Copies of all Association insurance policies (or certificates of insurance) and paid invoices showing that premiums have been paid shall be retained by the Association and shall be available for inspection by Owners at any reasonable time.

11.19 Adjustment of Losses. The Board is appointed attorney-in-fact by each Owner to file all claims and to negotiate and agree on the value and extent of any loss under any policy carried by the Association pursuant to Section 11.3 ("Hazard Insurance to Be Maintained by Association"), Section 11.4 ("Commercial General Liability Insurance to Be Maintained by Association"), or Section 11.5 ("Other Insurance to Be Maintained by Association.") The Board is granted full right and authority to compromise and settle any claims or enforce any claim by legal action or otherwise and to execute releases in favor of any insured.

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ARTICLE 12 DAMAGE OR DESTRUCTION; CONDEMNATION

✓ 12.1 Damage or Destruction. If Project improvements are damaged or destroyed by fire or other casualty, the improvements shall be repaired or reconstructed substantially in accordance with the original as-built plans and specifications, modified as may be required by applicable building codes and regulations in force at the time of such repair or reconstruction and subject to such alterations or upgrades as may be approved by the Board, unless either of the follow occurs:
(1) the cost of repair or reconstruction is more than fifty percent (50%) of the

current replacement costs of all Project improvements, available insurance proceeds are not sufficient to pay for at least eighty-five percent (85%) of the cost of such repairs or reconstruction, and three-fourths (3/4) of the Total Voting Power of the Association residing in Members and their First Mortgagees vote against such repair and reconstruction; or (2) available insurance proceeds are not sufficient to substantially repair or reconstruct the improvements within a reasonable time as determined by the Board, a Special Assessment levied to supplement the insurance fails to receive the requisite approval (if such approval is required) as provided in Section 9.8.2 ("Permitted Amount of Special Assessments") and the Board, without the requirement of approval by the Owners, is unable to supplement the insurance by borrowing on behalf of the Association sufficient monies to enable the improvements to be substantially repaired or reconstructed within a reasonable time.

X 12.2 Process for Repair or Reconstruction. If the improvement is to be repaired or reconstructed and the cost for repair or reconstruction is in excess of twenty-five percent (25%) of the current replacement cost of all the Project improvements, the Board shall designate a construction consultant, a general contractor, and an architect for the repair or reconstruction. All insurance proceeds, Association monies allocated for the repair or reconstruction, and any borrowings by the Association for the repair or reconstruction shall be deposited with a commercial lending institution experienced in the disbursement of construction loan funds (the "depository") as selected by the Board. Funds shall be disbursed in accordance with the normal construction loan practices of the depository that require as a minimum that the construction consultant, general contractor and architect certify within ten (10) days prior to any disbursement substantially the following:

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- (a) That all of the work completed as of the date of such request for disbursement has been done in compliance with the approved plans and specifications;
- (b) That such disbursement request represent monies which either have been paid by or on behalf of the construction consultant, the general contractor or the architect and/or are justly due to contractors, materialmen, engineers, or other persons (whose name and address shall be stated) who have rendered or furnished certain services or materials for the work and giving a brief description of such services and materials and the principal subdivisions or categories thereof and the respective amounts paid or due to each of said persons in respect thereof and stating the progress of the work up to the date of said certificate;
- (c) That the sum then requested to be disbursed plus all sums previously disbursed does not exceed the cost of the work insofar as actually up to the date of such certificate;

(d) That no part of the cost of the services and materials described in the foregoing Section 12.1 ("Damage or Destruction") has been or is being made the basis for the disbursement of any funds in any previous or then pending application; and

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

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

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

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*BOARD CHAIRMAN T
A. GAYE OJ
APPRAISER*

12.3 Process if Repair or Reconstruction Not Undertaken. If the improvements are not repaired or reconstructed in accordance with the foregoing all available insurance proceeds shall be disbursed among the Owners of the damaged Units and their respective Mortgagees in proportion to the respective fair market values of their Condominiums as of the date immediately preceding the date of damage or destruction as determined by a qualified independent appraiser selected by the Board, after first applying the proceeds to the cost of mitigating hazardous conditions on the Project, making provision for the continuance of public liability insurance to protect the interests of the Owners until the Project can be sold, and complying with all other applicable requirements of governmental agencies. In the event of a failure to agree upon an appraiser, the appraiser shall be appointed by the then President of the San Mateo County Bar Association.

12.4 Material Alteration Resulting from Failure to Repair or Reconstruct. If the failure to repair or reconstruct results in a material alteration of the use of the Project from its use immediately preceding the damage or destruction by the Board (a material alteration shall be conclusively presumed if repair or reconstruction costs exceed twenty-five percent (25%) of the current replacement cost of all Project improvements), the Project shall be sold in its entirety under such terms and conditions as the Board deems appropriate. If any Owner or First Lender disputes the Board's determination as to a material alteration, the dispute shall be submitted to arbitration pursuant to the rules of the American Arbitration

Association, and the decision of the arbitrator shall be conclusive and binding on all Owners and their Mortgagees.

- 12.5 Proceeds of Sale. If the Project is sold, the sales proceeds shall be distributed to all Owners and their respective Mortgagees in proportion to their fair market values of their Condominiums as of the date immediately preceding the date of damage or destruction as determined by the independent appraisal procedure described above. For the purpose of effecting a sale under this Section 12.5, each Owner grants to the Association an irrevocable power of attorney to sell the entire Project for the benefit of the Owners, to terminate the Declaration and to dissolve the Association. In the event the Association fails to take the necessary steps to sell the entire Project as required hereunder within sixty (60) days following the date of a determination by the Board or arbitrator of a material alteration, or if within one hundred twenty (120) days following the date of damage or destruction the Board has failed to make a determination as to a material alteration, any Owner may file a partition action as to the entire Project under *Civil Code* section 4610, or any successor statute, and the court shall order partition by sale of the entire Project and distribution of the sale proceeds as provided herein.
- 12.6 Owner's Right of First Refusal. Notwithstanding anything herein to the contrary, any Owner or group of Owners shall have a right of first refusal to match the terms and conditions of any offer made to the Association in the event of a sale of the Project under this Section 12.6 provided this right is exercised within ten (10) days of receipt by the Owners of a notice from the Association containing the terms and conditions of any offer it has received. If the Owner or group of Owners subsequently default on their offer to purchase, they shall be liable to the other Owners and their respective Mortgagees for any damages resulting from the default. If more than one (1) Owner or group elects to exercise this right, the Board shall accept the offer that in its determination is the best offer.
- 12.7 Condemnation. The Association shall represent the Owners in any condemnation proceeding or in negotiations, settlements and agreements with the condemning authority of the Common Area(s), or part thereof. In the event of a taking or acquisition of part or all of the Common Area(s) by a condemning authority, the award or proceeds of settlement shall be payable to the Association, or any trustee appointed by the Association, for the use and benefit of the Owners and their Mortgagees as their interests may appear. In the event of an award for the taking of any Condominium in the Project by eminent domain, the Owner of such Condominium shall be entitled to receive the award for such taking and after acceptance thereof he or she and his or her Mortgagee shall be divested of all interest in the Project if such Owner shall vacate his or her Condominium as a result of such taking. The remaining Owners shall decide by majority vote whether to rebuild or repair the Project, or take other action. The remaining portion of the Project shall be resurveyed, if necessary, and the

Declaration shall be amended to reflect such taking and to readjust proportionately the percentages of undivided interest of the remaining Owners in the Project. In the event of a taking by eminent domain of any part of the Common Area, the Association shall participate in the negotiations, and shall propose the method of division of the proceeds of condemnation, where Condominiums are not valued separately by the condemning authority or by the court. Proceeds of condemnation shall be distributed among Owners of Condominiums and their respective Mortgagees according to the relative values of the Condominiums affected by the condemnation, said values to be determined by the method provided in this Article 12.

If there is a substantial taking of the Project (more than fifty percent (50%)), the Owners may terminate the legal status of the Project and, if necessary, bring a partition action under *Civil Code* section 4610 or any successor statute, on the election to terminate by fifty-one percent (51%) of the Total Voting Power of the Association and the approval of Eligible Mortgage Holders holding Mortgages on Condominiums which have at least fifty-one percent (51%) of the votes of Condominiums subject to Eligible Mortgages. The proceeds from the partition sale shall be distributed to the Owners and their respective Mortgagees in proportion to the fair market values of their Condominiums as determined under the method described in this Article 12.

ARTICLE 13 RIGHTS OF MORTGAGEES

13.1 Rights of First Mortgagees. No breach of any of the covenants, conditions and restrictions herein contained, nor the enforcement of any lien provisions herein, shall render invalid the lien of any First Mortgagee (meaning a Mortgagee of a Mortgage with first priority over any other Mortgage) on any Condominium made in good faith and for value, but all of said covenants, conditions and restrictions shall be binding upon and effective against any Owner whose title is derived through Foreclosure or trustee's sale, or otherwise. Notwithstanding any provision in the Condominium Documents to the contrary, First Mortgagees shall have the following rights.

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

13.1.2 Audited Financial Statement. Any holder, insurer or guarantor of a First Mortgage shall be entitled, upon written request, to an audited financial statement for the immediately preceding fiscal year, free of charge to the party so requesting. Such statement shall be furnished within one hundred twenty (120) days of the Association's fiscal year-end.

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

- (i) any condemnation loss or any casualty loss which affects a material portion of the Project or any Condominium on which there is a First Mortgage held, insured, or guaranteed by such Eligible Mortgage Holder or Eligible Insurer or Guarantor, as applicable;
- (ii) any default in performance of obligations under the Project Documents or delinquency in the payment of Assessments or charges owed by an Owner of a Condominium subject to a First Mortgage held, insured or guaranteed by such Eligible Mortgage Holder or Eligible Insurer or Guarantor, which remains uncured for a period of sixty (60) days;
- (iii) any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;
- (iv) any proposed action which would require the consent of a specified percentage of Eligible Mortgage Holders as specified in Section 13.1.4 ("Consent to Action").

The Association shall discharge its obligation to notify Eligible Mortgage Holder or Eligible Insurer or Guarantors by sending written notices required herein to such parties, at the address given on the current request for notice.

13.1.4 Consent to Action.

- (i) except as provided by statute or by other provision of the Governing Documents in case of substantial destruction or condemnation of the Project, and further excepting any reallocation of interests in the Common Area(s) which might

occur pursuant to any plan of expansion or phased development contained in the original Project Documents:

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- A) the consent of Owners of Condominiums to which at least sixty-seven percent (67%) of the votes in the Association are allocated and the approval of Eligible Mortgage Holders holding Mortgages on Condominiums which have a least fifty-one percent (51%) of the votes of Condominiums subject to Eligible Mortgages, shall be required to terminate the legal status of the Project as a Condominium Project; *provided, however,* that if termination is for reasons other than substantial destruction or condemnation, the agreement of Eligible Mortgage Holders representing at least sixty-seven percent (67%) of the votes of the Mortgaged Unit is required.
- B) the consent of Owners of Condominiums to which at least sixty-seven percent (67%) of the votes in the Association are allocated and the approval of Eligible Mortgage Holders holding Mortgages on Units which have at least fifty-one percent (51%) of the votes of the Condominiums subject to Eligible Mortgages, shall be required to add or amend any material provisions of the Project Documents which establish, provide for, govern or regulate any of the following: (i) voting rights; (ii) increases in Assessments that raise the previously assessed amount by more than twenty-five percent (25%), Assessment Liens, or the priority of Assessment Liens; (iii) reductions in reserves for maintenance, repair, and replacement of Common Areas; (iv) responsibility for maintenance and repairs; (v) reallocation of interests in the general or Restricted Common Areas, or rights to their use; (vi) convertibility of Units into Common Areas or vice versa; (vii) expansion or contraction of the Project, or the addition, annexation, or withdrawal of property to or from the Project; (viii) hazard or fidelity insurance requirements; (ix) imposition or any restrictions on the leasing of Units; (x) imposition of any restrictions on an Owner's right to sell or transfer his or her Unit; (xi) restoration or repair of the Project (after damage or partial condemnation) in a manner other than that specified in the Project Documents; or (xii) any provisions that

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expressly benefit Mortgage holders, insurers, or guarantors;

- C) an Eligible Mortgage Holder who receives a written request to approve additions or amendments who does not deliver or post to the requesting party a negative response within thirty (30) days after the notice of the proposed addition or amendment shall be deemed to have approved such request, provided the notice has been delivered to the Mortgage holder by certified or registered mail, return receipt requested.
- (ii) except as provided by statute in case of condemnation or substantial loss to the Condominiums and/or common elements of the Project, unless the holder(s) of at least two-thirds (2/3) of the First Mortgages (based upon one (1) vote for each First Mortgage owned), or Owners of the individual Condominiums have given their prior written approval, the Association and/or the Owners shall not be entitled to:
- A) by act or omission, seek to abandon or terminate the Condominium Project (except for abandonment or termination provided by law in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain);
 - B) change the pro rata interest or obligations of any individual Condominium for the purpose of: (i) levying Assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards; or (ii) determining the pro rata share of ownership of each Condominium in the Common Area, provided that no Owner's undivided interest in the Common Area may be changed without the consent of that Owner;
 - C) partition or subdivide any Condominium Unit;
 - D) by act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the Common Area. (The granting of easements for public use or for other public purposes consistent with the intended use of the Common Area by the Condominium Project shall not be deemed a transfer within the meaning of this clause);

✓ E) use hazard insurance proceeds for losses to any of the Project (whether to Units or to Common Area) for other than the repair, replacement or reconstruction of such Project.

/ 13.1.5 Right of First Refusal. The right of an Owner to sell, transfer, or otherwise convey his or her Condominium shall not be subject to any right of first refusal or similar restriction.

/ 13.1.6 Contracts. Any agreement for professional management of the Project, or lease or any other contract providing for services of the developer, sponsor, or builder, may not exceed one (1) year. Any agreement, contract, or lease must provide for termination by either party for cause on thirty (30) days' written notice, or without cause and without payment of a termination fee or penalty on ninety (90) days' or less written notice.

/ 13.1.7 Reserves. Condominium dues or charges shall include an adequate reserve fund for maintenance, repairs, and replacement of those improvements which the Association is obligated to maintain and that must be replaced on a periodic basis, and shall be payable in installments of Regular Assessments, rather than by Special Assessments.

✓ 13.1.8 Priority of Liens. Any Assessment Lien created under the provisions of this Declaration is expressly made subject and subordinate to the lien and encumbrance of any First Mortgage that encumbers all or any portion of the Project, or any Unit. Each First Lender who comes into possession of the Condominium by virtue of Foreclosure of the Mortgage, or any purchaser at a Foreclosure, will take the Condominium free of any claims for unpaid Assessments and fees, late charges, fines or interest levied in connection with such claims, against the Condominium which accrue prior to the time such First Lender or purchaser at a Foreclosure takes title to the Condominium, except for claims for a pro rata share of such Assessments or charges to all Condominiums including the mortgaged Condominium, and except for Assessment Liens as to which a notice of delinquent assessment has been recorded prior to the Mortgage.

/ 13.1.9 Distribution of Insurance or Condemnation Proceeds. No provision of the Condominium Documents gives an Owner, or any other party, priority over any rights of First Mortgagees in case of a distribution to Owners of insurance proceeds or condemnation awards for losses to or taking of Condominiums and/or Common Area.

- 13.1.10 Status of Loan to Facilitate Resale. Any First Mortgage given to secure a loan to facilitate the resale of a Condominium after acquisition by foreclosure or by a deed in lieu of foreclosure or by an assignment in lieu of foreclosure, shall be deemed to be a loan made in good faith and for value and entitled to all of the rights and protections of Mortgages under this Declaration.
- 13.1.11 Right to Appear at Meeting. Any Eligible Mortgage Holder may appear (but cannot vote) at meetings of Owners and the Board to draw attention to violations of this Declaration that have not been corrected or that have been made the subject of remedial proceedings or Assessments.

ARTICLE 14 ENFORCEMENT; NOTICE; HEARINGS

- 14.1 Violations As Nuisance. Every act or omission constituting or resulting in a violation of any of the provisions of the Governing Documents shall be deemed to constitute a nuisance and, in addition to any other remedies which may be available, such nuisance may be abated or enjoined by the Association or its officers or Board of Directors or by any Owner; *provided, however,* that the Board shall not be obligated to take action to abate or enjoin a particular violation if, in the exercise of its discretion, the Board determines that acting to abate or enjoin such violation is not likely to foster or protect the interests of the Association and its Members as a whole. Notwithstanding the preceding sentence and without limiting the generality of the proviso therein, nothing in the Governing Documents shall be deemed to impose upon the Association, the Board, or the officers, employees, or agents of the Association a duty to intervene in any physical dispute or altercation or any criminal or alleged criminal activity other than to notify law enforcement officials.
- 14.2 Violation of Law Is a Violation of the Declaration. Any violation of a state, municipal, or local law, ordinance or regulation pertaining to the ownership, occupancy, or use of any property within the Project is hereby declared to be a violation of this Declaration and subject to any and all of the enforcement procedures set forth herein.
- 14.3 Owner's Responsibility for Conduct and Damages. Each Owner shall be fully responsible for informing members of his or her household, Contract Purchasers, tenants, invitees, and guests of the provisions of the Governing Documents, and shall be fully responsible for the conduct, activities, and any Governing Document violation of any of them, and for any damage to the Project or the Association resulting from the negligent or intentional conduct of any of them or the conduct of any pet belonging to any of them. If a Condominium is owned

jointly by two (2) or more persons, the liability of each Owner in connection with the obligations imposed by the Governing Documents shall be joint and several; that is, each co-Owner individually shall be fully liable and responsible and all co-Owners collectively shall be fully liable and responsible. The foregoing provisions of this Section 14.3 are in addition to and shall not limit the generality of the provisions of Section 6.12.2 ("Indemnification Regarding Business Activity"), Section 6.27 ("Animals"), and Section 8.11 ("Disclaimer of Liability").

14.4 No Avoidance. No Owner may avoid the burdens or obligations imposed by the Governing Documents through non-use of any Common Area facilities or by abandonment of his or her Unit.

14.5 Enforcement Rights Are Cumulative. To the fullest extent permitted by law, including *Civil Code* section 5975, the Association, its directors, officers, or agents, and any Owner shall have the right to enforce any and all provisions of the Governing Documents by any proceeding at law or in equity, or, with respect to action by the Association, through the use of such other remedies (including self-help remedies that do not breach the peace or otherwise violate applicable law or this Declaration) as are available and deemed appropriate by the Board. Each remedy provided is cumulative and not exclusive.

14.6 Injunctions. Except for the non-payment of any Assessment levied pursuant to the provisions of this Declaration, it is hereby declared that a remedy at law to recover damages for a default in the performance of any of the terms and provisions of any of the Governing Documents or for the breach or violation of any such provisions is inadequate and that the failure of any Owner, Contract Purchaser, member of his or her household, tenant, invitee, guest, or household pets or any other Resident or user of any of the property within the Project to comply with any provision of the Governing Documents may be enjoined in any judicial proceedings initiated by the Association, its officers or Board of Directors, or by any Owner or by their respective successors in interest.

14.7 Limitation on Association's Disciplinary Rights. To the extent provided in *Civil Code* section 4510, the Association shall not have the power and authority to cause a forfeiture or abridgment of an Owner's right to the full use and occupancy of his or her Unit as the result of the failure by such Owner, members of his or her household, Contract Purchaser, tenants, invitees, guests or pets to comply with any provision of the Governing Documents, except where such forfeiture or abridgment is the result of the judgment of a court of competent jurisdiction, a decision arising out of an arbitration proceeding, or a foreclosure or sale under private power of sale for failure of such Owner to pay Assessments levied by the Association pursuant to this Declaration and except to the extent of the Association's rights pursuant to Section 9.15.3 ("Owner's Right to Discuss Payment Plan"). The provisions of this Section 14.7 shall not affect the

Association's right to impose other sanctions including imposing Enforcement Assessments as provided in Section 14.8 ("Imposing Sanctions").

14.8 Imposing Sanctions. Upon an explicit finding and for reasons specified by the Board following a hearing called by the Board and conducted in accordance with this Article 14, the Board shall have the power to impose sanctions on a Member who is in default in the payment of any Assessment or Additional Charge levied by the Board or is found to be in violation of any provision of the Governing Documents. Sanctions may include loss of good standing, suspension of other rights, and/or monetary penalties (fines), as described below.

14.8.1 Loss of Good Standing. The Board may suspend a Member's Good Standing for so long as the Member remains in default of such payment or until the violation is remedied. When a Member is not in Good Standing, his or her Association voting rights shall be suspended and the Member shall be disqualified from serving on the Board.

14.8.2 Monetary Penalties (Fines). The Board may adopt a policy imposing monetary penalties or fines as Enforcement Assessments in accordance with a schedule of fines adopted by the Board pursuant to *Civil Code* section 5850 and distributed to the Members in the annual policy statement pursuant to *Civil Code* section 5310. Multiple fines may be imposed for multiple violations. The schedule of fines may be changed by the Board by a Rule change pursuant to *Civil Code* section 4360.

14.8.3 Monthly Sanctions for Continuing Violations. In the case of a continuing violation, such as an uncorrected architectural violation, where an Owner fails to remedy the violation after notice from the Board to do so, the Board may impose sanctions, including monetary penalties, such sanctions to remain in effect for a period of one (1) month or until the continuing violation is remedied, whichever occurs sooner. (By way of example and not limitation, a violation in the nature of parking every day in a prohibited parking space would *not* constitute a "continuing violation" but each instance would constitute a separate violation.) If the continuing violation has not been remedied within the one-month period, the Board may impose separate and successive sanctions for the continuing violation, provided the Board conducts a separate hearing, not more frequently than once a month, before imposing each successive sanction. The Board may limit the scope of such hearing to facts and circumstances occurring subsequent to the previous hearing relating to the subject continuing violation.

14.8.4 Reimbursement Assessment Not a Sanction. The imposition of a Reimbursement Assessment pursuant to the Declaration does not constitute and shall not be deemed to be a sanction.

14.9 Investigation of Complaints. Upon receipt of a written complaint from an Owner or a Resident, the Board shall conduct an investigation of the allegations in the complaint and shall make relevant findings upon which the Board shall base a decision to pursue or not pursue the matter. If the Board decides not to pursue a matter, it shall notify the complaining party in writing stating the reason(s) for its decision.

14.10 Written Notice of Violation. If the Board determines, whether on its own initiative or pursuant to a written complaint, that a violation of the Governing Documents exists or has occurred, it shall notify the responsible Owner(s) by written notice in compliance with Section 14.11 ("Notices: Content, Delivery").

14.11 Notices: Content, Delivery. Any notice of violation required or given under this Article 14.11 shall be in writing and shall comply with *Civil Code* section 5855 as to content and time of service and *Civil Code* section 4040 as to method of service.

14.11.1 Content of Notice of Violation. Any notice given by the Association to a Member shall comply with *Civil Code* section 5855 and, at a minimum, set forth a brief description of the act or omission constituting the alleged violation of the Governing Documents; a reference to the specific Governing Document provision or provisions alleged to have been violated; if applicable, a statement that the Member may request a hearing by the Board; the date, time, and location of any hearing called by the Board; and any sanction, disciplinary action, or other enforcement action being contemplated by the Board.

14.11.2 Delivery of Notice. Any notice may be given by any method provided for in *Civil Code* section 4040; *provided, however*, that (i) if notice is given by mail, it shall be sent postage prepaid by United States first-class mail and/or by certified mail, return-receipt requested; and (ii) if given by the Association to a Member, it shall be sent to the most recent address for the affected Member as shown on the records of the Association. Pursuant to *Civil Code* section 4050, if sent by United States mail, such notice shall be deemed delivered upon deposit in the United States mail, postage prepaid. If such notice is sent by electronic means, delivery is complete at the time of the transmission, as set forth in *Civil Code* section 4050.

14.11.3 Owner's Address for Notice. It shall be each Owner's responsibility to notify the Association in writing of any change in the Owner's address

for the purpose of receiving notices from the Association. The fact that a different address appears on correspondence to the Association from an Owner shall not constitute such written notice, unless it is expressly stated that such address is a change of address for the purpose of receiving notice from the Association. Upon transfer of title to a Condominium, the transferee shall be responsible for notifying the Association of such transfer. The notification shall set forth the address of the Condominium, the names of the transferee and the transferor, and the date of sale or other transfer. Prior to receipt of such notification, any and all communications required or permitted to be given by the Association or the Board to the Condominium Owner shall be deemed to be duly made and given to the transferee if duly and timely made and given to the person shown as the Owner of the Condominium and at the address in the Association's records.

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OWNERSHIP
ASSOCIATION
14.11.4

14.11.4 Notice to Co-Owners or Occupants. Unless otherwise provided by law, when a Unit is owned by two (2) or more co-Owners or is occupied by two or more Residents, notice to one (1) Owner or to one (1) Resident shall be deemed notice to all Owners or to all occupants, as the case may be.

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[Signature]

14.12 Hearing Called by the Board; Executive Session; Open Meeting. To the extent required by *Civil Code* section 5855, whenever the Board determines to conduct a hearing, it shall notify the affected Owner(s) and/or Resident(s) in writing by Individual Delivery, at least ten (10) days before the Board meeting at which the matter will be considered. If the matter concerns Member discipline or the imposition of sanctions, the Board shall meet in executive session if requested by the Member, unless (and then only to the extent) applicable law requires that certain actions by the Board be conducted at an open meeting of the Board, such as *Civil Code* section 5673 concerning a decision to record a lien for delinquent Assessments. If the matter concerns compliance with architectural approval requirements, the hearing shall be conducted in open meeting pursuant to *Civil Code* section 4765. In the Board's discretion, other interested person(s) may attend a hearing and may present information relevant to the subject matter of the hearing. If a notified Owner or Resident fails to attend a noticed hearing, the Board may nevertheless conduct its deliberations and make a determination based on its own investigation and any other information supplied to it that the Board deems reasonably reliable.

14.13 Owner's Request for Hearing. An Owner who has received a notice of violation sent pursuant to Section 14.10 ("Written Notice of Violation") or a notice of corrective action sent pursuant to Section 14.15 ("Enforcement by Association in Emergency Situations") or as otherwise provided in the Governing Documents, may request a hearing before the Board by submitting a written request to the Board. If an Owner is requesting a meeting to discuss a payment plan for a past

due debt owed to the Association, the meeting shall be scheduled and conducted as provided in Section 9.15.3 ("Owner's Right to Discuss Payment Plan"). If the Owner is requesting a hearing concerning a notice of violation sent pursuant to Section 14.10 or a notice of corrective action sent pursuant to Section 14.15, the request for hearing must be submitted within ten (10) days after the date of such notice. The Board shall schedule a hearing at its next regular meeting that is at least five (5) days after its receipt of an Owner's request for hearing or, in the Board's discretion, at another time agreed by the Board and the Owner. Hearings shall be conducted in executive session or at an open meeting as provided in Section 14.12 ("Hearing Called by the Board; Executive Session; Open Meeting").

14.14 Notice of Hearing Decisions. Within fifteen (15) days after a hearing is conducted, the Board shall notify the Owner or Resident in writing as to its decision. If the Board decides to impose sanctions, the notice shall describe the sanctions imposed and, if applicable, their effective dates.

14.15 Enforcement by Association in Emergency Situations.

14.15.1 Definition of Emergency Situation. For purposes of this Section 14.15, the following shall constitute emergency situations:

- (i) an immediate and unreasonable infringement of or threat to the safety or peaceful enjoyment of Residents of the Project,
- (ii) a traffic or fire hazard,
- (iii) a threat of material damage to or destruction of the Project or any portion thereof,
- (iv) a violation of any provision of the Governing Documents that is of such a nature that there is no material question regarding the identity of the violator or whether the violation has occurred (such as parking violations).

14.15.2 Immediate Corrective Action. Notwithstanding any other provisions of the Governing Documents, under circumstances that constitute an emergency, the Board or its duly-authorized agents may undertake immediate corrective action. The Board shall promptly thereafter send written notice of the corrective action to the affected Owner including notice of any Reimbursement Assessment assessed to the Owner for costs incurred by the Association in connection therewith. If the Owner requests a hearing pursuant to Section 14.13 ("Owner's Request for Hearing"), enforcement of any Reimbursement Assessment imposed

by the Board shall be held in abeyance and shall be pursued only if affirmed by the Board at the hearing.

14.16 Internal Dispute Resolution.

- 14.16.1 Fair, Reasonable, and Expeditious Procedure. The provisions of Article 8 (“Architectural and Unit Remodeling Considerations”) and of Section 14.9 (“Investigation of Complaints”) through Section 14.15 (“Enforcement by Association in Emergency Situations”) are intended to provide a fair, reasonable, and expeditious procedure for resolving disputes between the Association and any Member that are subject to *Civil Code* sections 5900 through 5920 (which apply to, among other things, enforcement of applicable provisions of the *Corporations Code* and enforcement of the Governing Documents). The above-referenced provisions of the Declaration shall constitute the Association’s “internal dispute resolution” process as required by *Civil Code* section 5905.
- 14.16.2 Statutory Default Procedures. If the Association shall fail to comply with the Association’s internal dispute resolution process, then the Association and the affected Member shall abide by the statutory default procedures provided in *Civil Code* section 5915, or successor statute. Any resolution so agreed upon by the parties thereto, that is not in conflict with the law or the Governing Documents, shall bind the parties and shall be judicially enforceable as provided in *Civil Code* section 5910.
- 14.16.3 Alternative Dispute Resolution May Also Apply: If (a) the subject matter of the dispute (including, among other things, enforcement of applicable provisions of the *Corporations Code* and enforcement of the Governing Documents) and the remedy sought (including certain kinds of declaratory, injunctive, or writ relief, which may be in conjunction with certain limited monetary relief, but excluding small claims actions and excluding Assessment disputes) are subject to *Civil Code* sections 5925 through 5965 and (b) the Association and the affected Member do not agree on a resolution through the foregoing internal dispute resolution process provided for in Section 14.16.1 (“Fair, Reasonable, and Expeditious Procedure”), then no party to the dispute may pursue a civil remedy that is subject to *Civil Code* sections 5925 through 5965, without first complying with the “alternative dispute resolution” (hereinafter, “ADR”) procedures set forth in that statute and referenced in Section 14.17 (“Alternative Dispute Resolution Before Initiating Lawsuit”).

14.16.4 Annual Description of Internal Dispute Resolution Process. The Association shall annually provide the Members with a description of the internal dispute resolution process required by *Civil Code* section 5920 as part of the annual policy statement prepared pursuant to *Civil Code* section 5310. Such description may consist of a copy of Article 8 (“Architectural and Unit Remodeling Considerations”) and Section 14.9 (“Investigation of Complaints”) through this Section 14.16 (“Internal Dispute Resolution”).

14.17 Alternative Dispute Resolution Before Initiating Lawsuit.

14.17.1 Annual Summary. As provided in *Civil Code* section 5965, the Association shall annually provide to its Members a summary of the provisions concerning ADR contained in *Civil Code* sections 5925 through 5965 as part of the annual policy statement prepared pursuant to *Civil Code* section 5310. Such summary may consist of a copy of this Section 14.17. Such summary shall include the following language:

“Failure of a member of the association to comply with the alternative dispute resolution requirements of Section 5930 of the *Civil Code* may result in the loss of the member’s right to sue the association or another member of the association regarding enforcement of the governing documents or the applicable law.”

14.17.2 When ADR Applies. The requirements of this Section 14.17 apply to civil action or proceedings as defined in *Civil Code* section 5925(b) when the remedy sought is solely for declaratory, injunctive, or writ relief or if for the foregoing relief in conjunction with monetary damages not in excess of the jurisdictional amount for a small claims action as stated in *California Code of Civil Procedure* sections 116.220 and 116.221, all as provided in *Civil Code* section 5930(b). *Civil Code* sections 5925 through 5965 apply to disputes between Members as well as to disputes between the Association and a Member. The ADR requirements of this Section 14.17 do not apply to Assessment disputes or to an action in small claims court.

14.17.3 Statutory ADR Process. In accordance with *Civil Code* sections 5925 through 5965, the Association or a Member may not file an “enforcement action” as defined in the statute unless the parties have endeavored to submit their dispute to “alternative dispute resolution” as the term is defined in *Civil Code* section 5925(a) and as the process is specified in *Civil Code* sections 5935, 5940, and 5945.

14.18 Non-waiver of Enforcement. Failure to enforce any provision of the Governing Documents at any time shall not be deemed a waiver of the right to do so thereafter with respect to the same or any other violation of any provision of the Governing Documents. ✓

14.19 Costs and Attorney Fees. In an action to enforce the Governing Documents, the prevailing party shall, to the fullest extent permitted by law, including *Civil Code* section 5975, be entitled to recover the full amount of all costs including attorney fees incurred in responding to and/or in enforcing any Governing Document provision. Without limiting the generality of the foregoing, in the event an Owner pursuant to *Civil Code* section 4605 brings a civil action for violation of *Civil Code* section 4600 (concerning the granting of exclusive use of a portion of the Common Area to a Member) or pursuant to *Civil Code* section 4955, a civil action for violation of the Common Interest Open Meeting Act (*Civil Code* sections 4900 through 4955) if the Association shall prevail in any such action, the Association shall be entitled to recover reasonable attorney fees except to the extent prohibited by law. The remedies of the prevailing party to recover the amount of such costs, expenses, and attorney fees shall include, but shall not necessarily be limited to, the imposition of a Reimbursement Assessment. ✓

ARTICLE 15 **AMENDMENT** ^{on how}
_{62 COMMENTS}

15.1 Required Approval. Subject to any applicable requirements of **Section 12.4** ("Material Alteration Resulting from Failure to Repair or Reconstruct"), this Declaration may be amended by the affirmative vote of Members representing at least a majority of the Total Voting Power of the Association; *provided, however*, that, upon advice of legal counsel licensed to practice law in the State of California including the drafting by legal counsel of appropriate amendatory provisions, the Board shall have the authority without the requirement of Member approval to amend any provision of the Declaration (i) to resolve any conflict between the Declaration and applicable law which may arise due to the enactment or amendment of a statute or due to a development in applicable case law or (ii) to conform the provisions of the Declaration to changes in applicable statutory law that impose requirements that are non-discretionary in nature. ✓

15.2 Amendment Must Be Recorded. Any amendment of the Declaration shall be signed and acknowledged by the duly-authorized officer(s) of the Association and recorded in the Office of the County Recorder. ✓

15.3 Presumption of Validity. There will be a presumption subsequent to the recording of an amendment to this Declaration pursuant to **Section 15.2** ("Amendment Must Be Recorded") that all votes and consents required to pass the same pursuant to **Section 15.1** ("Required Approval") were duly obtained in accordance with the ✓

✓ Governing Documents and applicable law. Such presumption may be rebutted by an action commenced within one (1) year from the date the amendment is recorded. In the absence of any such action, such presumption shall thereafter become conclusive.

ARTICLE 16 GENERAL PROVISIONS

- ✓ 16.1 Headings. The headings used in this Declaration are for convenience only and are not to be used in interpreting the meaning of any of the provisions of this Declaration, or otherwise.
- ✓ 16.2 Severability. The provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any provision hereof shall not invalidate any other provisions hereof.
- ✓ 16.3 Liberal Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of fostering a plan of community ownership and occupancy and of management of the Project for the benefit of the community.
- ✓ 16.4 Amendment to Referenced Statutes; Time for Performance. References in the Declaration to particular statutes, including sections of the *Civil Code* or the *Corporations Code*, shall be deemed to include any successor statute and any amendments to existing or successor statutes. Whenever this Declaration states a time for the performance of any act by the Association which by law (as it may exist from time to time) must be performed at or within a specified time, the time for the performance of such act shall be deemed to be the widest timeframe permitted under then-applicable law.
- ✓ 16.5 Number; Gender. The singular shall include the plural and the plural the singular unless the context requires the contrary, and the masculine, feminine, and neuter shall each include the masculine, feminine, or neuter, as the context requires.
- ✓ 16.6 Exhibits. All exhibits attached to this Declaration are incorporated by this reference as though fully set forth herein.
- 16.7 Power of Attorney. To the extent necessary to carry out and enforce the provisions of this Declaration, an irrevocable power of attorney coupled with an interest is granted to the Association by the Owners and each of them.
- ✓ 16.8 Term. The covenants, conditions, restrictions, limitations, reservations, grants of easement, rights, rights-of-way, liens, charges, and equitable servitudes contained in this Declaration shall run with and shall benefit and burden all of the

62
real property subject to this Declaration, including without limitation the Units and Common Areas, and shall inure to the benefit of and be binding upon the Owners, the Association, its Board of Directors and officers, and their respective agents and successors in interest, for a term of thirty (30) years from the date of recordation of this Declaration and thereafter the term shall be automatically extended for successive periods of ten (10) years each, unless within the six (6) months prior to the expiration of the initial thirty-year term or within six months prior to the expiration of any ten-year extension period a written instrument, approved by Owners entitled to vote and holding at least a majority of the Total Voting Power of the Association, terminating the effectiveness of this Declaration shall be recorded in the Office of the County Recorder of San Mateo County, State of California.

IN WITNESS WHEREOF, we, the Members of THE MENLO COMMONS ASSOCIATION, pursuant to the requisite approval, and by means of the signatures of the President and the Secretary, do hereby affirm, approve, and adopt the foregoing Amended and Restated Declaration of Covenants, Conditions and Restrictions of The Menlo Commons Association, which Amended and Restated Declaration of Covenants, Conditions and Restrictions shall be recorded with the County Recorder of San Mateo County, State of California.

DATED: _____

THE MENLO COMMONS
ASSOCIATION, a California nonprofit
mutual benefit corporation

President's Name

Secretary's Name

EXHIBIT A

(Recital Paragraphs A & B)

**List of Recorded Documents Superseded by
This Amended and Restated Declaration**

1. DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS ESTABLISHING A PLAN OF CONDOMINIUM OWNERSHIP FOR THE MENLO COMMONS, recorded on March 11, 1977, in Volume 7405, Pages 331 through 393, inclusive, as Document No. 91155AK, in the Official Records of San Mateo County, State of California;
2. AMENDMENTS TO THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS, recorded on July 28, 1986, as Document No. 86087514, in the Official Records of San Mateo County, State of California;
3. AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR MENLO COMMONS, recorded on August 6, 1986, as Document No. 86093128, in the Official Records of San Mateo County, State of California;
4. AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR MENLO COMMONS ASSOCIATION, recorded on November 6, 1987, as Document No. 87169708, in the Official Records of San Mateo County, State of California;
5. AMENDMENT TO THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS, recorded on December 24, 1992, as Document No. 92213618, in the Official Records of San Mateo County, State of California;
6. AMENDMENT TO THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS, recorded on May 23, 1994, as Document No. 94090943, in the Official Records of San Mateo County, State of California;
7. AMENDMENT TO THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS, recorded on December 27, 1994, as Document No. 94192743, in the Official Records of San Mateo County, State of California;
8. MENLO COMMONS ASSOCIATION AMENDMENT TO CC&R, recorded on September 9, 1999, as Document No. 1999-154515, in the Official Records of San Mateo County, State of California.

9. OCT 11, 2005

10. MAY 10, 2007

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EXHIBIT B

(Section 9.7.2)

**Percentage Interests in Common Area Appurtenant to the Units
and
Allocation of Assessments**

Building A Unit No.	Percentage of Assessment	Building B Unit No.	Percentage of Assessment
A101	.80484	B101	.80484
A102	.87193	B102	.67077
A103	.87193	B103	.67077
A104	.80484	B104	.67077
A105	.67077	B105	.80484
A106	.80484	B106	.80484
		B107	.67077
		B108	.87193
		B109	.80484

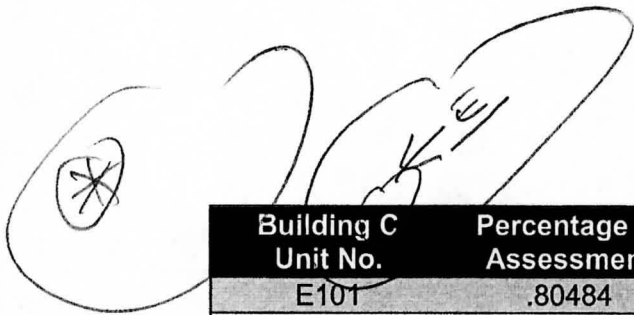
A201	.80484	B201	.80484
A202	.67077	B202	.67077
A203	.67077	B203	.67077
A204	.67077	B204	.67077
A205	.80484	B205	.80484
A206	.80484	B206	.80484
A207	.67077	B207	.67077
A208	.67077	B208	.67077
A209	.67077	B209	.67077
A210	.80484	B210	.80484

A301	.87193	B301	.87193
A302	.87193	B302	.87193
A303	.72610	B303	.72610
A304	.87193	B304	.87193
A305	.87193	B305	.87193
A306	.72610	B306	.72610

Building C Unit No.	Percentage of Assessment	Building D Unit No.	Percentage of Assessment
C101	.80484	D101	.80484
C102	.82720	D102	.87193
C103	.87193	D103	.87193
C104	.87193	D104	.80484
C105	.80484	D105	.82720
C106	.80484	D106	.87193
C107	.87193	D107	.87193
C108	.87193	D108	.80484
C109	.87193		
C110	.80484		

C201	.80484	D201	.80484
C202	.84962	D202	.87193
C203	.87193	D203	.87193
C204	.87193	D204	.80484
C205	.80484	D205	.84962
C206	.80484	D206	.87193
C207	.87193	D207	.87193
C208	.87193	D208	.80484
C209	.87193		
C210	.80484		

C301	.93893	D301	.93893
C302	.93893	D302	.93893
C303	.93893	D303	.93893
C304	.72610	D304	.93893
C305	.67077	D305	.93893
C306	.93893		
C307	.93893		



Building C Unit No.	Percentage of Assessment
E101	.80484
E102	.87193
E103	.87193
E104	.87193
E105	.80484
E106	.80484
E107	.82720
E108	.87193
E109	.87193
E110	.80484

E201	.80484
E202	.87193
E203	.87193
E204	.87193
E205	.80484
E206	.80484
E207	.84962
E208	.87193
E209	.87193
E210	.80484

E301	.72610
E302	.67077
E303	.93893
E304	.93893
E305	.93893
E306	.93893
E307	.93893

EXHIBIT C

(Section ___)

Items Covered by Maintenance Provisions

	Responsibility	
	<u>Association</u>	<u>Owner</u>
Air-conditioning equipment		X
Awnings		X
Balcony drains, cleaning		X
Caulking – bath tub or shower		X
Doors – 3 rd floor deck storage area	X	
Drawer guides		X
Drains	X	
Faucets		X
Filters – Kitchen faucet, range exhaust		X
Fireplaces		X
Garage Gate remote control		X
Garage parking space – drip pans		X
Garage cleaning	X	
Kitchen cabinet repairs/replacement		X
Kitchen appliances, all		X
Knobs – Doors – Cabinets		X
Lights – Bulbs – fluorescent tubes, diffusers		X
Lockers (in the garage)		X
Pest Control – rats, mice, ants, silverfish	X	
Phone jacks (original)	X	
Plumbing (inside walls)	X	
Rollers – Closet doors		X
Radiant heat ceiling panels	X	
Screens		X
Showers		X
Smoke detectors		X
Switches		X
TV outlets (original)	X	
Toilets – seats, seals, tank, lid, bowl		X
Towel bars – new, replacement, repair		X
Vacuum system ^{central}	X	
Water pipes	X	
Windows – glass, rollers		X

The Board may provide repair and installation services for those items or portions of items that are the responsibility of Owners, provided that the Owner requesting such service shall be specifically assessed for the labor and materials used.

THIS IS EXACT COPY
OF LAW
VERIFIED BY ANN
OK 90m 11/17/19

✓ EXHIBIT D (EXACT COPY) ✓

CIVIL CODE SECTION 51.3

§ 51.3. Housing; age limitations; necessity for senior citizen housing

(a) The Legislature finds and declares that this section is essential to establish and preserve specially designed accessible housing for senior citizens. There are senior citizens who need special living environments and services, and find that there is an inadequate supply of this type of housing in the state.

(b) For the purposes of this section, the following definitions apply:

(1) "Qualifying resident" or "senior citizen" means a person 62 years of age or older, or 55 years of age or older in a senior citizen housing development.

(2) "Qualified permanent resident" means a person who meets both of the following requirements:

(A) Was residing with the qualifying resident or senior citizen prior to the death, hospitalization, or other prolonged absence of, or the dissolution of marriage with, the qualifying resident or senior citizen.

(B) Was 45 years of age or older, or was a spouse, cohabitant, or person providing primary physical or economic support to the qualifying resident or senior citizen.

(3) "Qualified permanent resident" also means a disabled person or person with a disabling illness or injury who is a child or grandchild of the senior citizen or a qualified permanent resident as defined in paragraph (2) who needs to live with the senior citizen or qualified permanent resident because of the disabling condition, illness, or injury. For purposes of this section, "disabled" means a person who has a disability as defined in [REDACTED]. A "disabling injury or illness" means an illness or injury which results in a condition meeting the definition of disability set forth in [REDACTED].

✓ (A) For any person who is a qualified permanent resident under this paragraph whose disabling condition ends, the owner, board of directors, or other governing body may require the formerly disabled resident to cease residing in the development upon receipt of six months' written notice; provided, however, that the owner, board of directors, or

other governing body may allow the person to remain a resident for up to one year after the disabling condition ends.

(B) The owner, board of directors, or other governing body of the senior citizen housing development may take action to prohibit or terminate occupancy by a person who is a qualified permanent resident under this paragraph if the owner, board of directors, or other governing body finds, based on credible and objective evidence, that the person is likely to pose a significant threat to the health or safety of others that cannot be ameliorated by means of a reasonable accommodation; provided, however, that the action to prohibit or terminate the occupancy may be taken only after doing both of the following:

(i) Providing reasonable notice to and an opportunity to be heard for the disabled person whose occupancy is being challenged, and reasonable notice to the co-resident parent or grandparent of that person.

(ii) Giving due consideration to the relevant, credible, and objective information provided in the hearing. The evidence shall be taken and held in a confidential manner, pursuant to a closed session, by the owner, board of directors, or other governing body in order to preserve the privacy of the affected persons.

The affected persons shall be entitled to have present at the hearing an attorney or any other person authorized by them to speak on their behalf or to assist them in the matter.

(4) "Senior citizen housing development" means a residential development developed, substantially rehabilitated, or substantially renovated for, senior citizens that has at least 35 dwelling units. Any senior citizen housing development which is required to obtain a public report under [REDACTED] and which submits its application for a public report after July 1, 2001, shall be required to have been issued a public report as a senior citizen housing development under [REDACTED]. No housing development constructed prior to January 1, 1985, shall fail to qualify as a senior citizen housing development because it was not originally developed or put to use for occupancy by senior citizens.

(5) "Dwelling unit" or "housing" means any residential accommodation other than a mobile home.

(6) "Cohabitant" refers to persons who live together as husband and wife, or persons who are domestic partners within the meaning of [REDACTED].

(7) "Permitted health care resident" means a person hired to provide live-in, long-term, or terminal health care to a qualifying resident, or a family member of the qualifying resident providing that care. For the purposes of this section, the care provided by a permitted health care resident must be substantial in nature and must provide either assistance with necessary daily activities or medical treatment, or both. A permitted health care resident shall be entitled to continue his or her occupancy, residency, or use of the dwelling unit as a permitted resident in the absence of the senior citizen from the dwelling unit only if both of the following are applicable:

(A) The senior citizen became absent from the dwelling due to hospitalization or other necessary medical treatment and expects to return to his or her residence within 90 days from the date the absence began.

(B) The absent senior citizen or an authorized person acting for the senior citizen submits a written request to the owner, board of directors, or governing board stating that the senior citizen desires that the permitted health care resident be allowed to remain in order to be present when the senior citizen returns to reside in the development.

Upon written request by the senior citizen or an authorized person acting for the senior citizen, the owner, board of directors, or governing board shall have the discretion to allow a permitted health care resident to remain for a time period longer than 90 days from the date that the senior citizen's absence began, if it appears that the senior citizen will return within a period of time not to exceed an additional 90 days.

(c) The covenants, conditions, and restrictions and other documents or written policy shall set forth the limitations on occupancy, residency, or use on the basis of age. Any such limitation shall not be more exclusive than to require that one person in residence in each dwelling unit may be required to be a senior citizen and that each other resident in the same dwelling unit may be required to be a qualified permanent resident, a permitted health care resident, or a person under 55 years of age whose occupancy is permitted under subdivision (h) of this section or under [REDACTED]. That limitation may be

less exclusive, but shall at least require that the persons commencing any occupancy of a dwelling unit include a senior citizen who intends to reside in the unit as his or her primary residence on a permanent basis. The application of the rules set forth in this subdivision regarding limitations on occupancy may result in less than all of the dwellings being actually occupied by a senior citizen.

(d) The covenants, conditions, and restrictions or other documents or written policy shall permit temporary residency, as a guest of a senior citizen or qualified permanent resident, by a person of less than 55 years of age for periods of time, not less than 60 days in any year, that are specified in the covenants, conditions, and restrictions or other documents or written policy.

(e) Upon the death or dissolution of marriage, or upon hospitalization, or other prolonged absence of the qualifying resident, any qualified permanent resident shall be entitled to continue his or her occupancy, residency, or use of the dwelling unit as a permitted resident. This subdivision shall not apply to a permitted health care resident.

(f) The condominium, stock cooperative, limited-equity housing cooperative, planned development, or multiple-family residential rental property shall have been developed for, and initially been put to use as, housing for senior citizens, or shall have been substantially rehabilitated or renovated for, and immediately afterward put to use as, housing for senior citizens, as provided in this section; provided, however, that no housing development constructed prior to January 1, 1985, shall fail to qualify as a senior citizen housing development because it was not originally developed for or originally put to use for occupancy by senior citizens.

(g) The covenants, conditions, and restrictions or other documents or written policies applicable to any condominium, stock cooperative, limited-equity housing cooperative, planned development, or multiple-family residential property that contained age restrictions on January 1, 1984, shall be enforceable only to the extent permitted by this section, notwithstanding lower age restrictions contained in those documents or policies.

(h) Any person who has the right to reside in, occupy, or use the housing or an unimproved lot subject to this section on January 1, 1985, shall not be deprived of the

right to continue that residency, occupancy, or use as the result of the enactment of this section.

(i) The covenants, conditions, and restrictions or other documents or written policy of the senior citizen housing development shall permit the occupancy of a dwelling unit by a permitted health care resident during any period that the person is actually providing live-in, long-term, or hospice health care to a qualifying resident for compensation. For purposes of this subdivision, the term "for compensation" shall include provisions of lodging and food in exchange for care.

(j) Notwithstanding any other provision of this section, this section shall not apply to the County of Riverside.

gma