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AND
WHEN RECORDED MAIL TO:**

THE MENLO COMMONS
ASSOCIATION
c/o

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

**THIRD AMENDED AND RESTATED DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS FOR
THE MENLO COMMONS ASSOCIATION**

NOTICE

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

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**THIRD AMENDED AND RESTATED DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS OF
THE MENLO COMMONS ASSOCIATION**

This Amended and Restated Declaration of Covenants, Conditions and Restrictions is made on the date set forth at the end of this document by THE MENLO COMMONS ASSOCIATION, a California nonprofit mutual benefit corporation (referred to in this document as the "Association").

Menlo Commons is a senior housing development consisting of 122 condominiums and is located in the City of Menlo Park.

The Menlo Commons Association is responsible for, among other things, maintenance and upkeep of common area and for ensuring that the community complies with applicable federal and state laws concerning the qualification of all residents, occupants, and guests to reside in a senior housing development, including but not limited to, age requirements.

Menlo Commons is not a community licensed as a "continuing care retirement community," a "residential care facility for the elderly," or otherwise equipped to accept responsibility for or to care for persons who are not capable of safely living independently. The Association does not provide care or supervision of residents, assistance with activities of daily life, assisted living services, or care programs of any kind for residents.

RECITALS OF BACKGROUND FACTS; DECLARATIONS

- A. This Third Amended and Restated Declaration is made with reference to that certain MENLO COMMONS AMENDED AND RESTATED DECLARATION, recorded on October 11, 2005, as Document No. 2005-177038, in the Official Records of San Mateo County, State of California (the "2005 Declaration").
- B. The 2005 Declaration was subsequently amended by that certain First Amendment to Amended and Restated Declaration of Menlo Commons Association recorded on May 10, 2007, as Document No. 2007-072889, in the Official Records of San Mateo County, State of California (the "First Amendment"). The 2005 Declaration together with the First Amendment are referred to herein as the "Declaration."
- C. The Declaration establishes certain limitations, easements, covenants, restrictions, conditions, liens, and charges which run with, and are binding upon

1 all parties having or acquiring any right, title, or interest in, that certain real
2 property located in the County of San Mateo, State of California, and more
3 particularly described as follows:
4

5 Parcel A and Parcel B as shown on that certain "Parcel Map"
6 filed for record on September 30, 1976, in Volume 33 of
7 Parcel Maps at Page 27, in the Official Records of San
8 Mateo County, State of California.
9

- 10 D. The Project (as defined herein) is a "senior citizen housing development" as
11 defined in California *Civil Code* section 51.3(b)(3) and is operated as "Housing
12 for Older Persons" as defined in the United States Fair Housing Amendments Act
13 of 1988, 42 U.S.C. section 3607(b)(2).
14
- 15 E. THE MEMBERS, constituting at least a majority of the Total Voting Power of the
16 Association, desire to amend, modify, and otherwise change the Declaration
17 pursuant to Article IX, Section 9.4 thereof, and DO HEREBY DECLARE that the
18 Declaration shall be, and is hereby, AMENDED AND RESTATED IN ITS
19 ENTIRETY as set forth in the within Third Amended and Restated Declaration of
20 Covenants, Conditions and Restrictions for The Menlo Commons Association.
21
- 22 F. IT IS FURTHER HEREBY DECLARED that all of the real property described in
23 **Recital Paragraph C**, above, constitutes a condominium project within the
24 meaning of Section 4125 of the California *Civil Code*.
25
- 26 G. IT IS FURTHER HEREBY DECLARED that all of the real property described in
27 **Recital Paragraph C**, above, is and shall be held, owned, operated, managed,
28 conveyed, hypothecated, encumbered, leased, used, occupied, and improved
29 subject to the following covenants, conditions, and restrictions set forth herein, all
30 of which are declared and agreed to be in furtherance of a plan and purpose of
31 protecting, preserving, and enhancing the value, desirability, and attractiveness
32 of the said real property and every part thereof, and of fostering the development,
33 management, improvement, enjoyment, and sale of the said real property and
34 any part thereof.
35
- 36 H. IT IS FURTHER HEREBY DECLARED that all of the covenants, conditions, and
37 restrictions set forth herein shall constitute enforceable equitable servitudes as
38 provided in California *Civil Code* section 5975, shall constitute covenants that
39 shall run with the said real property, and shall be binding upon and inure to the
40 benefit of each Owner of any portion of the said real property or the owner or
41 holder of any interest or estate therein and their heirs, successors, and assigns.
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1 **ARTICLE 1** **DEFINITIONS**

- 2
- 3 1.1 Additional Charges. “Additional Charges” shall mean all costs, fees, charges,
4 and expenditures including, but not limited to, interest, late charges, attorney
5 fees, recording and filing fees, and all other costs actually incurred by the
6 Association in collecting and/or enforcing payment of Assessments.
7
- 8 1.2 Articles of Incorporation. “Articles of Incorporation” shall mean the Amended and
9 Restated Articles of Incorporation of The Menlo Commons Association, as they
10 may be amended from time to time, and as filed with the Office of the Secretary
11 of State of California.
12
- 13 1.3 Assessments. “Assessments” shall mean any or all of the following: Regular
14 Assessments, Special Assessments, Reimbursement Assessments, and
15 Enforcement Assessments.
16
- 17 1.4 Association. “Association” shall mean The Menlo Commons Association, a
18 California nonprofit mutual benefit corporation, its successors and assigns.
19
- 20 1.5 Board of Directors. “Board of Directors” or “Board” shall mean the governing
21 body of the Association.
22
- 23 1.6 Building. “Building” shall mean any of the five (5) Condominium buildings in the
24 Project designated as Buildings A, B, C, D, and E, respectively, and shown on
25 the Condominium Plan.
26
- 27 1.7 Bylaws. “Bylaws” shall mean the Amended and Restated Bylaws of the
28 Association as they shall be duly adopted by the Board of Directors and the
29 Members and any duly-adopted amendments thereof.
30
- 31 1.8 City. “City” shall mean the City of Menlo Park.
32
- 33 1.9 Civil Code. “Civil Code” shall mean the California *Civil Code* as amended from
34 time to time.
35
- 36 1.10 Common Area. “Common Area” shall mean all of the property comprising the
37 Project within Parcels A and B as shown on the Map, title to each of said Parcels
38 being held by the Owners as tenants-in-common of the Units located within the
39 respective Parcels, but excluding the Units therein. The Common Area includes,
40 without limitation, the Buildings and other improvements, the land, parking and
41 driveway areas, and garage areas; trash enclosures; landscaping; exterior
42 lighting, fences; interior and exterior stairs and stair wells; lobbies and interior
43 hallways; elevators and elevator shafts; basement and storage areas; exterior
44 walls; decks, and balconies; flower boxes and their irrigation systems; windows,
45 window frames, doors and door frames; bearing walls, girders, subfloors,
46 foundations, unfinished floors, roofs, gutters and downspouts; pumps, motors,

1 ducts, vents, flues, and chutes; building ventilation systems; fire protection
2 systems; conduits, pipes, plumbing, wires and other utility installations (except
3 the outlets thereof when located within a Unit) required to provide power, light,
4 water, sewerage, drainage, and elevator service; and exterior irrigation systems.
5 The line of demarcation between the portion of a water supply line that is
6 Common Area and the portion that is part of the Unit shall be the point at which
7 the line exits the Unit. The line of demarcation between the portion of a waste
8 water line that is Common Area and the portion that is part of the Unit shall be
9 the point at which the exposed line enters the Unit. Some portions of the
10 Common Area constitute “Exclusive Use Common Area” as defined in **Section**
11 **1.21** (“Exclusive Use Common Area”).
12

13 1.11 Condominium. “Condominium” shall mean an estate in real property as defined
14 in *Civil Code* sections 783 and 4125, consisting of an undivided interest in all or
15 any portion of the Common Area together with a separate fee interest in a Unit
16 and any easements or other interests in the Project or any portion thereof
17 appurtenant to the Unit, as are described in the Declaration, in the Condominium
18 Plan, or in the deed conveying a Condominium.
19

20 1.12 Condominium Plan. “Condominium Plan” or “Plan” shall mean a plan recorded
21 pursuant to *Civil Code* sections 4285, 4290, and 4295 with respect to the Project
22 and any amendments thereto which identifies the Common Area and each
23 separate interest in the Project, a copy of which Condominium Plan is attached
24 hereto as **Exhibit A**.
25

26 1.13 Contract Purchaser / Contract Seller. “Contract Purchaser” and “Contract Seller”
27 shall mean the purchaser and the seller, respectively, under an installment land
28 contract in which title to the property is transferred after the final installment
29 payment is made.
30

31 1.14 Corporations Code. “*Corporations Code*” shall mean the California *Corporations*
32 *Code* as amended from time to time.
33

34 1.15 County. “County” shall mean the County of San Mateo.
35

36 1.16 Declaration. “Declaration” shall mean this Third Amended and Restated
37 Declaration of Covenants, Conditions and Restrictions of The Menlo Commons
38 Association, recorded in the Office of the County Recorder of San Mateo, State
39 of California, and any duly-recorded amendments thereof.
40

41 1.17 Eligible Mortgage. “Eligible Mortgage” shall mean a Mortgage held by an Eligible
42 Mortgage Holder.
43

44 1.18 Eligible Mortgage Holder. “Eligible Mortgage Holder” shall mean a First
45 Mortgagee who has requested notice of certain matters from the Association in
46 accordance with **Section 13.1.3** (“Notice of Action”).
47

1 1.19 Eligible Insurer or Guarantor. “Eligible Insurer” or “Eligible Guarantor” shall mean
2 an insurer or governmental guarantor of a First Mortgage which has requested
3 notice of certain matters from the Association in accordance with **Section 13.1.3**
4 (“Notice of Action”).
5

6 1.20 Enforcement Assessment. “Enforcement Assessment” shall have the meaning
7 set forth in **Section 9.11** (“Enforcement Assessments”).
8

9 1.21 Exclusive Use Common Area. “Exclusive Use Common Area” shall mean any
10 portion of the Common Area the exclusive use of which is set aside, allocated,
11 assigned, and restricted to the exclusive use or possession of the Owners and
12 Residents of one (1) or more but less than all of the Units and which is
13 appurtenant to a Unit or Units. An exclusive easement to such Exclusive Use
14 Common Area may be specifically granted in each individual grant deed
15 conveying a Unit or may be granted by or as provided in this Declaration. On the
16 date of recording of this Third Amended and Restated Declaration, the Exclusive
17 Use Common Area appurtenant to the respective Units consists of one (1) or
18 more of the following:
19

20 1.21.1 Balcony. “Balcony” shall mean an exterior space adjacent to the Unit
21 to which it is appurtenant as stated in the deed to the Condominium.
22 The perimeter and vertical boundaries of each Balcony space are to
23 the interior finished surface of the railing, the exterior finished surface
24 of the floor, and a plane in space at the height of the ceiling of the
25 adjacent Unit. Each Balcony comprises the airspace encompassed
26 within its boundaries and does not include the physical components
27 enclosing that space.
28

29 1.21.2 Deck. “Deck” shall mean a deck adjacent to the third-floor Unit to
30 which it is appurtenant as stated in the deed to the Condominium. The
31 perimeter boundaries of each deck space are to the exterior finished
32 surfaces of the building and floor and do not include any physical
33 components enclosing that space.
34

35 1.21.3 Garage Parking Space. “Garage Parking Space” shall mean each
36 space designated on the Plan by a letter (A, B, C, D or E) indicating
37 the building in which the Garage Parking Space is located, then
38 followed by the letter “P-” which is followed by the number of the Unit
39 to which the Garage Parking Space is appurtenant and as stated on
40 the deed to the Condominium. The perimeter and vertical boundaries
41 of each Garage Parking Space are to the lines on the garage floor
42 demarking the side boundaries of each space to the end of such lines,
43 the interior unfinished surfaces of the exterior wall of the garage level
44 of the Building, floor, and ceiling. Each Garage Parking Space
45 comprises the airspace encompassed within its boundaries and does
46 not include the physical components enclosing that space.
47

1 1.21.4 Other Exclusive Use Common Area. Internal and external telephone
2 and data communication wiring designed to serve a single Unit
3 constitute Exclusive Use Common Area appurtenant to the Unit.
4

5 1.22 First Mortgage / First Mortgagee. “First Mortgage” shall mean a Mortgage that
6 has first priority over all other Mortgages. “First Mortgagee” shall mean the
7 beneficiary under a First Mortgage.
8

9 1.23 Governing Documents. “Governing Documents” shall mean the Articles of
10 Incorporation, Bylaws, Declaration, and Rules.
11

12 1.24 Individual Delivery / Individual Notice. “Individual Delivery” or “Individual Notice”
13 shall mean delivery to a Member or Members by the “preferred delivery method”
14 specified by the Member pursuant to *Civil Code* section 4041. If a Member has
15 not provided a valid delivery method pursuant to *Civil Code* section 4041, the
16 Association shall deliver the document by first-class mail, registered or certified
17 mail, express mail, or overnight delivery by an express service carrier addressed
18 to the recipient at the address last shown on the books of the Association. Upon
19 receipt of a written request by a Member, in compliance with *Civil Code* section
20 5260, identifying a secondary email or mailing address for delivery of notices, the
21 Association shall deliver an additional copy of both of the following to such
22 secondary address:
23

24 (a) The documents to be delivered to the Member pursuant to *Civil Code*
25 sections 5300 through 5320; and
26

27 (b) The documents to be delivered to the Member pursuant to *Civil Code*
28 sections 5650 through 5690, and *Civil Code* section 5710.
29

30 1.25 Lease. “Lease” shall mean any agreement between an Owner and a third party,
31 hereinafter referred to as Tenant, whereby the Tenant is granted the right of use
32 and possession of the Owner’s Unit (without the Owner being in residence).
33

34 1.26 Maintenance. “Maintenance” or to “maintain” (whether the term is capitalized or
35 not) shall mean the act of caring for property and keeping it in its existing state,
36 preserving it from failure or deterioration, including painting, caulking, cleaning,
37 and minor, non-structural upkeep. In the case of landscaping, “maintenance” or
38 to “maintain” shall mean regular fertilizing, irrigation, pruning, and other garden
39 management practices necessary to promote healthy plant growth free of weeds
40 or dead or dying plants.
41

42 1.27 Majority of a Quorum. “Majority of a Quorum” shall mean a majority of the votes
43 cast by Members in Good Standing in any lawful vote or election by the Members
44 in which the number of ballots cast equals or exceeds the number required to
45 establish a quorum.
46

- 1 1.28 Map. “Map” shall mean that certain “Parcel Map,” filed on September 30, 1976,
2 in Volume 33 of Parcel Maps at Page 27 in the Official Records of San Mateo
3 County, State of California.
4
- 5 1.29 Member. “Member” shall mean an Owner as shown on a grant deed to a
6 Condominium.
7
- 8 1.30 Member in Good Standing. “Member in Good Standing” shall mean a Member of
9 the Association who is current in the payment of all Regular Assessments and
10 Special Assessments imposed in accordance with the Governing Documents,
11 and who is in compliance with all of the provisions of the Governing Documents.
12 A Member shall be deemed to be in Good Standing unless, after notice and an
13 opportunity for hearing, pursuant to **Article 14** (“Enforcement; Notice; Hearings”),
14 the Board has found the Member to be not in Good Standing and has so notified
15 the Member in accordance with *Civil Code* section 5855.
16
- 17 1.31 Mortgage / Mortgagee. “Mortgage” shall mean a duly-recorded deed of trust or
18 mortgage in the conventional sense encumbering a Condominium. “Mortgagee”
19 shall mean a beneficiary under a Mortgage.
20
- 21 1.32 Owner. “Owner” shall mean the record owner, whether one (1) or more persons
22 or entities, of the fee simple title to any Condominium, including Contract Sellers
23 but excluding Contract Purchasers, and excluding those persons having such
24 interest merely as security for the performance of an obligation.
25
- 26 1.33 Parking Space. “Parking Space” shall mean both a Garage Parking Space as
27 defined in **Section 1.21.3** and a Parking Space located in the Common Area
28 outside of the garage level of a Building.
29
- 30 1.34 Permitted Vehicle. “Permitted Vehicle” shall mean a vehicle that is permitted to
31 be parked or operated within the Project as set forth in **Section 6.29.1** (“Permitted
32 Vehicles”).
33
- 34 1.35 Prohibited Vehicle. “Prohibited Vehicle” shall mean a vehicle that is prohibited
35 from being parked, stored or operated within the Project as set forth in **Section**
36 **6.29.2** (“Prohibited Vehicles”).
37
- 38 1.36 Project. “Project” shall mean all of the real property described in this Declaration
39 as comprising The Menlo Commons condominium project, including all structures
40 and other improvements located at any time upon said real property, and such
41 additional real property as may hereafter be brought within the jurisdiction of the
42 Association.
43
- 44 1.37 Regular Assessment. “Regular Assessment” shall have the meaning set forth in
45 **Section 9.7** (“Regular Assessment”).
46

- 1 1.38 Reimbursement Assessment. “Reimbursement Assessment” shall have the
2 meaning set forth in **Section 9.10** (“Reimbursement Assessments”).
3
- 4 1.39 Rental. “Rental” (when used as a noun) shall mean a Unit whose Owner has
5 obtained approval from the Board to offer a Lease to a Tenant.
6
- 7 1.40 Rental Quota. “Rental Quota” shall mean thirty-one (31) Units which is the
8 maximum number of Units that may be leased or rented at one (1) time, not
9 including any Temporary Rental that has been approved by the Board as
10 provided in **Section 7.8(b)** (“Approval of Lease Application in Special Cases”).
11
- 12 1.41 Repair. “Repair” (whether the term is capitalized or not) shall mean the minor
13 restoration of property that is torn, broken, or otherwise damaged, or has
14 sustained wear, tear, or deterioration such that minor restoration is necessary.
15
- 16 1.42 Replacement. “Replacement” or to “replace” (whether the term is capitalized or
17 not) shall mean substantial reconstruction, restoration, or substitution of the
18 whole or a substantial part of property that has deteriorated or has been
19 damaged or destroyed through usage or through hazard or catastrophe such that
20 it is no longer useable or serviceable in its current condition. In the case of
21 landscaping, “replacement” or to “replace” shall mean the removal and replanting
22 of trees, shrubs, lawns, and other plants that are dead or dying or otherwise not
23 serviceable or the substitution of plants for hardscape or substitution of
24 hardscape for plants.
25
- 26 1.43 Resident. “Resident” shall mean any person who resides in a Unit within the
27 Project whether or not such person is an Owner.
28
- 29 1.44 Rules. “Rules” shall mean the policies, rules, and regulations governing the
30 administration, management, operation, use, and occupancy of the Project,
31 including the use of the Common Area and facilities, the personal conduct of
32 Owners and Residents, members of their household, pets, tenants, invitees, and
33 guests within the Project, enforcement of the Governing Documents, and any
34 other matter that is within the jurisdiction of the Association, as adopted,
35 published, or amended by the Board from time to time and subject to applicable
36 law including *Civil Code* section 4340 and following.
37
- 38 1.45 Senior Housing Residency Rules. “Senior Housing Residency Rules” shall mean
39 the residency policy adopted by the Board and referenced in **Section 6.8** (“Senior
40 Citizen Residential Use; Qualification for Residency”).
41
- 42 1.46 Special Assessment. “Special Assessment” shall have the meaning set forth in
43 **Section 9.8** (“Special Assessments”).
44
- 45 1.47 Temporary Rental. “Temporary Rental” shall mean a Unit that the Board has
46 approved to be a Rental Unit for a limited time period of not more than one (1)
47 year and renewable for not more than one (1) additional year, as a result of an

1 Owner's request for special consideration as provided in **Section 7.6** ("Request
2 for Approval of Board").

3
4 1.48 Tenant. "Tenant" shall mean a third party with whom an Owner has entered into
5 a rental agreement or Lease of the Owner's Unit pursuant to the approval of the
6 Board to lease or rent that Unit. The Tenant must meet all residency
7 requirements as set forth in the Association's Senior Housing Residency Rules.

8
9 1.49 Total Voting Power. "Total Voting Power" shall mean the total number of votes of
10 all Members entitled to vote at a particular time, calculated on the basis of one
11 (1) vote for each Unit.

12
13 1.50 Unit. "Unit" shall mean the elements of a Condominium that are not owned in
14 common with the Owners of other Condominiums within the Project, which Units
15 are shown as separately designated and numbered areas on the Condominium
16 Plan. There are one hundred twenty-two (122) Units in the Project.

17
18 1.50.1 Boundaries of Unit. The boundaries of each Unit are as follows: the
19 interior unfinished surfaces of the perimeter walls, floors, ceilings,
20 windows and exterior doors thereof.

21
22 1.50.2 Included in Unit. Without limiting the generality of **Section 1.50.1**,
23 above, a Unit *includes* the following: (a) the finishes or coverings on
24 the interior surfaces of the walls, floors, ceilings, windows and window
25 frames, and exterior doors and door frames; (b) the partition (non-
26 bearing) walls within the boundaries of the Unit; (c) all interior doors
27 within the boundaries of the Unit and hardware of interior doors; and
28 (d) appliances and equipment and fixtures, including non-standard light
29 fixtures, refrigerators, air conditioners, and those portions of sinks,
30 tubs, shower stalls, toilets non-electrical and non-plumbing portions of
31 dishwashers and garbage disposals not excluded under **Section**
32 **1.50.3**, below.

33
34 1.50.3 Excluded from Unit. Without limiting the generality of **Section 1.50.1**,
35 above, a Unit *does not include* the following: (a) Common Areas within
36 the boundaries of the Unit except the finished surfaces thereof inside
37 the Unit; (b) load bearing walls, wherever located, waste and drain line
38 traps, and water lines and faucets; (c) circulation systems of
39 dishwashers and garbage disposals, electrical wall plugs, wall
40 switches, standard light fixtures, and sub-feed circuit breaker panels;
41 and (d) heaters, electrical components of standard ranges and ovens,
42 dishwashers and garbage disposals located within the boundaries of
43 the Unit.

1 **ARTICLE 2 HOMEOWNERS ASSOCIATION**

2
3 2.1 Management and Operation; Bylaws. The Association is an “association” as
4 defined in *Civil Code* section 4080 and as such shall have the power and the
5 authority to manage and operate the Project in accordance with the Governing
6 Documents and the provisions of applicable law. The Association shall have all
7 of the powers set forth in the Governing Documents together with general power
8 to do any and all things that a nonprofit mutual benefit corporation may lawfully
9 do under the laws of the State of California, subject only to the limitations upon
10 the exercise of such powers as are expressly set forth in the Governing
11 Documents. Provisions concerning the operation of the Association as a
12 nonprofit mutual benefit corporation are set forth in the Bylaws.

13
14 2.2 Legal Standing. To the fullest extent permitted by law, including *Civil Code*
15 section 5980, the Association shall have standing to institute, defend, settle, or
16 intervene in litigation, arbitration, mediation, or administrative proceedings in its
17 own name as a real party in interest, and without joining with it the Owners, in
18 matters pertaining to the following:

- 19 (a) Enforcement of the Governing Documents,
- 20 (b) Damage to the Common Area,
- 21 (c) Damage to the separate interests that the Association is obligated to
22 maintain, repair, or replace,
- 23 (d) Damage to a separate interest that arises out of, or is integrally related to,
24 damage to the Common Area or separate interests that the Association is
25 obligated to maintain, repair, or replace.

26
27 2.3 Membership. Every Owner of a Condominium shall be a Member of the
28 Association and shall remain a Member thereof until such time as his or her
29 ownership of such Condominium ceases for any reason. Fee ownership of a
30 Unit shall be the sole qualification for membership in the Association.
31 Membership shall be appurtenant to and may not be separated from ownership
32 of a Condominium and shall not be transferred, encumbered, pledged, alienated,
33 or otherwise hypothecated in any way, except in connection with the sale or
34 encumbrance of the Condominium to which it is appurtenant.

35
36 2.4 Voting. Only Members shall be entitled to vote and, only one (1) vote shall be
37 cast for each Condominium, as more particularly set forth in the Bylaws.

38
39 2.5 Association Rules. Subject to applicable law including *Civil Code* section 4340
40 and following, regarding notice and procedures, the Board shall have the power
41 and the authority to establish, promulgate, amend, repeal, and enforce Rules.
42
43
44
45
46

1 2.6 Association to Monitor Use of Common Area. The Association shall also, as a
2 separate and distinct responsibility, take reasonable action to require that third
3 parties (including Owners and their guests) utilize the Common Area in
4 accordance with applicable municipal, state and federal laws, statutes and
5 ordinances, as the case may be. The Association shall, when it becomes aware
6 of any violation of the aforementioned laws, take reasonable action to
7 expeditiously correct such violations.
8
9

10 **ARTICLE 3 PROPERTY SUBJECT TO THIS DECLARATION**

11
12 3.1 Legal Description. The property subject to this Declaration and to the jurisdiction
13 of the Association is described in Recital Paragraph C, above.
14

15 3.2 Classification of Property. The property subject to this Declaration is a
16 condominium project. All of the property subject to the Declaration is divided into
17 the following categories:
18

- 19 (a) Common Area,
- 20
- 21 (b) Exclusive Use Common Area, and
- 22
- 23 (c) Units.
24

25 3.3 Ownership of Condominium. Ownership of each Condominium within the Project
26 shall include: (i) a designated Unit, (ii) the respective undivided percentage
27 interest as tenant in common in the Common Area as set forth in Exhibit B, (iii) a
28 Membership in the Association, and (iv) any exclusive easements or easements
29 appurtenant to such Unit upon the Exclusive Use Common Area and such other
30 easements as are applicable, all as described in the Declaration, in the deed to
31 the Unit, or in the Condominium Plan.
32

33 3.4 Undivided Interests Cannot Be Changed. The undivided interests in the
34 Common Area established in the Declaration cannot be changed except with the
35 approval of one hundred percent (100%) of the Owners.
36

37 3.5 No Separate Conveyance of Undivided Interests. The undivided interests in the
38 Common Area shall not be severed or conveyed separately from the respective
39 Units to which they are appurtenant and each such undivided interest shall in all
40 cases be deemed to be conveyed or encumbered along with the respective Unit
41 even though the description in the instrument of conveyance or encumbrance
42 may refer only to the Unit. Any purported severance or separate conveyance of
43 an undivided interest in the Common Area apart from a conveyance of the
44 respective Unit shall, for all purposes, be null, void, and unenforceable.
45

1 3.6 Limitation on Partition; Power of Attorney. Except in the case of substantial
2 damage to or destruction or obsolescence of the Project as provided in *Civil*
3 *Code* section 4610, there shall be no judicial partition of the Project or any part
4 thereof, nor shall any Owner or any person acquiring any interest in the Project
5 or any part of the Project seek any judicial partition thereof; *provided, however,*
6 that if any Unit shall be owned by two (2) or more co-tenants as tenants in
7 common or as joint tenants, nothing contained in this Declaration shall be
8 deemed to prevent a judicial partition by sale as between such co-tenants. In the
9 event of a judicial partition of the Project pursuant to *Civil Code* section 4610 or
10 this Declaration, each Owner, for himself or herself and his or her successors
11 and assigns, hereby grants to the Association an irrevocable power of attorney to
12 sell the entire Project for the benefit of all the Owners. The power of sale shall
13 be exercised only after recordation by the Association of a certificate which
14 provides that the Association has the right to exercise the powers provided in this
15 **Section 3.6** and in *Civil Code* section 4610.

16
17 3.7 Sale or Mortgage of Association's Property. Upon approval of a majority of the
18 Total Voting Power of the Association, the Board acting on behalf of the
19 Association shall have the power and authority to acquire, own, hold improve,
20 build upon, operate, maintain, sell, lease, transfer, mortgage, pledge, encumber,
21 or otherwise hypothecate or dispose of real or personal in connection with the
22 affairs of the Association; *provided, however,* that such approval shall not be
23 required in the case of the sale by the Association of a Unit acquired by the
24 Association as the result of foreclosure of the Association's lien.

25 26 27 **ARTICLE 4 UTILITIES**

28
29 4.1 Owner's Rights and Duties. The rights and duties of the Owners of
30 Condominiums within the Project with respect to sanitary sewer, storm sewer,
31 water, drainage, electric, gas, television receiving, telephone equipment, cables
32 and lines, meters, catch basins, storage tanks, wires, ducts, flues, pumps, pipes
33 and exhaust flues, collectively, "Utility Facilities" shall be as follows:

34
35 (a) Whenever Utility Facilities are installed within the Project, which Utility
36 Facilities or any portion of those facilities lies in or upon Condominiums
37 owned by other than the Owner of a Condominium served by those Utility
38 Facilities, the Owners of any Condominium served by those Utility
39 Facilities shall have the right of reasonable access for themselves or for
40 utility companies to repair, replace and generally maintain those Utility
41 Facilities as and when necessary, due to failure or inability of the Board to
42 take timely action to make such repairs or perform such maintenance.

43
44 (b) Whenever Utility Facilities serving more than one (1) Condominium are
45 installed within the Project, the Owner of each Condominium served by
46 those Utility Facilities shall be entitled to the full use and enjoyment of

1 such portions of those Utility Facilities as servicing his or her
2 Condominium.

3
4 (c) In the event of a dispute between Owners with respect to the repair or
5 rebuilding of Utility Facilities, or with respect to the sharing of the cost of
6 those facilities, then, upon written request of one (1) Owner addressed to
7 the other Owner(s), the matter shall be submitted first to the Board for
8 mediation, and thereafter, if the dispute remains unresolved, to binding
9 arbitration within sixty (60) days pursuant to the rules of the American
10 Arbitration Association, or any successor rules, or to any other generally
11 recognized system of alternative dispute resolution, The decision of the
12 arbitrator(s) shall be final and conclusive on the parties, and judgment on
13 the decision may be entered in any court having jurisdiction.

14
15 4.2 Easements for Utilities and Maintenance. Easements over, under and through
16 the Project (including soffits and utility chases within Units, if any) for the
17 installation, repair, and maintenance of electric, telephone, water, gas and
18 sanitary sewer lines and facilities, heating or air conditioning facilities, cable or
19 master television antenna lines, drainage facilities, walkways, and landscaping
20 as shown on the Map, and as may be hereafter required or needed to service the
21 Project, exist in favor of the Association for the benefit of its Members.

22
23 4.3 Association's Duties. The Association shall maintain all Utility Facilities located
24 in the Common Area except for those facilities maintained by utility companies,
25 public, private, or municipal and those maintained by the Owners as described in
26 **Section 10.3** ("Owner's Responsibility for Maintenance and Repair."). The
27 Association shall pay all charges for utilities supplied to the Project except those
28 metered or charged separately to the Condominiums.

29
30
31 **ARTICLE 5 TAXES; MECHANIC'S LIENS; EASEMENTS**

32
33 5.1 Unallocated Taxes. In the event that any taxes are assessed against the
34 Common Area or against the personal property of the Association rather than
35 against the Units, said taxes shall be included in the Regular Assessments, and if
36 necessary a Special Assessment may be levied against the Units in an amount
37 equal to said taxes, to be paid in two (2) installments each due not less than
38 thirty (30) days prior to each tax installment.

39
40 5.2 Mechanic's Lien Against Common Area. In the event there shall be filed against
41 the Common Area a notice of mechanic's lien for, or purporting to be for, labor or
42 materials alleged to have been furnished or delivered for any Owner within the
43 Project or his or her Unit, such Owner shall forthwith cause such lien to be
44 discharged by payment, bond, or otherwise. If the Owner fails to cause the lien
45 to be discharged, the Board may send written notice to the Owner specifying that
46 unless the Owner causes the lien to be discharged within five (5) days from the

1 date of such notice, the Board may cause the lien to be discharged. Within such
2 five (5) day period, and notwithstanding any other provisions of the Governing
3 Documents concerning notice or hearing, the Owner shall be permitted a hearing
4 before the Board regarding the validity of such lien and any offsets or defenses
5 thereto. At that time, the Board shall determine whether the lien adversely and
6 improperly affects and encumbers the rights and interests of the Association or
7 the other Owners. If the Board of Directors determines that the lien does
8 adversely and improperly affect and encumber such rights and interests and that
9 adequate protection of such rights and interests has not been provided, the
10 Board may cause the lien to be discharged by payment, bond, or otherwise. The
11 Board shall have the right to levy a Reimbursement Assessment against the
12 Owner responsible for causing the lien to be discharged in an amount equal to all
13 amounts paid by the Association together with interest thereon at the legal rate
14 and all costs and expenses paid or incurred in connection therewith, including
15 reasonable attorney fees.

16
17 5.3 Easements in General. In addition to all easements reserved and granted on the
18 Map or the Condominium Plan, there are hereby specifically reserved and
19 granted for the benefit of the Units and the Owners in common and for each Unit
20 and each Owner severally, and for the Association, as their respective interests
21 shall obtain, the easements, reciprocal negative easements, secondary
22 easements, and rights-of-way as particularly identified in this **Article 5**.

23
24 5.4 All Easements Are Part of Common Plan. Whenever any easements are
25 reserved or created or are to be reserved or created herein, such easements
26 shall constitute equitable servitudes for the mutual benefit of all property in the
27 Project, even if only certain Units are specifically mentioned as subject to or
28 benefiting from a particular easement, and when easements referred to herein
29 are subsequently created by grant deed or other grant, such easements are part
30 of the common plan created by the Declaration for the benefit of all property
31 Owners within the Project.

32
33 5.5 Exclusive Use Common Area Easements. The “Exclusive Use Common Areas”
34 are enumerated in **Section 1.21**. “Exclusive Use Common Areas” are subject, as
35 the servient tenements, to exclusive easements in favor of the Units to which
36 they are attached or assigned, as the dominant tenements, and such exclusive
37 easements shall be appurtenant to those designated Units. An exclusive
38 easement to such Exclusive Use Common Area may be specifically granted in
39 each individual grant deed conveying a Unit; however, the failure of any such
40 deed to set forth such grant of easement shall not invalidate the exclusive
41 easement granted as provided in this Declaration.

42
43 5.6 Owner's Non-exclusive Easement of Enjoyment. Every Owner of a
44 Condominium shall have a non-exclusive easement of use of and enjoyment in,
45 to, and throughout the Common Area of the Project; *provided, however*, such
46 non-exclusive easements shall be subordinate to, and shall not interfere in any
47 way with, the exclusive easements, if any, appurtenant to Units over Exclusive

1 Use Common Area. Each such non-exclusive easement shall be appurtenant to
2 and pass with the title to every Unit, subject to the following rights and
3 restrictions:

- 4
- 5 (a) The right of the Board to establish and enforce Rules governing the use of
6 the Common Area and facilities thereon;
- 7
- 8 (b) The right of the Board to charge reasonable admission and other fees for
9 the use of any facilities situated upon the Common Area;
- 10
- 11 (c) The right of the Board, as set forth in **Section 3.7** (“Sale or Mortgage of
12 Association’s Property”), to mortgage, pledge, encumber, or otherwise
13 hypothecate the Common Area and facilities thereon as security for
14 money borrowed by the Association;
- 15
- 16 (d) The right of the Board, as set forth in **Section 5.8** (“Association’s Utility
17 Easements”), to grant and transfer utility easements and rights-of-way in,
18 on, over, or under the Common Area subject to such conditions as may be
19 agreed to by the Board;
- 20
- 21 (e) The right of the Board, as set forth in **Section 5.9** (“Board’s Power to Grant
22 Easements and Licenses to Owners”), to grant easements, licenses, and
23 rights-of-way upon the Common Area to Owners; and
- 24
- 25 (f) The right of the Association or its authorized agents, as provided in this
26 Declaration, to perform its obligations under this Declaration, including
27 obligations with respect to construction, maintenance, repair, or
28 replacement for the benefit of the Common Area or the Owners in
29 common.
- 30

31 **5.7 Easements of Encroachment.** There shall be reciprocal appurtenant easements
32 of encroachment as between each Unit and such portion or portions of the
33 Common Area adjacent thereto and/or as between adjacent Units due to the
34 placement or settling or shifting of the improvements constructed, reconstructed,
35 or altered thereon in accordance with the terms of the Declaration; *provided,*
36 *however,* that in no event shall an easement for encroachment exist in favor of
37 an Owner, Resident or the Association if such encroachment occurred due to
38 willful unauthorized conduct on the part of such person. In the event that any
39 Unit is partially or totally destroyed and then repaired or rebuilt in accordance
40 with the provisions of the Declaration, the Owners of each Unit agree that minor
41 encroachments over adjoining Units and/or Common Area shall be permitted and
42 there shall be easements for the maintenance of said encroachments so long as
43 they shall exist.

44

45 **5.8 Association’s Utility Easements.** Easements over under and through the Project
46 or any portion thereof (including soffits and utility chases within Units, if any) for
47 the installation, repair, maintenance, and replacement of electric, telephone,

1 water, gas, and sanitary sewer lines and facilities, heating and air-conditioning
2 facilities, cable or master television antenna lines, drainage facilities, walkways,
3 and landscaped areas as shown on the Map or Condominium Plan, and as may
4 be hereafter required or needed to service the Project, are reserved by and shall
5 exist in favor of the Association, together with the right to grant and transfer the
6 same.

- 7
8 5.9 Board's Power to Grant Easements and Licenses to Owners. Notwithstanding
9 any other provisions of the Governing Documents, the Board shall have the
10 power in its discretion without approval vote of the Members to grant and convey
11 licenses for use, rights-of-way, and *nonexclusive* easements in, over, or under
12 the Common Area or any portion thereof to Owners, for such purposes as the
13 Board deems to be appropriate and not inconsistent with the purposes and
14 interests of the Association; *provided, however*, that approval of a majority of the
15 Total Voting Power of the Association shall be required to grant an *exclusive*
16 easement over Common Area to any Member, other than any grant or
17 conveyance to a Member described in *Civil Code* section 4600(b).
18
19

20 **ARTICLE 6 USE RESTRICTIONS**

- 21
22 6.1 Use of Common Area Generally. All use of Common Area is subject to the
23 Governing Documents. Subject to the provisions of the Governing Documents,
24 the Common Area shall be held, maintained, and used to meet the common
25 interests of the Owners and the Residents, members of their household, tenants,
26 and guests.
27
28 6.2 No Public Rights. There shall be no entitlement to public use of, access to, or
29 other public rights in, the Project property. The Association reserves the rights to
30 prohibit entry on the Project property by any person whose presence is not
31 authorized by the Governing Documents.
32
33 6.3 No Alteration of Common Area. Except as may be authorized by the Board, no
34 person or entity other than the Association or its duly-authorized agents shall (i)
35 construct, reconstruct, refinish, alter, or maintain any improvement upon the
36 Common Area, (ii) make or create any excavation or fill upon the Common Area,
37 (iii) change the natural or existing drainage of the Common Area, or (iv) plant,
38 remove, or destroy any seed, plant material, tree, shrub, or other vegetation upon
39 the Common Area (other than permitted vegetation upon or within a balcony or
40 any Exclusive Use Common Area).
41
42 6.4 No Obstruction of Common Area. The Common Area shall be kept free of
43 rubbish, debris, and other unsightly or unsanitary materials. There shall be no
44 obstruction of any part of the Common Area nor shall anything impair access to
45 the Common Area. Each Owner shall avoid causing any damage to the
46 Common Area.

1
2 6.5 No Smoking in Common Area. For the safety of the property and for the health,
3 safety, and security of all Residents of the Project, no smoking of cigarettes,
4 pipes, cigars, electronic cigarettes, personal vapor devices, or any other tobacco
5 product, marijuana, legal or illegal substance shall be permitted anywhere in the
6 Common Area, whether indoors or outdoors including Exclusive Use Common
7 Area. "Smoking" shall include the inhaling, exhaling, burning, or carrying of any
8 lighted cigarette, pipe, cigar, electronic cigarette, personal vapor device or other
9 smoke inhalation device or any kind, or other tobacco product, marijuana, legal
10 or illegal substance, and shall include smoke or vapor from any such activity
11 drifting from the interior of a Unit to the Common Area or to Exclusive Use
12 Common Area.

13
14 6.6 Delegation of Use. Any Owner may delegate his or her rights of use and
15 enjoyment, including easements, in the Project to the members of his or her
16 household, tenants, Contract Purchasers, and guests, subject to the terms of the
17 Governing Documents. It is the express purpose and intent of this **Section 6.6** to
18 limit the right of use and enjoyment of the Common Area amenities to Residents
19 of the Project and their accompanied guests. Upon the leasing or renting of a
20 Unit, or upon occupancy of a Unit by a Contract Purchaser, the Owner shall be
21 deemed to have delegated and assigned all such rights exclusively to the tenants
22 or Contract Purchasers of such Unit. Any rights of enjoyment that have been
23 delegated by an Owner are subject to suspension to the same extent that rights
24 of Owners are subject to suspension as provided in the Governing Documents.

25
26 6.7 Independent Living Condominium Community. Menlo Commons is a not a
27 community licensed as a "continuing care retirement community," a "residential
28 care facility for the elderly," or otherwise equipped to accept responsibility for or
29 to care for persons who are not capable of safely living independently. The
30 Association does not provide care or supervision of residents, assistance with
31 activities of daily life, assisted living services, or care programs of any kind for
32 residents.

33
34 6.8 Senior Citizen Residential Use; Qualification for Residency. Except to the extent
35 permitted in **Section 6.10** ("Restriction on Businesses"), all Units shall be
36 occupied and used for senior citizen residential purposes only. Residents, other
37 occupants, and guests shall be subject to the age and other restrictions set forth
38 in the Senior Housing Residency Rules adopted by the Board in compliance with
39 applicable federal and California law, as those laws may be amended from time
40 to time, and all such persons shall cooperate with the Board as required to verify
41 the Association's compliance with such laws. A Resident's or non-Resident's
42 age may be verified by a driver's license, passport, or birth certificate, or such
43 other evidence as the Board may permit as provided in the Rules.

44
45 6.8.1 Qualification of Occupants. An Owner leasing or renting his or her Unit
46 shall, as required by the Senior Housing Residency Rules, provide to
47 the Association documentation verifying each prospective occupant's

1 qualification for residency before such person takes up occupancy of a
2 Unit.

3
4 6.8.2 Prior Approval Required. Prior to any person taking up occupancy in a
5 Unit, proof of qualification of such person to be a Resident must be
6 provided to the Board and approved by the Board. No person to whom
7 ownership passes by law or otherwise shall be entitled to occupy any
8 Unit unless and until he or she has applied for occupancy and been
9 approved by the Board.

10
11 6.8.3 Financial and Health Qualifications. In addition to complying with
12 applicable age restrictions, the "Qualifying Resident(s)" as defined in
13 the Senior Housing Residency Rules must, as a condition of approval
14 for occupancy:

15
16 (i) have assets and income sufficient under foreseeable
17 circumstances and after providing for payment of the Resident's
18 obligations under the Governing Documents, as and when they
19 become due, to meet the Resident's ordinary and customary
20 living expenses;

21
22 (ii) be capable of independent living, including being capable of
23 understanding and managing his or her own affairs, being
24 capable of providing for his or her own personal needs for
25 physical health, food, and clothing, and being capable of
26 understanding participating in, and contributing to the affairs,
27 business and activities of the Association; and

28
29 (iii) be free of contagious disease and not constitute a threat to the
30 health or safety of other individuals or to the property of others.

31
32 6.8.4 Form of Application. Every prospective Resident shall file an
33 application with the Board which shall include a form approved by the
34 Board, proof of age, and such information as the Board may require to
35 evaluate the qualification of the prospective Resident(s) including: (i)
36 financial information (including but not limited to a personal credit
37 report, financial statements and copies of bank and other account
38 statements, and tax returns), (ii) medical information (including but not
39 limited to medical examination reports) or the Association may require
40 a prospective Resident to be examined by a physician selected by the
41 Association, and (iii) such other information as the Board may
42 reasonably require pursuant to the Senior Housing Residency Rules or
43 otherwise.

44
45 6.8.5 Review of Complete Application. Upon receipt of a complete
46 application, the Board shall review the application and all materials
47 submitted with the application and shall interview the applicant(s) and

1 evaluate the applicant(s)' qualifications for Residency. The Board shall
2 approve or disapprove the application based upon proof of age and
3 other evidence germane to the applicant(s)' qualifications for
4 occupancy, including financial and health qualifications.
5

6 6.8.6 Delay in Taking Up Residency. In the event occupancy of a Unit has
7 not occurred within six (6) months after the Board has approved
8 occupancy by an individual, the Board may require an updated
9 documentation concerning the financial or health qualification of the
10 prospective occupant. If such updated documentation is deemed by
11 the Board to be unsatisfactory, the Board may revoke the approval of
12 occupancy.
13

14 6.8.7 Renters, Owners. If an approved occupant under a lease should seek
15 to occupy a Unit as an Owner, a new application for consent to occupy
16 shall be required.
17

18 6.8.8 Preservation of Senior Community Status. Notwithstanding any
19 contrary provision in the Senior Housing Residency Rules, this
20 Declaration shall at all times be deemed to restrict residency and
21 occupancy to older persons or senior citizens to the fullest extent
22 permitted by applicable law to preserve the character of the Project as
23 a senior community.
24

25 6.9 Residential Use. Except to the extent permitted in **Section 6.10** ("Restriction on
26 Businesses"), Units shall be occupied and used only for single family residential
27 purposes in conformity with the requirements of applicable zoning laws or other
28 state or local rules or regulations.
29

30 6.10 Restriction on Businesses.
31

32 6.10.1 Types of Businesses Allowed. No business of any kind shall be
33 established, maintained, operated, permitted, or conducted within the
34 Project except: (i) professional, administrative, or clerical activity as
35 may be permitted by applicable governmental ordinances without the
36 requirement of a conditional use permit but only if such activity does
37 not entail the presence of employees, patrons, clients, or vendors
38 except on an infrequent basis; does not require storage of large
39 amounts of bulky goods or inventory; there is no external evidence of
40 such activity including but not limited to a significant increase in traffic
41 within the Project; the activity complies with all applicable
42 governmental ordinances; and the activity is merely incidental to the
43 use of the Unit for residential purposes; and (ii) certain care facilities
44 that, by law, cannot be prohibited by the Declaration, including family
45 day care homes and residential care facilities as provided in **Sections**
46 **6.17** ("Family Day Care Homes") and **Section 6.18** ("Residential Care
47 Facilities").

1
2 6.10.2 Indemnification Regarding Business Activity. To the fullest extent
3 permitted by law, every Owner or Resident who conducts or engages
4 in any business, commercial endeavor, or profession within the
5 Project, or whose tenant does so, agrees to and shall indemnify and
6 defend the Association, its officers, directors, employees, and agents
7 and shall hold them harmless from and against any cost, loss, claim, or
8 damages of any kind, arising out of the conduct or presence of such
9 activity, including but not limited to attorney fees, any claims for
10 consequential damages, and any claims arising or alleged to arise out
11 of the enforcement or non-enforcement by the Association of the
12 Governing Documents, including but not limited to the restriction on
13 business contained in this **Section 6.10**. Any amounts owed pursuant
14 to this **Section 6.10.2** may be assessed as a Reimbursement
15 Assessment.
16

17 6.10.3 Garage Sales or Yard Sales; Estate Sales. A community garage sale
18 date and a yard sale date, each to be limited to once each year, may
19 be announced from time to time as authorized by the Board.
20 Otherwise, no individual yard sales, garage sales, tag sales, or similar
21 activity shall be permitted. The Board in its discretion may permit
22 estate sales to be held in connection with the sale of a Unit. Estate
23 sales must be authorized by the Board in advance in writing, including
24 the date and the manner in which the sale will be conducted.
25

26 6.11 Keys and Locks. The Owner of every Condominium shall provide to the Board a
27 key to his or her Unit and the Board shall maintain a pass key to all Units for use
28 in case of emergency. Without Board consent, no Owner shall alter any lock or
29 install a new or additional lock in any door providing access to his or her Unit or
30 to any portion of the Common Area (except to storage lockers inside a storage
31 room) over which he or she has exclusive use. In the interest of security, safety,
32 and welfare of the Members and Residents, the Board shall have the right to re-
33 key all Units when necessary in the discretionary judgment of the Board.
34

35 6.12 Authority for Entry of Unit or Exclusive Use Common Area. The Association or
36 its agents shall have the right to enter any Unit or any portion of Exclusive Use
37 Common Area, whenever such entry is necessary, in the Board's discretion, for
38 purposes of inspection and/or in connection with the performance of any
39 maintenance, repair, construction, or replacement for which the Association is
40 responsible or for which it is authorized to perform. Such entry shall be made
41 with as little inconvenience to the Residents as practicable and only upon
42 reasonable advance written notice of not less than twenty-four (24) hours, except
43 that in emergency situations notice shall be given as the situation reasonably
44 permits. Without limiting the generality of the foregoing, the Association or its
45 agents and the fire marshal or similar authority having jurisdiction concerning fire
46 safety or life safety system compliance may enter and inspect any Unit upon
47 reasonable notice for the purpose of evaluating existing fire prevention or fire

1 safety or life safety measures or effectuating fire prevention or fire safety or life
2 safety measures approved or mandated to be installed.

3
4 6.13 Board's Discretion to Require Maintenance. The Board shall have the discretion
5 to determine whether any maintenance, repair, or replacement that is the
6 responsibility of an Owner, including within a Unit, is necessary to preserve the
7 appearance and value of the property within the Project or any portion thereof
8 and may notify an Owner of the work the Board deems necessary. In the event
9 an Owner fails to perform such work within sixty (60) days after notification by the
10 Board to the Owner, the Board may, after written notice to the Owner and the
11 right of a hearing before the Board pursuant to **Section 14.12** ("Hearing Called by
12 the Board; Executive Session; Open Meeting"), cause such work to be done and
13 charge the cost thereof to the Owner as a Reimbursement Assessment.

14
15 6.14 Limitation of Association's Liability. In the case of damage to a Condominium or
16 its contents arising or allegedly arising from the Association's performance of its
17 maintenance, repair or replacement obligations, the Association shall not be
18 responsible or liable for such damage, except to the extent arising from the willful
19 misconduct or gross negligence of the Association, its employees, contractors, or
20 agents.

21
22 6.15 Owner's Liability to Association for Negligent Damage. In the event the need for
23 any maintenance, repair, or replacement performed by the Association is caused
24 by the willful or negligent act or omission of an Owner or a Resident, a member
25 of his or her household, pets, tenants, invitees, or guests, the cost of such
26 maintenance, repair, or replacement not covered by insurance, including any
27 applicable insurance deductible and the cost of materials, labor, supplies, and
28 services shall be charged to, and paid by, the Owner of the Condominium in the
29 form of a Reimbursement Assessment.

30
31 6.16 Owner's Liability to Other Unit Owners or Residents. In the case of damage to a
32 Condominium or its contents arising or allegedly arising from another Unit or the
33 conduct of the Owner or Resident of another Unit (for example and not by way of
34 limitation, damage to a Unit resulting from water leaking from another Unit), if any
35 affected party or their insurers should assert claims against the Owner or
36 Resident of another Unit to recover damages, any such claims shall not alter the
37 obligation of each Unit Owner as provided in this Declaration to maintain, repair,
38 and replace their respective Units; to carry insurance; and to perform and/or pay
39 for repairs or reconstruction of their Unit in the event of casualty. Moreover, any
40 such claims shall not affect the authority of the Board to enforce a Unit Owner's
41 obligations with respect to his or her own Unit under the Declaration and shall not
42 obligate the Association or the Board to intervene in any such claims or disputes
43 between Unit Owners or Residents.

44
45 6.17 Family Day Care Homes. No family day care home for children shall be
46 permitted within the Project except as specifically authorized by California *Health*
47 *and Safety Code* section 1597.40 and other applicable state statutes. The

1 owner/operator of any permitted family day care home shall provide the
2 Association with prior written notice as to its operation, and comply with all local
3 and state laws regarding the licensing and operation of a day care home and, in
4 addition, shall:

- 5
6 (a) Name the Association as an additional insured on the liability insurance
7 policy or bond carried by the owner/operator of the day care home, as
8 provided under California *Health and Safety Code* section 1597.531. This
9 clause (a) of Section 6.17 is intended to be and shall be conclusively
10 deemed to be the written notice to the operator or owner from the
11 Association as specified in *Health and Safety Code* section 1597.231;
12
13 (b) Be subject to the provisions of Section 6.10.2 (“Indemnification Regarding
14 Business Activity”);
15
16 (c) Abide by and comply with all of the Association Rules;
17
18 (d) Supervise and be completely responsible at all times for children for whom
19 day care services are provided while they are within the Project; and
20
21 (e) Cooperate with the Association upon request by the Association or its
22 insurance agent or carrier for proof of insurance, proof of the agreement of
23 the owner or operator of the home to these conditions, or other reasonable
24 requests.
25

26 6.18 Residential Care Facilities. Except for residential facilities serving six (6) or fewer
27 persons and permitted in accordance with California *Health and Safety Code*
28 sections 1566.3 and 1569.85 and other applicable state statutes, no health care
29 facilities operating as a business or charity and serving the sick, elderly, or
30 physically or developmentally disabled shall be permitted in the Project. The
31 owner/operator of any permitted residential care facility shall comply with all local
32 and state laws regarding the licensing and operating of such facility, and, in
33 addition, to the extent permitted by applicable laws, shall:

- 34
35 (a) Name the Association as an additional insured on the liability insurance
36 policy or bond carried by the owner/operator of such residential care
37 facility;
38
39 (b) Be subject to the provisions of Section 6.10.2 (“Indemnification Regarding
40 Business Activity”);
41
42 (c) Abide by and comply with all of the Association’s Rules as applied to Units
43 in the Project in a general manner;
44
45 (d) Supervise and be completely responsible for occupants of such residential
46 facility at all times while they are within the Project; and
47

1 (e) Cooperate with the Association upon request by the Association or its
2 insurance agent or carrier for proof of insurance, proof of the agreement of
3 the owner or operator of such residential care facility to these conditions,
4 or other reasonable requests.
5

6 6.19 Compliance with Laws. Each Owner and Resident shall comply with all
7 requirements of all federal, state, and local governmental authorities and all laws,
8 ordinances, rules and regulations applicable to his or her Unit and the Common
9 Area.
10

11 6.20 Moving In and Out. The Association may charge a reasonable fee, including a
12 damage deposit, to a Unit Owner to cover costs of administering the moving in or
13 moving out of a Unit by a Unit Owner or the tenants or other occupants of a Unit,
14 or the moving of furniture, equipment, or other large objects into or out of a Unit
15 that requires use of the elevators. Before elevators are used for moving
16 furniture, equipment, or other large objects, the Owner shall notify the
17 Association and shall comply with all applicable Rules.
18

19 6.21 Sports Apparatus. No sports apparatus shall be attached to the Building exterior,
20 or affixed to any portion of the Common Area, nor shall any portable apparatus
21 be used for playing sports in the Project.
22

23 6.22 Unlawful Conduct; Nuisances; Noise. No unlawful, noxious, harmful, or offensive
24 activities shall be conducted upon or within any part of the Project, nor shall
25 anything be done within the Project that may be or become a nuisance, or cause
26 unreasonable embarrassment, disturbance, or annoyance to any Resident of the
27 Project, or which shall in any way interfere with Residents' use of the Common
28 Area and facilities thereon or the use and enjoyment of their Units. Without
29 limiting any of the foregoing, no Resident shall permit noise, including but not
30 limited to the barking of dogs, to emanate from the Resident's Unit that would
31 unreasonably disturb another Resident's enjoyment of his or her Unit or of the
32 Common Area. The Association shall not be obligated to enforce this **Section**
33 **6.22** when a dispute under the Declaration is solely between neighbors, does not
34 involve Common Area, or is not an emergency unless otherwise required by law.
35

36 6.23 Conditions Affecting Insurance. Nothing shall be done, placed, or kept within the
37 Project that will increase the rate of insurance or result in the cancellation of
38 insurance under any insurance policy maintained by the Association, or which
39 will be in violation of any governmental statute, ordinance, rule, or regulation. If
40 any Owner or Resident, member of their household, tenant, invitee, or guest shall
41 violate this **Section 6.23**, the Unit Owner shall be liable to the Association for any
42 resulting increase in insurance premiums and any other damages, which may be
43 assessed against the responsible Owner as a Reimbursement Assessment.
44

45 6.24 Requirement of Architectural Approval. As addressed in **Section 8.2**
46 ("Requirement of Architectural/Remodeling Approval"), construction, installation,

1 modification, or alteration of Buildings, outdoor structures, landscaping, and
2 outdoor lighting are subject to prior architectural approval.

3
4 6.25 Animals.

5
6 6.25.1 No Commercial Purposes. No animals shall be kept, bred, or
7 maintained within the Project for any commercial purpose.

8
9 6.25.2 Number of Pets. A reasonable number of common domestic
10 household pets such as a dog or a cat or a caged bird may be kept in
11 each Unit. Unless otherwise provided in the Rules, a “reasonable
12 number” of all dogs, cats, and birds kept in a Unit shall be deemed to
13 be two (2) (for example, two dogs, or a dog and a cat, or a dog and a
14 bird, or two birds).

15
16 6.25.3 Control of Dogs. While in Common Areas including Exclusive Use
17 Common Areas, each dog must be restrained on a leash held by a
18 responsible person capable of controlling the dog.

19
20 6.25.4 No Outside Structures for Animals. No animal cages, dog crates, or
21 other devices or structures for the care, housing, or confinement of any
22 animal shall be permitted anywhere in the Common Area.

23
24 6.25.5 No Outside Feeding of Animals. In order to control feral cats,
25 raccoons, vermin, and other stray animals within the Project, no animal
26 food shall be kept or placed outside anywhere within the Project,
27 except for approved bird feeders. Pet feeding stations may not be kept
28 in a garage if the garage door is left open permitting animals to access
29 the feeding station.

30
31 6.25.6 Responsibility for Pets. The owner of each pet shall be responsible for
32 immediately removing and disposing of any waste introduced to any
33 portion of the Project by such pet. Owners, their tenants, and guests
34 shall prevent their pets from soiling any portion of the Common Area
35 and shall immediately clean up any mess left by their pet.

36
37 6.25.7 Indemnification Regarding Pets. Each Owner, Resident, and any
38 person bringing or keeping an animal within the Project shall be
39 absolutely liable to the Association and all other persons for any injury
40 or damage to persons or property caused by the animal brought upon
41 or kept upon the Project by such person or by members of his or her
42 household, tenants, invitees, or guests. To the fullest extent permitted
43 by law, each Owner agrees to and shall indemnify and defend the
44 Association, its officers, directors, employees, and agents and shall
45 hold them harmless from and against any cost, loss, claim, or
46 damages of any kind, arising out of or resulting from the presence or
47 conduct of any animal brought upon or kept within the Project by the

1 Owner, members of his or her household, tenants, invitees, or guests
2 including but not limited to attorney fees, any claims for consequential
3 damages, and any claims arising or alleged to arise out of the
4 enforcement or non-enforcement by the Association of the Governing
5 Documents, including but not limited to the restrictions on animals
6 contained in this **Section 6.25**. Any amounts owed pursuant to this
7 **Section 6.25.7** may be assessed as a Reimbursement Assessment.

8
9 6.25.8 Removal of Nuisance Pets. The Association shall have the right to
10 prohibit the keeping of any animal which, after the responsible Owner
11 or Resident has an opportunity for a hearing called by the Board
12 pursuant to **Section 14.12** ("Hearing Called by the Board; Executive
13 Session; Open Meeting"), is found by the Board to be a nuisance.

14
15 6.25.9 Pet Rules. The Board may adopt and enforce pet Rules in addition to
16 the provisions of this **Section 6.25**.

17
18 6.26 Trash Disposal. Trash, garbage, accumulated waste plant material, other waste
19 and refuse, and recyclable and compostable waste shall be deposited only in
20 containers provided for that purpose by the garbage collection service. Such
21 containers shall be located in an appropriate area designated areas in the
22 Common Area and concealed from view. No Owner or Resident shall permit or
23 cause any garbage, trash, or other waste or refuse to be kept upon any portion of
24 any Unit or elsewhere in the Project, except in such containers. Furniture,
25 appliances, water heaters, construction or remodeling debris, and other bulky
26 items must be properly disposed of off-site by the Owner or Resident at his or her
27 sole expense and shall not be placed in Association waste containers or
28 discarded in the dumpster areas.

29
30 6.27 Machinery, Equipment, Motor Vehicle Maintenance. No power equipment, hobby
31 shops, or motor vehicle maintenance (other than emergency work) shall be
32 permitted on the Project except with prior written approval of the Board.
33 Approval shall not be unreasonably withheld and in deciding whether to grant
34 approval the Board shall consider the effects of noise, air pollution, dirt or grease,
35 fire hazard, interference with radio or television reception, and similar objections.
36 All hazardous or toxic materials shall be disposed of properly by each Owner.

37
38 6.28 Signs, Banners, Flags. Only the following types of signs, posters, banners, or
39 flags shall be displayed to the public view from any portion of the Project:

40
41 (a) Signs required by legal proceedings;

42
43 (b) A noncommercial sign or poster no larger than nine (9) square feet in size
44 or a noncommercial flag or banner no larger than fifteen (15) square feet
45 in size, displayed upon a Unit, and limited to the fullest extent permitted by
46 *Civil Code* section 4710;
47

- 1 (c) A single sign of customary and reasonable dimension and design
2 advertising a Unit for sale or rent, complying with the provisions of
3 applicable law, including any applicable ordinance, and the Architectural
4 Rules, if any, and located within areas of the Project that are designated in
5 the Rules regarding such signs; and, in addition, an Owner or his or her
6 agent may display one (1) for sale or for rent sign within his or her Unit;
7
8 (d) Other signs which by law cannot be prohibited;
9
10 (e) A flag of the United States, subject to City or County restrictions as to size
11 and as to time, place, and manner of display, as provided in *Civil Code*
12 section 4705;
13
14 (f) A single identification sign which has been approved by the Board or the
15 Architectural Committee (if any) located on a Unit identifying the number
16 or address of the Unit and/or the names of the occupants;
17
18 (g) Signs approved by the Board as required for traffic control and regulation
19 of streets or open areas within the Project; and
20
21 (h) Signs on the Common Area as approved by the Board for a purpose
22 reasonably related to the affairs of the Association, including signs located
23 at or near any entrance to the Project identifying the Project.
24

25 6.29 Vehicles and Parking. Except as otherwise permitted in this **Section 6.29**, only
26 Permitted Vehicles shall be parked, stored or operated within the Project.
27

28 6.29.1 Permitted Vehicles. The following types of vehicles are Permitted
29 Vehicles: appropriately licensed and operable (i) passenger
30 automobiles, (ii) sports utility vehicles, (iii) motorcycles, (iv) trucks
31 having a carrying capacity of three-quarter (3/4) ton or less, and (v)
32 vans having a seating capacity of eight (8) persons or less.
33

34 6.29.2 Prohibited Vehicles. All vehicles that are not Permitted Vehicles are
35 Prohibited Vehicles and may not be brought into the Project. Without
36 limiting the foregoing sentence, the following types of vehicles are
37 Prohibited Vehicles: (i) dilapidated or inoperable vehicles; (ii)
38 unreasonably noisy vehicles, vehicles that emit foul-smelling or
39 offensive exhaust fumes; (iii) campers, mobile homes, motor homes,
40 trailer homes, recreational vehicles; (iv) trailers; (v) boats; (vi) any
41 vehicle that is too large to be parked entirely within a garage or entirely
42 within a designated parking space ("oversized vehicle"); (vii) golf carts
43 or similar equipment; and (viii) commercial vehicles. The term
44 "commercial vehicle" shall not include any two-axle passenger vehicle,
45 van, or pickup truck with carrying capacity of no greater than three-
46 quarter (3/4) ton that is used by a Resident both for business and for
47 daily personal transportation, provided that any signs or markings of a

1 commercial nature on such vehicle shall be unobtrusive and
2 inoffensive as determined by the Board.

3
4 6.29.3 Parking Generally. The primary parking facility for Residents is the
5 garage/parking space allocated or designated for the Unit. Each
6 garage/parking space shall be used for parking the vehicles of the
7 Residents of the Unit and shall not be used for any other purpose that
8 interferes with the ability to park the number of vehicles the
9 garage/parking space was designed to accommodate. Vehicles shall
10 not be parked anywhere within the Project except wholly within a
11 garage or in a designated parking area. Parking is not allowed at any
12 time in designated fire lanes. No vehicle shall be parked continuously
13 in the driveway for longer than seventy-two (72) hours.

14
15 6.29.4 Parking of Commercial Vehicles. Commercial vehicles (other than a
16 vehicle that constitutes a Prohibited Vehicle as defined in **Section**
17 **6.29.2**, above) of vendors, utilities, contractors, and others providing
18 services may be parked in appropriate parking spaces within the
19 Project temporarily as necessary while services are actually being
20 performed and shall not be parked within the Project overnight.

21
22 6.29.5 Vehicle Repairs. No motor vehicles or boats shall be constructed,
23 reconstructed, repaired, or serviced within the Project (other than
24 minor emergency repairs to the extent necessary to move the vehicle
25 to a repair facility).

26
27 6.29.6 Parking Enforcement and Towing. The provisions of this **Section**
28 **6.29.6** apply to all vehicles within the Project, including vehicles of
29 guests and invitees. In addition to the provisions of this **Section 6.29.6**,
30 the Board shall have the power and authority to adopt, promulgate,
31 and enforce Parking Rules and shall have the power to impose fines
32 and other sanctions for violations of provisions of the Governing
33 Documents relating to vehicles and parking. Subject to the provisions
34 of applicable law, including California *Vehicle Code* section 22658, the
35 Board shall have the power and authority to cause the towing, at the
36 vehicle owner's expense, of vehicles that are parked within the Project
37 in violation of any of the provisions of the Governing Documents.
38 Costs incurred by the Association relating to the towing and/or storage
39 of any vehicle parked in violation of any provision of the Governing
40 Documents shall be assessed as a Reimbursement Assessment
41 against the Owner responsible or whose household member, Contract
42 Purchaser, tenant, invitee, or guest is responsible for the presence of
43 such vehicle.

44
45 6.30 Conversion of Garage Parking Spaces Prohibited. Garage parking spaces shall
46 not be converted into any use (such as a recreational room or a storage room)

1 that would prevent their use as parking space for the number of vehicles the
2 space was designed to accommodate.

3
4 6.31 Barbecues; Open Fires. Per the 2016 California *Fire Code* section 308.1.4, and
5 any relevant successor Code and section thereof, only electric grills or small
6 cooking devices using a liquid propane (LP) gas cylinder not to exceed nominal
7 “one pound” (16.4 oz) may be used within ten feet (10') of combustible
8 construction upon or within the Balconies or Decks. Use of charcoal or wood-
9 burning open flame barbecues or other devices and the use of propane tanks
10 larger than one pound (nominal) are not allowed on Balconies or Decks. No
11 other open flame devices of any kind are permitted to be used anywhere within
12 the Project.

13
14 6.32 Impairment of Structural Integrity. Nothing shall be done anywhere within the
15 Project which will impair the structural integrity of the Building. Planters or pots
16 heavier than fifty pounds (50 lb) (dry weight) and more than nine (9), fifteen (15)
17 gallon containers shall not be placed on decks or balconies.

18
19 6.33 Window Coverings. All drapes, curtains, shutters, blinds or other window
20 coverings visible from the street of Common Areas shall be beige, white, or off-
21 white in color or lined in beige, white, or off-white or, as the case may be, of
22 colors, materials and patterns which are approved by the Board. In no event shall
23 aluminum foil, newspaper, or similar materials be placed in windows.

24
25 6.34 Outside Laundering, Clothes Lines. There shall be no outside laundering or
26 drying of clothes within the Project and draping of towels, carpets, flags or
27 laundry over railings is prohibited.

28
29
30 **ARTICLE 7 RENTING OR LEASING**

31
32 This **Article 7** contains a rental restriction on the number of Condominiums that
33 can be rented that was originally adopted by the Association on May 10, 2007.
34 The rental restriction applies to each Condominium acquired by an Owner after
35 May 10, 2007. Other than minor updates to formatting and section references,
36 this restriction has been restated in its entirety except that the minimum
37 permitted rental limit has been increased from twenty to twenty-five percent (25%)
38 to comply with Civil Code section 4741(b) which went into effect January 1, 2021.

39
40 7.1 Right to Lease; Limitation on Leasing. Any Owner who wishes to lease his or her
41 Condominium must meet each and every one of the following requirements, and
42 the lease will be subject to these requirements whether they are included within
43 the lease or not:

44
45 (a) All leases must be in writing;

- 1 (b) The lease must be for the entire Unit and not merely parts thereof, unless
2 the Owner remains in occupancy;
3
4 (c) No lease shall be for a period of less than one (1) year;
5
6 (d) All leases shall be subject in all respects to provisions of the Declaration,
7 the Bylaws, and all Rules adopted by the Board;
8
9 (e) All Owners who lease their Condominiums shall promptly notify the
10 secretary of the Association in writing of the names of all tenants and
11 members of tenants' family occupying such Condominiums and shall
12 provide the Board with a complete copy of the lease; all Owners leasing
13 their Condominium shall promptly notify the Board of the address and
14 telephone number where such Owner can be reached.
15

16 7.2 Violation Is a Default. Any failure of a tenant to comply with the Declaration,
17 Bylaws, and Rules, shall be a default under the lease, regardless of whether the
18 lease so provides. In the event of any such default, the Owner immediately shall
19 take all actions to cure the default including, if necessary, eviction of the tenant.
20

21 7.2.1 Association's Right to Evict. If any tenant is in violation of the
22 provisions of the Declaration, Bylaws, or Rules of the Association, the
23 Association may bring an action in its own name and/or in the name of
24 the Owner to have the tenant evicted and/or to recover damages. If
25 the court finds that the tenant is violating or has violated any of the
26 provisions of the Declaration, the Bylaws or the Rules of the
27 Association, the court may find the tenant guilty of unlawful detainer
28 notwithstanding the fact that the Owner is not the plaintiff in the action
29 and/or the tenant is not otherwise in violation of tenant's lease. For
30 purposes of granting an unlawful detainer against the tenant, the court
31 may assume that the Owner or person in whose name a contract (the
32 lease or rental agreement) was made was acting for the benefit of the
33 Association. The remedy provided by this subsection is not exclusive
34 and is in addition to any other remedy or remedies which the
35 Association has. If permitted by present or future law, the Association
36 may recover all its costs, including court costs and reasonable attorney
37 fees, incurred in prosecuting the unlawful detainer action.
38

39 7.2.2 Notice in Writing. The Association shall give the tenant and the Owner
40 notice in writing of the nature of the violation of the Declaration and/or
41 Rules and a demand that the violation be cured within twenty-five (25)
42 days from the mailing of the notice. If the violation has not been cured
43 within such period, the Association may file for eviction.
44

45 7.3 Owner to Provide Tenant with Copies of Governing Documents. Each Owner
46 shall provide a copy of the Declaration, Bylaws and all Rules of the Association
47 to each tenant of his or her Unit. By becoming a tenant, each tenant agrees to

1 be bound by the Declaration, the Bylaws and the Rules of the Association, and
2 recognizes and accepts the right and power of the Association to evict a tenant
3 for any violation by the tenant of the Declaration, the Bylaws, and Rules of the
4 Association. The Owner shall cause the tenant to acknowledge in writing that the
5 tenant has read and understood the Declaration, the Bylaws, and the Rules, and
6 agrees to comply with the provisions. The signed acknowledgement is to be
7 provided to the Association's manager within fifteen (15) days of occupancy.
8

9 7.4 Provisions Controlling Leasing or Renting of Units. Notwithstanding anything to
10 the contrary in this **Article 7**, the following provisions shall control the leasing or
11 rental of any Units in the Project:
12

13 7.4.1 Lease / Rental of Units. The purpose of this **Section 7.4** is to set forth
14 the limitations and restrictions in regard to leasing or rental of Units.
15 The primary purpose of the limit and restrictions is to protect and
16 preserve property values, the availability of preferred financing through
17 compliance with secondary market standards for similar projects, the
18 active participation and cooperation of the Members in the
19 management of the Project by the Board of Directors, and the
20 residential nature and quality of the Project by limiting the number of
21 Units that are leased or rented to third parties.
22

23 7.4.2 Definitions.
24

25 (i) "Lease" or "Rental Agreement" means any agreement between
26 an Owner and a third party whereby the third party obtains the
27 right of use and possession of the Owner's Unit (without the
28 Owner in residence), and the Owner receives monetary or other
29 compensation in return for those rights.
30

31 (ii) "Third Party" for the purposes of this **Article 7** means any party
32 without an ownership interest in the Unit.
33

34 (iii) "Quota" for purposes of this **Article 7** means the maximum
35 number of Units that may be leased or rented at one (1) time
36 which shall not be more than thirty-one (31) out of a total one
37 hundred twenty-two (122) Units.
38

39 (iv) "Governing Documents" refers to the Declaration, as amended,
40 the Association Bylaws, and any Association Rules or policies
41 currently in effect.
42

43 (v) "Owner" or "Owners" for purposes of this **Article 7** means only
44 the record holder(s) of fee simple legal title to a Unit in the
45 Project, and shall not refer to any holder of a security or
46 equitable interest in any Unit, including, without limitation, any
47 purchaser under a contract of sale for any Unit.

1
2 7.5 Rental Rights of Owners. Any Owner shall be entitled to rent/lease his/her Unit
3 only where one (1) or more of the following circumstances exist:
4

- 5 (a) The Unit was leased to a tenant prior to May 10, 2007 (provided this
6 exemption shall cease as to a particular Unit upon the expiration of the
7 lease, including any extensions provided for therein, in place as of May
8 10, 2007); or
9
- 10 (b) The Owner became Owner of the subject Unit prior to May 10, 2007, and
11 the lease is executed thereafter and complies with the provisions of
12 **Section 7.6(b)** ("Request for Approval of Board"); or
13
- 14 (c) The Owner inherited the subject Unit as a bona fide heir to the estate of a
15 deceased Owner as described in **Section 7.4.2(v)** ("Definitions"), and the
16 lease is executed thereafter and complies with the provisions of **Section**
17 **7.6(b)** ("Request for Approval of Board"); or
18
- 19 (d) The Board of Directors has formally approved, in writing, the Owner's
20 written request to lease/rent the subject Unit pursuant to **Section 7.7**
21 ("Criteria for Approval"); or
22
- 23 (e) The Board of Directors has waived its right to deny an Owner's written
24 request to rent/lease a Unit by failing to make a determination within the
25 time periods provided for in **Section 7.6** ("Request for Approval of Board").
26

27 7.6 Request for Approval of Board. All Owners leasing or renting their Unit at the
28 time this provision becomes effective must "register" with the Board, by providing
29 a copy of the existing lease. Lease agreements existing on May 10, 2007, shall
30 be deemed approved, but not be extended beyond the term provided in such
31 lease agreement, including any extensions provided for therein, without
32 compliance with this **Section 7.6**. All other Owners must seek approval prior to
33 entering into a lease or rental arrangement. Owners applying for approval of the
34 leasing of a Unit have the right to request a hearing before the Board of
35 Directors. The hearing shall be set before the Board of Directors within thirty (30)
36 days after receipt of the request for hearing together with the application for
37 approval, and the Board shall make its determination within five (5) days after the
38 hearing. In cases where a hearing is not requested, the Board shall make its
39 determination within thirty (30) days after receipt of the application for approval.
40 If the Board fails to make a determination on any application within the foregoing
41 time periods, its right to disapprove the request is waived. These time limits may
42 be extended by the written agreement of both parties, i.e., the Owner(s) and
43 Board of Directors. The Board of Directors has the power to approve or
44 disapprove requests to rent/lease Units, in accordance with the standards set
45 forth in **Section 7.7** ("Criteria for Approval"). Before any Unit may be considered
46 for approval to be leased/rented, and before any of the foregoing time periods

1 begin to run, the Owner must provide the Board of Directors with all of the
2 following documents for its consideration:

- 3
- 4 (a) A written request to lease/rent the subject Unit, identifying the subject Unit,
5 stating the proposed lease term, identifying the tenant, and providing other
6 information required in this Article 7; and
7
- 8 (b) A written lease (in the form to be used by the Owner) which specifies the
9 following terms and conditions:
10
- 11 (i) the tenant shall be subject to all of the same provisions of the
12 Governing Documents as the Owner; and
13
- 14 (ii) failure by the tenant to comply with the provisions of the Governing
15 Documents will constitute a default under the rental/lease
16 agreement; and
17
- 18 (iii) the term shall not be less than one (1) year; and
19
- 20 (c) A “Statement of Hardship and Request for Board Hearing” setting forth the
21 special circumstance for the request to lease the Unit, if the Owner wishes
22 to qualify for approval under Section 7.8 (“Approval of Lease Application in
23 Special Cases”).
24
- 25 (d) The foregoing written applications and supporting documents (the
26 “Completed Application”) must be hand-delivered personally to a Board
27 member at a Board meeting or hand-delivered or mailed to the attention of
28 the President of the Association. Notwithstanding anything to the contrary
29 in this Article 7, the Board of Directors has discretion to deny
30 consideration of a request where a Completed Application has not been
31 received by the Board.
32

33 7.7 Criteria for Approval. The Board of Directors shall follow the criteria set forth in
34 this Article 7 in considering applications for approval to lease/rent Units.

- 35
- 36 (a) The Board of Directors shall approve any requests to lease a Unit so long
37 as the requirements of this Article 7 have been satisfied, and (i) the
38 present number of leased/rented Units in the Project does not exceed the
39 “Quota” set forth in Section 7.4.2(iii) (“Definitions”); or (ii) the Owner is an
40 Owner qualified under Section 7.5(a), (b), or (c) (“Rental Rights of
41 Owners”); or (c) the Board finds that the criteria set forth in Section 7.8
42 (“Approval of Lease Application in Special Cases”) have been met.
43
- 44 (b) The Board of Directors shall not approve any requests to lease/rent a Unit
45 where the requirements of this Article 7 have not been met.
46
47

1 7.8 Approval of Lease Application in Special Cases.

- 2
- 3 (a) The Board shall approve the temporary leasing of a Unit for a one (1) year
- 4 period WITHOUT regard to the Quota limitation in special circumstances
- 5 which the Board finds meet the following criteria:
- 6
- 7 (i) non-permanent job transfer, where the Owner is moving out of the
- 8 area because of the distance of the new work site from the Project
- 9 and expects to occupy the Unit again at the end of the assignment;
- 10
- 11 (ii) serious illness in the family or of a person with a close relationship
- 12 to the Owner which requires the Owner to live elsewhere
- 13 temporarily to provide care for the ill person;
- 14
- 15 (iii) substantial, adverse changes in the Owner's financial condition due
- 16 to job loss, emergency expenses or other sudden loss, which
- 17 create a significant problem for the Owner in maintaining the
- 18 expenses of ownership of the Unit without the benefit of rental
- 19 income and threatened forfeiture of the Unit; and
- 20
- 21 (iv) the Owner actively tried to sell the Unit by listing the Unit for sale on
- 22 the local multiple listing at a reasonable price for three (3)
- 23 consecutive months without receiving an offer to buy the Unit at a
- 24 price within five percent (5%) of the listing price (a reasonable price
- 25 shall be a price within Twenty Thousand Dollars (\$20,000) of the
- 26 highest sales price of comparable Units within the Project within the
- 27 six (6) month period preceding the listing of the Unit for sale, or if
- 28 no such sales exist, the appraised value of the Unit based on a
- 29 letter appraisal from a local realtor with at least five (5) years'
- 30 experience in residential sales in the local area, to be obtained by
- 31 the Association.
- 32
- 33 (b) The Board may also approve the temporary leasing of a Unit for a one (1)
- 34 year period WITHOUT regard to Quota limitation in other special
- 35 circumstances where the inability to lease the Unit will create a serious
- 36 hardship on the Owner as a result of unexpected circumstances.
- 37

38 The purpose of this **Section 7.8** is to protect Owners from serious hardship, but it

39 is not intended to permit Owner-occupied Units to be converted to rental Units at

40 a time that the Quota has been equaled or exceeded unless the Owner shows

41 one (1) or more of the special circumstances set forth in this **Section 7.8(a)** or

42 other serious hardship due to unexpected circumstances. Any denial of a

43 "Special Circumstances" request must be based on a finding by the Board of

44 Directors that withholding its approval is reasonably related to the protection,

45 preservation or proper operation of the Project and the purposes of the

46 Association as set forth in **Section 7.4.1** ("Lease / Rental of Units") or otherwise

47 in its Governing Documents, and that the Owner will not suffer serious hardship

1 due to unexpected circumstances. For purposes of this **Section 7.8**, not having
2 read or known the content of this Declaration is not an “unexpected
3 circumstance.” An Owner may be considered for an extension to the one-year
4 period referred to in this **Section 7.8** by reapplying to the Board of Directors for
5 approval to lease the Unit as provided in this **Article 7**.
6

7 **7.9 Record Keeping / Waiting List.** The Secretary or other designated representative
8 of the Association shall:

- 9
- 10 (a) Keep records regarding the number of leased/rented Units;
 - 11
 - 12 (b) Keep records regarding mailing address and telephone number of the
13 Owner and telephone number of the tenant, as provided by the
14 Owners;
 - 15
 - 16 (c) Keep records of all requests to lease/rent Units and files containing the
17 date of request and lease agreements provided by the Owners;
 - 18
 - 19 (d) Keep a waiting list of all Owners desiring to lease/rent their Units when
20 the Quota limitations are filled. Owners shall receive priority on the
21 waiting list according to the order in which their requests to lease/rent
22 their Units are received. Once a waiting list is formed, requests of
23 Owners on that list will be considered before those requests of Owners
24 not on the list, in order of priority, except as to **Section 7.8(a)** and
25 **Section 7.8(a)** (“Approval of Lease Application in Special Cases”).
26
27

28 **ARTICLE 8 ARCHITECTURAL AND UNIT REMODELING CONSIDERATIONS**

29

30 **8.1 Purpose and Intent.** It is the purpose and intent of this **Article 8** to ensure that
31 additions and alterations in the Project are consistent with the interests of the
32 Project as a whole and the coherence, value, attractiveness and aesthetic
33 compatibility of all improvements in the Project, including architectural designs
34 and features. To that end improvements, changes and alterations that are
35 considered bizarre, outlandish or offensive to a reasonably prudent Owner within
36 the Project will not be approved. In general, the Board may from time to time
37 adopt, amend, and repeal Rules and regulations to be known as
38 “Architectural/Remodeling Rules.” These Rules shall set forth the standards for
39 review and guidelines for improvements or alterations to the internal facilities of a
40 Unit and its Exclusive Use Common Area; *provided, however*, that these Rules
41 shall not be in derogation of any minimum standards required by this Declaration.
42

43 **8.2 Requirement of Architectural/Remodeling Approval.** An Owner may make
44 changes or alterations to his or her Unit or to that Unit’s Exclusive Use Common
45 Area. To do so, an Owner must obtain prior architectural/remodeling approval.
46 Additionally, an Owner shall conform and comply with the Rules, restrictions, and

1 procedures established in this **Article 8** and all the Association's Rules and
2 regulations as stated in the Association's Governing Documents. An Owner is
3 not permitted to make any additions or alterations to the Project's Common Area.
4 The requirement of architectural/remodeling approval shall not apply to
5 alterations, additions, or improvements made or constructed by or on behalf of
6 the Association.
7

8 **8.3 Compliance with Governmental Requirements.** In addition to the requirements of
9 this **Article 8**, an Owner of a Unit is required to obtain all permits and
10 governmental authorizations, if any, required for any work done within such
11 Owner's Unit and such Owner must comply with all applicable zoning and
12 building codes as well as other applicable laws and ordinances. The Owner of
13 each Unit is solely responsible for complying with any applicable building permit
14 process or other governmental requirements with respect to any work done
15 within the Owner's Unit. Submission of a request for architectural/remodeling
16 approval and the review and approval of any proposals, plans, or other
17 submittals shall in no way be deemed to be satisfaction of or compliance with any
18 building permit process or any other governmental requirements, nor shall it
19 constitute the assumption of any responsibility by or impose any liability on the
20 Association, the Board, the Committee, or its or their members as to the
21 accuracy, efficacy, or sufficiency thereof. When architectural/remodeling
22 approval standards of the Association are more stringent than applicable
23 governmental standards, the more stringent standards of the Association shall
24 apply, notwithstanding the fact that governmental approval may have been
25 obtained based on governmental standards that are less stringent than those of
26 the Association.
27

28 **8.4 Rights of Disabled.** Any modifications to a Unit to facilitate access or alter
29 conditions that may be hazardous to persons who are blind, visually
30 handicapped, deaf, or physically disabled must comply with applicable
31 requirements of *Civil Code* section 4760 and **Section 8.2** ("Requirement of
32 Architectural/Remodeling Approval") and **Section 8.3** ("Compliance with
33 Governmental Requirements") of this Article.
34

35 **8.5 Rules and Restrictions.** This **Section 8.5** enumerates the Rules and restrictions
36 of the more common subjects of Unit remodeling improvements, changes or
37 alterations and does not represent an exhaustive list of items that require prior
38 architectural/remodeling approval. Nothing in this **Section 8.5** shall be deemed to
39 limit the generality of **Section 8.2** ("Requirement of Architectural/Remodeling
40 Approval") and **Section 8.3** ("Compliance with Governmental Requirements").
41

42 **8.5.1 Solar Energy Systems.** As provided in *Civil Code* section 714.1, only
43 solar energy systems approved by the Board shall be installed, added,
44 or improved in or on any Common Area.
45

46 **8.5.2 Satellite Dishes and Antennas.** No outside radio or television aerial,
47 antenna, dish, wire, or other receiving or transmitting device

(collectively “antenna”) shall be erected, constructed, or maintained on the Common Area including upon the exterior of any Building, except (i) those erected, constructed, or maintained by the Association, (ii) an antenna free standing within a Balcony not visible from the ground/street level, (iii) an antenna free standing on a Deck not visible from the ground/street level, or (iv) those that by law cannot be prohibited. It is the intention of this **Section 8.5.2** to restrict radio or television aerials, antennas, dishes, wires, and other receiving or transmitting devices in the Project to the fullest extent permitted by law and to authorize the Board to adopt and implement Rules regarding the same.

8.5.3 No Installations on or Through the Low Slope Roof. No installation of solar panels shall be placed on a low sloped roof except upon approval of the Association, and no installation of any other kind, including but not limited to skylights, vents, antennas, or air-conditioning equipment, shall be placed on, installed upon or through any low slope roof except alterations, additions, or improvements made or constructed by or on behalf of the Association.

8.5.4 Installations on or Through the Steep Slope Roof. A third floor Owner may request approval to install a vent through the steep slope roof for the sole purpose of improving the air circulation beneath the roof and that request will require architectural/remodeling approval. No other installation on or through the steep slope roof is permitted, including, but not limited to, skylights, air-conditioning equipment, or antennas except alterations, additions; provided that an Owner may install a solar panel on a steep slope roof only upon approval of the Association.

8.5.5 Balconies and Decks. No additions, alterations, fixtures, permanent floor coverings or construction of any kind shall be made or installed on any Balcony or Deck without prior architectural/remodeling approval.

8.5.6 Air Conditioner Units. Prior architectural/remodeling approval is required for any interior or exterior installation of air-conditioning systems. For first and second floor Units, air-conditioning systems shall only be installed in the already provided spaces beneath the windows in each Unit. For third floor Units, air-conditioning systems shall not be installed on any Deck surface nor vent through any roof (low or steep slope) or building exterior visible from ground/street level. Venting of an air-conditioning system into the Deck air space shall be below line of sight from ground/street level.

8.5.7 Interior Unit Decoration. Except as provided in **Section 8.5.8** (“Window Coverings and Awnings”), **Section 8.5.9** (“Floor Coverings”), and **Section 8.5.10** (“Ceiling Radiant Heating”), each Owner shall have the

1 right to decorate or redecorate the interior of his or her Unit. Owners
2 may improve or alter any facility within the interior boundaries of his or
3 her Unit, provided prior architectural/remodeling approval is obtained
4 and such improvement or alteration does not impair the structural or
5 acoustical integrity of the Unit, Common Area, utilities, other systems
6 servicing other Units or the Common Area, or other Units.
7

8 8.5.8 Window Coverings and Awnings. All drapes, curtains, window shades,
9 blinds, shutters and other window coverings installed in the windows of
10 any Unit that are visible from the exterior of the Unit shall be beige,
11 white or off-white or lined in beige, white or off-white or as otherwise
12 approved by the Board, and must comply with any applicable
13 Architectural/Remodeling Rules. No exterior awning, ornamental
14 screens, or sunshades of any kind shall be installed or placed without
15 prior architectural/remodeling approval.
16

17 8.5.9 Floor Coverings. To reduce sound transmission, all Units which are
18 above other Units (second and third floor Units) shall have all floor
19 areas except kitchens and bathrooms covered with carpet or other
20 material which provides appropriate insulation against sound
21 transmission to the Unit below as stated in **Section 8.7** ("Sound Impact
22 Standards") below and determined by the Architectural/Remodeling
23 Committee and approved by the Board. The padding underlayment
24 specification for carpeting is padding that is not less than fifty ounce
25 (50 oz) jute padding, one-half inch (1/2") synthetic needle punch jute
26 padding, or equivalent noise absorption padding. For all Units, existing
27 carpeting may be replaced with carpeting material (like for like in the
28 same locations) without prior architectural/remodeling approval.
29 Architectural/remodeling approval is required for all other flooring
30 installation including replacing prior installations of materials other than
31 carpeting. Specifically, for Units on the second and third floors, wood
32 or composite flooring material may be installed only when one-half inch
33 cork underlayment is used. For Units on the first floor, the one-half
34 inch cork underlayment is not required, but architectural/remodeling
35 approval is still required.
36

37 8.5.10 Ceiling Radiant Heating. The heating system for Units within the
38 Project is by radiant heating panels built into the ceilings of every Unit.
39 It is solely the responsibility of the Association to maintain these panels
40 and repair them when they are inoperable. These panels are in the
41 ceilings of every room except kitchens and bathrooms. Therefore,
42 except for the ceilings in kitchen and bathroom areas a Unit Owner
43 shall not install, attach, or intrude any facility (electrical, lighting, or
44 other) into or onto the ceiling. Any and all costs for labor, materials, or
45 any other service or provision to replace or restore the heating panels
46 as result of any damage caused by a Unit Owner or Unit Owner's

1 agent's failure to comply with this requirement will be borne solely by
2 the Unit Owner.

3
4 8.5.11 Variances. The Board may, but is not obligated to, grant variances or
5 adjustments if necessary or appropriate in its discretion to overcome
6 practical difficulties due to conditions unique to a particular Unit, avoid
7 unnecessary expense, or prevent unnecessary hardship in the
8 application of the provisions of the Declaration; *provided, however*, that
9 such variance or adjustment does not violate the purpose or purposes
10 intended to be served by the standard or criteria being waived in each
11 instance and is in conformity with the intent and purposes of the
12 Declaration; and *provided, further*, that no such variance shall
13 constitute a waiver of such provision with respect to any future
14 application whether for the same Unit or any other Unit. Any variance
15 granted by the Board shall be noted in the written approval of the
16 proposed work and may be required by the Board to be recorded in the
17 County records.

18
19 8.6 Architectural/Remodeling Approval Process

20
21 8.6.1 Architectural/Remodeling Committee. The Board in its discretion may
22 appoint an Architectural/Remodeling Committee composed of Board
23 members only, a "Committee of the Board" as defined in the Bylaws, to
24 act for the Board in all matters related to, but limited to, initial review
25 and recommendation of approval or disapproval of any request for
26 architectural or remodeling additions, changes, or improvements and
27 referred to throughout this **Section 8.6** as the Board. In the event of an
28 initial disapproval decision by the Architectural Committee, if any, the
29 matter shall immediately be referred to the full Board for providing
30 written notice to the Owner. An Owner having any disagreement with
31 the initial decision has the right to bring his or her request for
32 reconsideration by the full Board at a meeting that may be in a private
33 or public forum at the discretion of the Owner.

34
35 8.6.2 Written Request for Approval. Any Owner proposing to perform any
36 work that requires prior architectural/remodeling approval pursuant to
37 this **Article 8**, shall submit to the Board, a written request setting forth
38 the nature of the proposed work and furnishing such information and
39 documentation as the Board may require depending on the nature and
40 size of the proposed work. Subject to the discretion of the Board, such
41 information and documentation shall include but is not limited to: (i)
42 floor plans, (ii) plumbing/electrical specifications, (iii) construction
43 plans, (iv) wall plans, (v) color samples of materials, (vi) elevations,
44 (vii) graphics, and (viii) the Owner's proposed construction schedule.

45
46 8.6.3 Fees; Professional Consultants. The Board may charge a reasonable
47 fee or fees for review of architectural/remodeling applications,

1 drawings, plans, and specifications which may include the cost of
2 retaining outside consultants including but not limited to architects,
3 engineers, plumbers, electricians, or other contractors.
4

5 8.6.4 Basis for Decisions; Good Faith. The Board's decisions shall be made
6 in good faith and shall not be unreasonable, arbitrary, or capricious. It
7 is recognized and intended that the Board will employ subjective
8 criteria and judgments in its review of and determination concerning
9 plans and proposals submitted to it. The Board shall make its
10 decisions from the perspective of the interest of the Project in the
11 fostering of the coherence, value, attractiveness and aesthetic
12 compatibility of all architectural/remodeling designs and features in the
13 Project, after consideration of such factors the Board reasonably
14 determines to be relevant and after reasonable investigation consistent
15 with the scope and circumstances of the proposal submitted. The
16 Board shall grant the requested approval only if:

- 17
- 18 (i) the Owner has submitted a complete application;
 - 19
 - 20 (ii) the Board finds that the plans and specifications conform to this
21 Declaration and to the Architectural/Remodeling Rules in effect
22 at the time such plans were submitted;
 - 23
 - 24 (iii) the Board finds that the proposed work will, if approved, be
25 consistent and compatible with the architectural/remodeling and
26 aesthetic standards prevailing within the Project and will be in
27 harmony with the external design and appearance of existing
28 structures and improvements within the Project; and
 - 29
 - 30 (iv) the Board determines that the proposed work would be
31 consistent with the standards of the Project and the purposes of
32 this Declaration as to quality of workmanship and materials.
33

34 8.6.5 Decisions in Writing; Timely Decision; Reasonable Conditions. All
35 decisions by the Board shall be in writing and shall be issued within
36 forty-five (45) days from the date of submission of a complete
37 application. At the Board's determination, an approval may include
38 reasonable conditions to proceed, incorporate in, or for an appropriate
39 conclusion of the request, which then becomes part of the request and
40 obligates the Owner to comply. If a request is rejected or disapproved,
41 the decision shall include an explanation of the Board's decision. If
42 the Board approves an application the approval shall not be effective
43 until the Board has received evidence that the City has approved all
44 necessary permits.
45

46 8.6.6 Owner's Compliance Failure During Active Construction. When it is
47 determined during the performance of approved work that there was a

1 violation of **Section 8.2** (“Requirement of Architectural/Remodeling
2 Approval”), **Section 8.3** (“Compliance with Governmental
3 Requirements”) or the documented conditions set by the Board as part
4 of its approval in **Section 8.6.5** (“Decisions in Writing; Timely Decision;
5 Reasonable Conditions”), the Board may stop all work activities. Any
6 costs and/or complications incurred or resulting from this action shall
7 be the sole responsibility of the Owner. Work activities may resume
8 only upon the Board’s finding that all violations have been remedied.
9

10 **8.6.7** Board’s or Committee’s Failure to Make Timely Decision. Except for
11 applications to install or use solar energy systems and install Electric
12 Vehicle Charging Stations, if the Board shall fail to act on a request for
13 approval within the time specified in **Section 8.6.5** (“Decisions in
14 Writing; Timely Decision; Reasonable Conditions”), the Owner shall be
15 entitled to invoke internal dispute resolution discussed in **Section 14.16**
16 (“Internal Dispute Resolution”) and this delay shall not result in an
17 application being deemed approved. For an application to install or
18 use solar energy systems, in the event of a delay longer than forty-five
19 (45) days, the application will be deemed approved and for an
20 application to install Electric Vehicle Charging Stations, in the event of
21 a time delay greater than sixty (60) days, the application will be
22 deemed approved.
23

24 **8.6.8** Commencement of Approved Work. Upon receipt of written approval,
25 the Owner shall, as soon as practicable, satisfy all conditions of the
26 approval and diligently proceed with the commencement and
27 completion of all approved work. Commencement of the approved
28 work shall occur, in all cases, within ninety (90) days from the date of
29 such approval. If the Owner fails to comply with this paragraph, any
30 approval previously given shall be deemed revoked unless the Board,
31 upon written request of the Owner made prior to the expiration of the
32 time for commencement of the approved work, extends the time for
33 such commencement. The Board shall not grant an extension of time
34 for commencement of the work if the Board finds that there has been a
35 material change in the circumstances upon which the original approval
36 was granted.
37

38 **8.6.9** Notice to Association Before Commencement of Work; Bond. The
39 Board, in its discretion, may require an Owner to give the Association
40 and any other Owner whose Unit will be affected by the work up to
41 thirty (30) days’ prior written notice before commencing approved work
42 so that the Association or other Owner may record a notice of non-
43 responsibility or take other appropriate action. The Board may require
44 from the Owner performing work a bond or other assurance (such as
45 disbursement through a voucher system of payments directly to
46 materialmen, contractors, and subcontractors) to protect against

1 mechanic's or materialmen's liens arising against the Common Area or
2 other Units.

3
4 8.6.10 Completion; Extension of Deadline. The Owner shall complete all
5 approved work within one (1) year after commencement thereof;
6 except that in the case of reconstruction after substantially total
7 destruction of a Unit, the construction or reconstruction shall be
8 completed within eighteen (18) months after commencement thereof.
9 In the case of projects under construction when this Declaration is
10 recorded, the construction or reconstruction shall be completed by the
11 completion date specified in the project approval or, if no such
12 completion date was specified, within one (1) year (or in the case of
13 reconstruction after unintended substantial total destruction of the Unit
14 within eighteen (18) months) after the date of recordation. The date for
15 completion may be extended as long as such completion is rendered
16 impossible or would result in great hardship to the Owner due to
17 strikes, fires, national emergencies, natural calamities, or other
18 supervening forces beyond the control of the Owner or his or her
19 agents, provided the Owner notifies the Board of such occurrence
20 within a reasonable time after becoming aware of it. If an Owner fails
21 to comply with this **Section 8.6.10**, the Board shall be entitled to
22 proceed in accordance with the provisions of **Section 8.6.14** ("Failure
23 to Remedy Non-conformity"), as though the Board has given written
24 notice of non-conformity with approved plans per **Section 8.6.13**
25 ("Notice of Non-conformity").

26
27 8.6.11 Notice of Completion; Inspection of Completed Work. Upon the
28 completion of any work for which approval is required under this Article
29 8, the Owner shall give written notice of completion to the Board. The
30 written notice shall include copies of all applicable permits, job cards,
31 and building permit inspections. Within thirty (30) days after receiving
32 notice of completion from the Owner, the Board or its duly-authorized
33 representative may inspect such work to determine if it substantially
34 complies with the granted approval and Owner shall cooperate with the
35 Board to conduct such inspection. If the Board fails to notify the Owner
36 of any non-conformity within such thirty (30) day period, the work shall
37 be deemed to be in accordance with the granted approval. If the
38 Owner fails to give notice of completion, the Board shall be entitled to
39 proceed in accordance with the provisions of **Section 8.6.14** ("Failure
40 to Remedy Non-conformity"), as though the Board has given written
41 notice of non-conformity with approved plans per **Section 8.6.13**
42 ("Notice of Non-conformity").

43
44 8.6.12 Failure to Obtain Required Approval. If any work that requires prior
45 approval pursuant to this **Article 8** is performed without such approval
46 having been obtained, the Board shall be entitled to proceed in
47 accordance with the provisions of **Section 8.6.14** ("Failure to Remedy

1 Non-conformity”), as though the Board has given written notice of non-
2 conformity with approved plans per **Section 8.6.13** (“Notice of Non-
3 conformity”).
4

5 8.6.13 Notice of Non-conformity. If the Board finds that the work was not
6 done in substantial conformity with the granted approval, it shall notify
7 the Owner in writing before the end of the thirty (30) day period set
8 forth in **Section 8.6.11** (“Notice of Completion; Inspection of Completed
9 Work”) specifying particulars of non-conformity and requiring the
10 Owner to remedy the same within thirty (30) days from the date of the
11 notice from the Board, or such longer time as the Board may designate
12 in the notice.
13

14 8.6.14 Failure to Remedy Non-conformity. If the Owner fails to remedy such
15 non-conformity within the time specified in the notice of non-conformity,
16 the Board shall then, pursuant to the procedures set forth in **Section**
17 **14.12** (“Hearing Called by the Board; Executive Session; Open
18 Meeting”), set a date on which a hearing before the Board shall be held
19 regarding the alleged non-conformity. If the Board finds at such
20 hearing that a substantial non-conformity exists, the Board may, in
21 addition to any other remedy available under the Governing
22 Documents or applicable law, order the Owner to remedy or remove
23 such non-conformity. If the Owner thereafter fails to do so within the
24 time specified by the Board, the Board may, in addition to any other
25 remedy available under the Governing Documents or applicable law,
26 remove or remedy the non-conformity and, in that event, all expenses
27 incurred by the Association in connection therewith shall be assessed
28 against the Owner as a Reimbursement Assessment.
29

30 8.7 Sound Impact Standards. As stated in **Section 8.5.9**, the Board may require
31 within upper Units replacement flooring to be carpet and padding or other flooring
32 materials with an Impact Insulation Class Rating (IIC) of eighty (80) or higher
33 (determined in accordance with ASTM E1007-14 standards “Standard Test
34 Method for Field Measurement of Tapping Machine Impact Sound Transmission
35 Through Floor-Ceiling Assemblies and Associated Support Structures”) or
36 equivalent except in the kitchen, bathrooms, and the immediate entry way where
37 linoleum or an equivalent product may be installed to replace existing linoleum or
38 other hard flooring. In the event non-approved floor covering has been installed
39 without obtaining prior architectural/remodeling approval, then upon receipt of
40 noise complaints from Residents of another Unit and subject to notice and
41 hearing pursuant to **Article 14** (“Enforcement; Notice; Hearings”), the Unit Owner
42 may be required to remove the unauthorized floor covering and replace it with
43 carpet and padding or other floor covering having an IIC rating of eighty (80) or
44 higher or other flooring material approved by the Board or may be required to
45 take other remediation measures (for example and not by way of limitation, the
46 installation of area rugs and padding).
47

1 8.8 Code Upgrades to Common Area. If an Owner's requested change would result
2 in the need for the Association to upgrade any Common Area component or
3 system for which the Association is responsible (such upgrade being necessary
4 to comply with changes in code requirements in order for appropriate
5 governmental permits to be issued to the Owner for Owner's proposed work and
6 where such code upgrade would not be required but for the work proposed by
7 Owner), the Board may condition approval upon the agreement of the Owner to
8 pay for or contribute to the cost of the Common Area upgrade. In making a
9 determination, the Board may consider such factors as it deems appropriate
10 under the circumstances including, but not limited to, whether Owner's requested
11 work is discretionary or is required as the result of a casualty, the failure of a
12 component in the Common Area or within a Unit; the age, condition, and
13 remaining useful life of the component or system that would require upgrading;
14 the cost of upgrade; whether or not the Association has reserved for the
15 replacement or upgrade of the system; and whether a feasible alternative to the
16 Owner's proposed work is available that would not necessitate the Common Area
17 code upgrade. Under no circumstances shall the Association be obligated to pay
18 for such code upgrades if the Owner has not applied for and obtained prior
19 architectural/remodeling approval pursuant to this **Article 8**.

20
21 8.9 Disproportionate Burden on Common Utility Service; Separate Metering. If an
22 Owner-installed alteration or addition will increase any utility usage for the
23 Owner's Unit that is not separately metered, the Board may require that separate
24 metering facilities be installed at the Unit Owner's sole cost and expense or, if
25 that is not feasible, the Board may allocate such utility costs in a manner the
26 Board determines is reasonable and equitable as provided in **Section 9.7.2**
27 ("Allocation of Regular Assessment").

28
29 8.10 Non-waiver. The approval by the Board of any plans, drawings, or specifications
30 for any work done or proposed, or for any other matter requiring approval under
31 this **Article 8**, shall not be deemed to constitute a waiver of the right to withhold
32 approval of any similar plan, drawing, specification, or matter subsequently
33 submitted for approval with respect to the same Unit or any other Unit.

34
35 8.11 Disclaimer of Liability. Neither the Board nor any Board member shall be liable
36 to the Association, to any Owner, or to any person deriving an interest through an
37 Owner for any damage, loss, or prejudice suffered or claimed on account of: (i)
38 the approval or disapproval of any plans, drawings, and specifications, whether
39 or not defective; (ii) the construction or performance of any work, whether or not
40 pursuant to approved plans, drawings, and specifications; or (iii) the development
41 of any property within the Project; *provided, however*, that the Board or such
42 member has acted in good faith on the basis of such information as may be
43 possessed by it or him or her. Without limiting the generality of the foregoing, the
44 Board may, but is not required to, consult with or hear the views of the
45 Association or any Owner with respect to any plans, drawings, specifications, or
46 any other proposal submitted for approval pursuant to this **Article 8**. Every
47 purchaser, by acquiring title to a Unit or portion thereof agrees not to bring any

1 action or suit against the Board or its members seeking to recover any such
2 damages.
3
4

5 **ARTICLE 9 ASSESSMENTS AND LIENS**

6
7 9.1 Covenant of Owner. Each Owner of a Unit within the Project, by acceptance of a
8 deed or other conveyance thereof, whether or not it shall be so expressed in
9 such deed or conveyance, shall be deemed to have covenanted and agreed to
10 pay to the Association all: (i) Regular Assessments, (ii) Special Assessments,
11 (iii) Reimbursement Assessments, and (iv) Enforcement Assessments levied by
12 the Association as hereinafter provided, together with all Additional Charges.
13

14 9.1.1 Association's Power to Collect. Such deed or conveyance shall be
15 deemed to vest in the Association the right and power to initiate all
16 actions and procedures as the Board shall deem necessary or
17 appropriate for the collection of such Assessments and Additional
18 Charges and for the enforcement of the liens hereinafter provided for.
19

20 9.1.2 Assessments Are a Personal Obligation. Assessments levied by the
21 Association pursuant to this Declaration, together with all Additional
22 Charges, shall be a personal debt and obligation of the Owner against
23 whom they are assessed, and shall bind his or her heirs, devisees,
24 personal representatives, successors, and assigns.
25

26 9.1.3 Obligation Runs with the Land. The obligation to pay Assessments
27 and Additional Charges and the right and power of the Association to
28 initiate all actions and procedures for collection shall run with the land,
29 so that each successive Owner or Owners of any Unit shall, in turn,
30 become liable to pay all such Assessments and Additional Charges
31 assessed that become due and payable during the time he or she is
32 Owner of such Unit.
33

34 9.1.4 Owner's Liability After Transfer. After an Owner transfers of record his
35 or her interest in any Unit, he or she shall not be liable for any
36 Assessments levied thereafter with respect to such Unit. Such Owner
37 shall remain personally liable, however, for all unpaid amounts due and
38 owing at the time of transfer, together with Additional Charges accruing
39 until time of collection. No assumption of personal liability by a
40 successor Owner shall relieve any Owner from personal liability for
41 delinquent Assessments. A Contract Seller of any Unit shall continue
42 to be liable for all Assessments and Additional Charges until a
43 conveyance by deed of such Unit is recorded in the Office of the
44 County Recorder.
45

1 9.2 Creation of Lien. Each Assessment levied by the Association pursuant to this
2 Declaration, together with all Additional Charges, shall be a charge upon the land
3 and upon levy shall be secured by a continuing lien upon the property against
4 which such Assessment is levied. The Association shall have a separate lien
5 and a separate lien is hereby created upon each Unit to secure the payment of
6 any such Assessments and Additional Charges as may be levied under this
7 Declaration.

8
9 9.2.1 Lien Is Continuing. The lien provided for herein shall continue to
10 secure all Assessments and Additional Charges levied upon any Unit
11 notwithstanding the transfer of record title to such Unit, and any such
12 transfer shall be subject to the Association's lien, provided that, prior to
13 such transfer, a notice of delinquent assessment has been recorded as
14 provided in the Declaration and by law.

15
16 9.2.2 Priority of Association's Assessment Liens. The priority of all such
17 liens on each Unit shall be in inverse order so that upon the
18 foreclosure of the lien for any particular charge on any Unit, any sale of
19 such Unit pursuant to foreclosure of the lien will be made subject to all
20 liens securing Assessments and Additional Charges on such Unit that
21 become due and payable subsequent to the lien being foreclosed
22 upon.

23
24 9.3 Purpose of Assessments. The Assessments levied by the Board shall be used
25 exclusively to pay for the costs of management and operation of the Project, of
26 conducting the business and affairs of the Association, to promote the recreation,
27 health, safety, welfare, benefit, and interests of the Owners and Residents in the
28 Project, and for the improvement and maintenance, repair, and replacement of
29 the Common Area and, to the extent provided for in the Governing Documents or
30 by law, of the Units situated within the Project or which, in the opinion of the
31 Board, shall be deemed to be necessary or proper for the management of the
32 Project or of the affairs of the Association, or the benefit of the Owners, or for the
33 enforcement of the Governing Documents.

34
35 9.4 Funds to Be Held in Association Name. Unless otherwise determined by the
36 Board, the Association shall maintain at least two (2) separate accounts in one
37 (1) or more banks or other depositories selected by the Board, which accounts
38 shall be clearly designated The Menlo Commons Association operating account
39 and The Menlo Commons Association reserve account. The Assessments
40 collected by the Association shall be properly deposited into such accounts.
41 Withdrawal of funds from Association accounts shall be subject to the
42 requirements of **Section 10.4 of the Bylaws** ("Checks, Drafts, and Evidences of
43 Indebtedness").

44
45 9.5 Funds Held in Trust for Owners. The Assessments collected by the Association
46 shall be held in trust by the Association for and on behalf of each Owner. Upon
47 sale or transfer of any Condominium by any Owner, the Owner's interest in the

1 funds held in trust by the Association shall terminate and shall be deemed
2 automatically transferred to the successor-transferee of such Owner.

3
4 9.6 Authority of the Board to Levy Assessments. The Board shall have the power
5 and the duty to levy Regular Assessments and Special Assessments sufficient to
6 meet the Association's obligations under the Governing Documents and
7 applicable law.

8
9 9.7 Regular Assessment.

10
11 9.7.1 Calculation of Estimated Requirement. Prior to the beginning of each
12 fiscal year, the Board shall estimate the net funds required by the
13 Association for such fiscal year to manage, administer, operate, and
14 maintain the Project; to conduct the affairs of the Association; and to
15 perform all of the Association's duties in accordance with the
16 Governing Documents, including a reasonable amount allocated to
17 contingencies and to a reserve fund for restoration, repair, and/or
18 replacement of those components for which the Association is
19 responsible and which must be repaired or replaced on a periodic
20 basis. The amount of estimated required funds shall constitute the
21 Regular Assessment.

22
23 9.7.2 Allocation of Regular Assessment. The Board shall allocate and
24 assess the Regular Assessment among the Condominiums in
25 proportion to the percentage interests in Common Area allocated to
26 each Unit as set forth in **Exhibit B**. Notwithstanding the foregoing, if
27 the Regular Assessment includes charges for commonly metered
28 utilities supplied to the Common Area or to the Units and any Owner-
29 installed or tenant-installed alteration to a Unit or any business use
30 conducted within the Common Area or within a Unit results in
31 disproportionate electrical, water, or other utility usage for that Unit, the
32 Board may allocate such commonly metered utility costs as the Board
33 determines is reasonable and equitable.

34
35 9.7.3 Payment of Regular Assessment. Unless the Board shall designate
36 otherwise, Regular Assessments shall be levied on an annual basis
37 and shall be paid in twelve (12) equal monthly installments during the
38 fiscal year, and each installment shall be due and payable on the first
39 day of each month.

40
41 9.7.4 Notice of Regular Assessment. Not less than thirty (30) days and not
42 more than ninety (90) days prior to the beginning of each fiscal year,
43 the Board shall send to each Owner a notice of the amount of the
44 Regular Assessment allocated to his or her Condominium, except that
45 if there is an increase in the Regular Assessment over the previous
46 year, in compliance with *Civil Code* section 5615, the notice shall be
47 provided to the Owner by Individual Delivery not less than thirty (30)

1 days and not more than sixty (60) days before the due date of the
2 increased Regular Assessment.

3
4 9.7.5 Permitted Increase in Regular Assessment. Pursuant to *Civil Code*
5 section 5605(b), except as otherwise provided by law, the Board shall
6 not increase the Regular Assessment for any fiscal year above the
7 amount of the Regular Assessment for the preceding fiscal year by
8 more than twenty percent (20%) (or such other limitation on the
9 increase as may be imposed by law), except upon the affirmative vote
10 of a majority of Members voting on any such increase in the Regular
11 Assessment, provided that a quorum is established. For purposes of
12 the preceding sentence and to the extent required pursuant to *Civil*
13 *Code* section 5605(c), a quorum shall mean more than fifty percent
14 (50%) of the Members of the Association, notwithstanding any lower
15 quorum requirement which may be set forth in the Bylaws.

16
17 9.7.6 Revised Regular Assessment. Subject to the provisions of **Section**
18 **9.7.5** (“Permitted Increase in Regular Assessment”) or as otherwise
19 permitted by law, if at any time during the course of any year, the
20 Board determines the amount of the Regular Assessment to be
21 inadequate, by reason of a revision of its estimate of either expenses
22 or income or otherwise, the Board shall have the right, at a regular or
23 special meeting of the Board, to revise the Regular Assessment for the
24 balance of the fiscal year. To the extent required by *Civil Code* section
25 5615, notice of any such increase shall be given to the Members by
26 Individual Delivery and such revised Regular Assessment shall
27 become effective on the first day of the next month that is at least thirty
28 (30) days and not more than sixty (60) days after the date of such
29 notice.

30
31 9.7.7 Failure to Fix Regular Assessment. The failure or omission by the
32 Board to fix or levy any Regular Assessment before the expiration of
33 any fiscal year, for that fiscal year or the next fiscal year, shall not be
34 deemed either a waiver or a modification in any respect of the
35 provisions of this Declaration, or a release of any Owner from the
36 obligation to pay Assessments or any installment thereof for that or any
37 subsequent year, but the amount of the Regular Assessment fixed for
38 the preceding fiscal year shall be the amount of the Regular
39 Assessment for the ensuing fiscal year until a new Regular
40 Assessment is levied.

41
42 9.8 Special Assessments.

43
44 9.8.1 Purpose of Special Assessments. If at any time during any fiscal year
45 the Regular Assessment proves inadequate for any reason, including
46 nonpayment of any Owner’s share thereof or the unexpected repair,
47 replacement, or reconstruction of improvements located in the Project,

1 or if funds are otherwise required for any authorized activity of the
2 Association, the Board may levy a Special Assessment in the amount
3 of such actual or estimated inadequacy or cost.
4

5 9.8.2 Permitted Amount of Special Assessments. Except in the case of an
6 emergency situation as defined in *Civil Code* section 5610, in any fiscal
7 year the Board may not levy Special Assessments which, in the
8 aggregate, exceed five percent (5%) of the budgeted gross expenses
9 of the Association for that fiscal year (or such other limitation on the
10 amount as may be imposed by law), except upon the affirmative vote
11 of a majority of the Members voting on any such Special Assessment,
12 provided that a quorum is established. For purposes of the preceding
13 sentence and to the extent required pursuant to *Civil Code* section
14 5605(c), a quorum shall mean more than fifty percent (50%) of the
15 Members of the Association, notwithstanding any lower quorum
16 requirement which may be set forth in the Bylaws.
17

18 9.8.3 Allocation of Special Assessments. Special Assessments shall be
19 allocated and assessed among the Condominiums in the same
20 manner as Regular Assessments.
21

22 9.8.4 Notice of Special Assessment. Upon the imposition of a Special
23 Assessment or an increase in a Special Assessment, in compliance
24 with *Civil Code* section 5615, notice thereof shall be given by Individual
25 Delivery to each Owner not less than thirty (30) days and not more
26 than sixty (60) days prior to the due date of the Special Assessment.
27

28 9.8.5 Payment of Special Assessments; Cost of Payment Plans. Special
29 Assessments shall be payable in a lump sum or in installments as may
30 be determined by the Board with regard to each Special Assessment
31 when it is imposed. If the Association incurs additional expenses
32 because of a payment method selected by an Owner (for example, but
33 not limited to, paying a Special Assessment in installments instead of
34 in a lump sum), the Association may charge such expense to the
35 Owner as an Additional Charge or as a Reimbursement Assessment.
36 Nothing in this **Section 9.8.5** shall be deemed to obligate the
37 Association to offer or permit alternate payment plans.
38

39 9.9 Application of Surplus Funds (IRS Resolution). If, prior to the end of any fiscal
40 year, there is an excess of membership income over membership expenses as
41 defined in Internal Revenue Code section 277 for the fiscal year, the Board may
42 determine, without the need for a Member vote, whether such excess shall be
43 applied to reserves and deposited in the Association's reserve account or shall
44 be applied against the subsequent tax year's Member Assessments as provided
45 in Internal Revenue Service Revenue Ruling 70-604. If the Board does not
46 determine to so apply such excess membership income to reserves or to the

1 subsequent year's Member Assessments, any other lawful disposition of such
2 excess income shall be as determined by the vote of the Members.

3
4 9.10 Reimbursement Assessments. The Board, after notice and a hearing as
5 provided for in **Section 14.11** ("Notices: Content, Delivery") and **Section 14.12**
6 ("Hearing Called by the Board; Executive Session; Open Meeting"), may levy a
7 Reimbursement Assessment against an Owner and his or her Condominium:

- 8
9 (a) To reimburse the Association for costs incurred to maintain, repair, or
10 replace property (including property within a Unit) when such damage is
11 due to the act or neglect of such Owner, his or her Contract Purchaser, or
12 member of his or her household, pet, tenant, invitee, or guest, or as
13 otherwise provided in the Governing Documents;
14
15 (b) If the failure of such Owner, his or her Contract Purchaser, or member of
16 his or her household, pet, tenant, invitee, or guest to comply with any
17 provision of the Governing Documents has necessitated or resulted in an
18 expenditure of funds by the Association to deal with such lack of
19 compliance or to bring such person or the Condominium into compliance;
20
21 (c) To reimburse the Association for any costs of collecting from an Owner
22 any amount the Owner is obligated to pay the Association.

23
24 Without limiting the generality of the foregoing, and to the fullest extent
25 permitted by law, all costs including attorney fees, incurred by the
26 Association to enforce **Section 6.10** ("Restriction on Businesses"), **Section**
27 **6.25** ("Animals"), **Section 9.18** ("Assignment of Rents As Security for
28 Payment"), and **Section 14.6** ("Injunctions"), or to defend any claim arising
29 or alleged to arise from any of the foregoing sections, shall be reimbursed
30 to the Association as a Reimbursement Assessment. Any
31 Reimbursement Assessment shall be due and payable to the Association
32 when levied.
33

34 9.11 Enforcement Assessments. Subject to the requirements set forth in **Section 14.8**
35 ("Imposing Sanctions"), the Board may levy an Enforcement Assessment (and
36 any fine or monetary penalty imposed by the Board in accordance with the
37 provisions of the Governing Documents shall be deemed to be such an
38 Enforcement Assessment), for violation of any of the provisions of the Governing
39 Documents. Any Enforcement Assessment shall be due and payable to the
40 Association when levied.

41
42 9.12 No Offsets. All Assessments levied by the Board shall be payable in the full
43 amount specified, including any Additional Charges imposed as provided by the
44 terms of this Declaration, and no offsets against any such amounts shall be
45 permitted for any reason whatsoever, including without limitation a claim that the
46 Association has failed to properly exercise its duties of maintenance or
47 enforcement.

1
2 9.13 Bad Checks. An Owner who writes a check to the Association on insufficient
3 funds shall be charged a service fee in the amount permitted by *Civil Code*
4 section 1719 and may be liable for damages to the Association in an amount
5 equal to three (3) times the amount of the bad check, as provided by statute.
6

7 9.14 Delinquent Assessments; Acceleration in the Event of Delinquency. Any
8 installment or other portion of an Assessment not received within fifteen (15)
9 days after its due date shall be delinquent and, to the fullest extent permitted by
10 law, including *Civil Code* section 5650(d), shall be subject to a late charge and,
11 thirty (30) days after the due date, interest not to exceed the maximum rate
12 permitted by law, as well as all other Additional Charges. If any monthly
13 installment of the Regular Assessment or any installment of a Special
14 Assessment that has been levied or is permitted to be paid on an installment
15 basis is delinquent for a period of sixty (60) days, the Association may, but shall
16 not be obligated to, declare the entire balance of the Regular Assessment or the
17 Special Assessment immediately due and payable together with all other
18 delinquent amounts.
19

20 9.15 Enforcement by Action at Law or Foreclosure. The Board, on behalf of the
21 Association, may enforce the payment of any delinquent Assessment plus
22 Additional Charges by bringing an action at law against any Owner personally
23 obligated to pay the same, or by foreclosing the lien against the Owner's
24 Condominium by judicial or non-judicial foreclosure, to the fullest extent permitted
25 by law. To the extent prohibited by *Civil Code* section 5725(b), the amount of an
26 Enforcement Assessment may not become a lien that is enforceable by non-
27 judicial foreclosure.
28

29 9.15.1 Pre-lien Notice. At least thirty (30) days prior to recording a notice of
30 delinquent assessment against a Condominium to collect a debt that is
31 past due, the Association shall provide written notice to the Owner(s)
32 of the Condominium, as required by *Civil Code* section 5660 ("Pre-lien
33 Notice").
34

35 9.15.2 Prior to Recording a Lien. Prior to recording a notice of delinquent
36 assessment, the Association shall comply with all applicable
37 requirements imposed by law, including offering to participate in
38 internal dispute resolution (**Section 14.16** of this Declaration) or
39 alternative dispute resolution (**Section 14.17** of this Declaration) to the
40 extent required pursuant to *Civil Code* section 5670 and making the
41 decision to record a lien for delinquent Assessments at an open
42 meeting of the Board, to the extent required pursuant to *Civil Code*
43 section 5673.
44

45 9.15.3 Owner's Right to Discuss Payment Plan. To the extent provided in
46 *Civil Code* section 5665, an Owner may submit to the Board a written
47 request to discuss a payment plan for a debt noticed in a pre-lien

1 notice. If the Owner's written request is mailed to the Board (as
2 evidenced by a postmark or receipt of mailing) within fifteen (15) days
3 after the postmark on the pre-lien notice, the Board shall meet with the
4 Owner within forty-five (45) days of the postmark date of the Owner's
5 written request, unless there is not a regularly scheduled Board
6 meeting within the period, in which case the Board, in its discretion,
7 may hold a special meeting in executive session to meet with the
8 Owner or may designate a committee of one (1) or more Board
9 members to meet with the Owner.

10
11 9.15.4 Notice of Delinquent Assessment. The amount of the past due debt
12 noticed in the pre-lien notice shall be a lien from and after the
13 recording of a notice of delinquent assessment. No later than ten (10)
14 days after recordation, a copy of the notice of delinquent assessment
15 shall be mailed by certified mail in compliance with *Civil Code* section
16 5675 to every person whose name is shown as an Owner of the
17 Condominium in the Association records or in such manner and to
18 such persons as may be required by applicable law.

19
20 9.15.5 Delinquent Assessments of Less Than \$1,800. To the extent provided
21 in *Civil Code* section 5720(b), delinquent Assessments totaling less
22 than Eighteen Hundred Dollars (\$1,800) that are less than twelve (12)
23 months delinquent may not be collected by judicial or non-judicial
24 foreclosure, but may be collected in any other manner provided by law
25 including a civil action in small claims court to the extent provided in
26 *Civil Code* section 5720(b)(1) or recording a lien as provided in *Civil*
27 *Code* section 5720(b)(2). Prior to recording such a lien the Association
28 shall offer to participate in internal dispute resolution (**Section 14.16**) to
29 the extent required by *Civil Code* section 5720(b)(2).

30
31 9.15.6 Initiating Foreclosure. As provided in *Civil Code* section 5700(a), no
32 procedures shall be initiated to foreclose the lien securing any noticed
33 past due debt under this **Article 9** until after the expiration of thirty (30)
34 days following the recording of a notice of delinquent assessment. To
35 the extent required pursuant to *Civil Code* section 5705(b), the
36 Association shall offer to participate in internal dispute resolution
37 (**Section 14.16** of this Declaration) or alternative dispute resolution
38 (**Section 14.17** of this Declaration). To the extent required by *Civil*
39 *Code* section 5705(c), a decision to initiate foreclosure shall be made
40 only by the Board in an executive session meeting.

41
42 9.15.7 Amount Due and Payable. Except with respect to the amount of any
43 Enforcement Assessment, upon the recording of the notice of
44 delinquent assessment referred to above, the Association may, at its
45 option, declare the entire balance of all sums then due or to become
46 due from the Owner, immediately due and payable, which total sum

1 may then be included in any suit, action, or other procedure initiated to
2 collect said sums, including all Additional Charges.

3
4 9.15.8 Notice of Initiating Foreclosure. To the extent required pursuant to
5 *Civil Code* section 5705(d), the Association shall provide written notice
6 of initiating foreclosure to the record Owner of the Condominium,
7 including notice by personal service to any resident Owner.
8

9 9.16 Power of Sale. Each Owner does hereby appoint the Association as trustee to
10 enforce and to foreclose any lien which is established pursuant to the terms of
11 this Declaration, by private power of sale, as provided in Division III, Part 4, Title
12 14, Chapter 2, Article 1, (Section 2920 and following) of the *Civil Code* of the
13 State of California, and does further grant to the Board of Directors, on behalf of
14 the Association, the authority and power to sell the Condominium of such Owner
15 in the event of any default in payment of any Assessments or Additional Charges
16 levied against such Condominium, for lawful money of the United States, to the
17 highest bidder, to satisfy said lien. The Association, as trustee for the remaining
18 Owners, or any other Owner, may purchase the Condominium at said sale.
19

20 9.17 Right of Redemption. To the extent provided pursuant to *Civil Code* section
21 5715(b), a non-judicial foreclosure to collect delinquent Assessments shall be
22 subject to a right of redemption.
23

24 9.18 Assignment of Rents As Security for Payment. As security for the payment of all
25 liens provided for under this Declaration, each Owner hereby gives to and
26 confers upon the Association the right, power, and authority during the
27 continuance of such ownership to collect the rents, issues, and profits of the
28 Owner's Condominium, reserving unto the Owner the right, prior to any default by
29 such Owner in performance of that Owner's obligations under the Governing
30 Documents in payment of any indebtedness to the Association, to collect and
31 retain such rents, issues, and profits as they become due and payable. Upon
32 any such default, the Association may (i) instruct the tenant to pay rent to the
33 Association as and when such rents become due or (ii) at any time upon ten (10)
34 days' written notice to such Owner (either in person, by agent, or by a receiver to
35 be appointed by a court, and without regard to the adequacy of any security for
36 such indebtedness) in its own name sue for or otherwise collect such rents,
37 issues, and profits, including those past due and unpaid, and in either event
38 apply the same, less costs and expenses of operation and collection, including
39 reasonable attorney fees, upon any such indebtedness, and in such order as the
40 Association may determine or as required by applicable law. Owner waives the
41 giving of any and all notices required by the laws of the State of California in
42 order for the Association to exercise the rights provided by this **Section 9.18**.
43 The collection of such rents, issues, and profits, and the application thereof as
44 aforesaid, shall not cure or waive any default under the Governing Documents or
45 invalidate any act done pursuant to this Declaration. The assignment of rents
46 and powers described in this **Section 9.18** shall not affect, but shall in all respects

1 be subordinate to, the rights and power of the holder of any First Mortgage on
2 any Condominium, or any part thereof, to do the same or similar acts.

3
4 9.19 Remedies Are Cumulative. The Board may commence any procedure for the
5 collection of delinquent Assessments upon its own decision. The remedies
6 provided in this Declaration for collection of delinquent Assessments shall be
7 cumulative and not exclusive; that is, the Association may use one (1) or more or
8 all of the available remedies to collect delinquent Assessments to the fullest
9 extent permitted by law.

10
11 9.20 Partial Payments. The Association's acceptance of a partial payment, whether
12 voluntary or involuntary, shall not prevent the Association from pursuing any or
13 all of its available collection remedies.

14
15 9.21 Certificate of Satisfaction and Release of Lien. Upon payment in full of a
16 delinquent Assessment, including any Additional Charges, or the satisfaction
17 thereof, the Board shall cause to be recorded, in the same manner as the notice
18 of delinquent assessment, a further certificate stating the satisfaction thereof and
19 the release of the lien.

20
21 9.22 Subordination to Lien of First Mortgage. Except as otherwise expressly provided
22 by law, the lien securing each of the Assessments provided for under this
23 Declaration shall have priority as of the date of recordation of the notice of
24 delinquent assessment as provided in **Section 9.15.4**, over all other liens and
25 encumbrances applicable to the Condominiums; *provided, however*, that such
26 Assessment lien shall be subordinate to the lien of any First Mortgage recorded
27 against the Condominium prior to the date the notice of delinquent assessment
28 was recorded; and *provided, further*, that such subordination shall apply only to
29 the Assessments which have become due and payable prior to the sale of such
30 property pursuant to a decree of foreclosure of any such First Mortgage, or
31 pursuant to a power of sale contained in any such First Mortgage. Such
32 foreclosure sale shall not relieve such property from liability for any Assessments
33 and Additional Charges becoming due after the sale of such property pursuant to
34 a decree of foreclosure of any such First Mortgage, or pursuant to a power of
35 sale contained in any such First Mortgage, nor from the lien of any subsequent
36 Assessment, including Assessments levied against all Condominiums
37 proportionately to compensate for the unpaid Assessments and Additional
38 Charges, which shall constitute a lien upon the purchased Condominium in
39 accordance with this **Article 9**.

40
41 9.23 Waiver of Exemptions. Each Owner, to the extent permitted by law, does hereby
42 waive, to the extent of any liens created pursuant to this Declaration, the benefit
43 of any homestead or exemption laws of the State of California in effect at the
44 time any Assessment or installment thereof becomes delinquent or any lien is
45 imposed pursuant to the terms of this Declaration.
46

1 9.24 Property Exempt from Assessments. The following property subject to this
2 Declaration shall be exempt from the Assessments, Additional Charges, and
3 liens created herein:
4

- 5 (a) All property dedicated to and accepted by the City or County or other local
6 public authority and devoted to public use;
7
8 (b) Any Condominium which is owned by the Association as a result of the
9 Association having acquired such Condominium through foreclosure;
10 *provided, however,* that such exemption shall apply only during the period
11 in which the Association is record owner of such Condominium; and
12
13 (c) All Common Area.
14
15

16 **ARTICLE 10 MAINTENANCE OF PROPERTY**
17

18 10.1 Association's Responsibility for Common Area Generally. The Association shall
19 manage, operate and maintain the Common Area in accordance with the
20 provisions of the Governing Documents and all applicable municipal, state, and
21 federal laws, statutes and ordinances. The Association shall Maintain, Repair
22 and restore and Replace (when necessary) all of the Common Area and all
23 facilities, improvements, equipment, hardscape, including concrete planters,
24 wooden planter boxes, landscaping and irrigation thereon, furniture, fixtures and
25 appliances in all Common Areas, and all property that may be acquired by the
26 Association. The Association shall Maintain, Repair and Replace the structure
27 and grounds surrounding all Units, including bearing walls, and roofing; fencing,
28 balconies, decks, planter boxes and railings thereon, sidewalks, pathways and
29 railings, mailboxes and mailbox structures, exterior lighting; exterior irrigation
30 systems; window glass and exterior doors (including glass therein), columns,
31 girders, subfloors; roofs, skylights, rain gutters and downspouts; foundations;
32 storage buildings, conduits, ductwork, pipes, plumbing, wires and other utility
33 installations required to provide or transport power, light, telephone, television
34 and Internet service, gas, water, sewage and drainage; fire extinguishers;
35 easement areas and areas subject to grants for passage, repair or maintenance;
36 and all exterior sewer, water or other utilities serving the property. The allocation
37 of responsibility for maintenance of certain specific items shall be as provided in
38 **Exhibit C**, attached hereto.
39

40 10.1.1 Association's Responsibility Inclusive. Maintenance shall include,
41 without limitation, painting, cleaning, upkeep, Maintaining, Repairing
42 and Replacing of all such areas.
43

44 10.1.2 Association Is Not Responsible for Repairs Necessitated by Owner's
45 Conduct. The responsibility of the Association for Maintenance, Repair
46 and Replacement shall not extend to repairs or replacements arising

1 out of or caused by the willful or negligent act or omission of an Owner,
2 or his or her household members, guests, tenants or invitees or the
3 Owner's pets. However, when the repair is covered by the insurance
4 carried by the Association, the Association shall be responsible for
5 making the repairs, and the responsible Owner shall pay any
6 deductible pursuant to the insurance policy. Any repairs arising out of
7 or caused by the willful or negligent act or omission of an Owner, or his
8 or her household members, guests, tenants or invitees, or the Owner's
9 pets, the cost of which is not covered by insurance carried by the
10 Association, shall be made by the responsible Owner; *provided,*
11 *however,* that the person actually making the repairs and the method
12 of repair shall be subject to the approval of the Board. If the Owner
13 fails to make such payment, then the Association may make such
14 payment and shall charge the amount of such payment to the
15 responsible Owner as a Reimbursement Assessment in accordance
16 with **Article 9** ("Assessments and Liens") which charge shall be subject
17 to a late charge as provided in **Article 9** and which shall bear interest at
18 the rate of twelve percent (12%) per annum (but no greater than the
19 maximum rate allowed by law) until paid in full. If the responsible
20 Owner fails to take the necessary steps to make the repairs within a
21 reasonable time under the circumstances, the Association shall make
22 the repairs and charge the cost thereof to the responsible Owner as a
23 Reimbursement Assessment, which cost shall be subject to a late
24 charge as provided in **Article 9** and which shall bear interest at the rate
25 of twelve percent (12%) per annum (but no greater than the maximum
26 rate authorized by law) until paid in full. If an Owner disputes his or her
27 responsibility for the repairs, the Owner shall be entitled to notice and a
28 hearing as provided in **Article 14** ("Enforcements; Notice; Hearings")
29 before any charge may be imposed.

30
31 10.1.3 Association's Responsibility for Damage Caused by Wood-destroying
32 Pests. The Association shall have the Common Area periodically
33 inspected for wood-destroying pests and organisms and shall take
34 appropriate corrective measures therefor. The Association shall have
35 the authority to require the temporary removal of Residents of a Unit as
36 may be necessary in connection with the treatment of wood-destroying
37 pests or organisms, pursuant to the procedures described in *Civil Code*
38 section 4780 or any successor statute. The costs of any temporary
39 relocation shall be borne by each Owner of a Unit who is required to
40 temporarily relocate.

41
42 10.1.4 Landscape Maintenance. Landscaping maintenance shall include
43 regular fertilization, irrigation, pruning, and other prudent garden
44 management practices necessary to promote a healthy weed-free
45 environment for optimum plant growth. The Association shall remove
46 and replace all dying or dead vegetation. The Association shall take

1 appropriate steps to maintain the irrigation of the landscaping and to
2 prevent damage resulting from misdirected and/or excessive watering.

3
4 10.1.5 Mold. In order to reduce the presence of mold, fungi, spores, pollens
5 and other botanical substances, or other allergens (collectively “Mold”),
6 within the Units and Common Area, the Association shall inspect the
7 exterior of the Common Area improvements, including the structure in
8 which a Unit is located, not less frequently than once each year to
9 check for water leaks or other breaches of the watertight integrity of the
10 improvements, and for the presence of Mold. If any water leaks and/or
11 Mold are detected, the Board shall immediately take such remedial
12 action as appropriate to repair the leak, and/or remove the Mold and to
13 ensure maintenance of proper ventilation within enclosed areas, and to
14 maintain humidity levels to reduce the risk of Mold growth. The Board
15 shall decide in its best judgment whether to take corrective action. The
16 Board shall periodically inspect the irrigation system to ensure proper
17 watering, and to repair any leaks and/or misdirected or excessive
18 watering, and shall periodically inspect the ground surface and
19 foundations to ensure that no water is pooling around or within the
20 foundations, and shall maintain rain gutters in a clean and proper
21 operating condition at all times, and shall take such prudent steps as
22 may be appropriate to prevent Mold growth, or eliminate any existing
23 Mold.

24
25 10.1.6 Owner’s or Resident’s Responsibility. Each Owner and Resident shall
26 fully cooperate with the agents of the Association in the performance of
27 the Association’s maintenance and repair obligations described in this
28 **Article 10**. Such cooperation shall include, but is not limited to,
29 immediate notification to the Board or its managing agent of any
30 maintenance or repair problems for which the Association is
31 responsible and access to the Owner’s or Resident’s dwelling and
32 Exclusive Use Common Area as may be necessary to inspect and, if
33 appropriate, to perform any necessary Maintenance or Repairs.

34
35 10.1.7 Damage from Water Leak or Overflow from Unit. In the event of any
36 water leak or overflow from any Unit that damages any Common Area
37 or another Unit, the Owner and Residents of the Unit that is the source
38 of the water leak or overflow (the “Responsible Owner”) shall
39 cooperate with the Association in the inspection and correction of the
40 problem. Cooperation shall include access to the dwelling to inspect
41 and to correct the problem and/or repair any damage. The
42 Responsible Owner shall reimburse the Association for its repair cost
43 to the extent the cost is not paid through insurance maintained by the
44 Association (provided that the Board shall have complete discretion as
45 to the filing of claims with the Association’s insurer), and the
46 Association may levy a Reimbursement Assessment to recover the
47 cost. If the damage may be covered by insurance maintained by the

1 Association, the Association shall submit an appropriate claim. Any
2 deductible amount shall be paid by the Responsible Owner.
3

4 10.2 Inspection and Maintenance Guidelines. The Board shall adopt inspection and
5 maintenance guidelines for the periodic inspections and maintenance of the
6 Common Area improvements and landscaping, including but not limited to,
7 foundations, gutters, downspouts, siding, roofs and trim, balconies, decks,
8 window caulking, utility equipment, and sanitary sewer and storm drainage
9 facilities maintained by the Association, streets, parking areas, recreational
10 facilities, and the irrigation system. The Board periodically and at least once
11 every three (3) years shall review and update the inspection guidelines. The
12 Board shall take all appropriate steps to implement and comply with the
13 inspection and maintenance guidelines.
14

15 10.2.1 Annual Professional Inspections. The Association shall cause
16 professional inspections of all infrastructures to be regularly made at
17 least annually, and for appropriate items or events, more often.
18 Inspections will include a review of all repair records since the previous
19 inspection.
20

21 10.2.2 Annual Report to Members. The inspections shall be reported at the
22 annual membership meeting and in writing, and shall include plans for
23 cleaning, Maintenance, Repair, Replacement, etc. (if any), as well as
24 estimates of the costs. The reports shall address any noted
25 deterioration which may require future attention. The reports may also
26 report on supplemental specialized investigations (i.e., elevator,
27 termite, pool, mechanical, arborist, geologist, structural, etc.).
28

29 10.2.3 Maintenance of Records. The Association shall keep permanent
30 records of all: (a) Complaints and potential problems, including
31 description, date and by whom; (b) Reports, including inspections and
32 actions taken; (c) Repairs, including description, location, date, by
33 whom made and cost; and (d) Plans, including construction drawings,
34 subsequent modifications, and repair plans.
35

36 10.3 Owner's Responsibility for Maintenance and Repair. Except for those portions of
37 the Project which the Association is required to Maintain and Repair, each
38 Condominium Owner shall, at his or her sole cost and expense, Maintain and
39 Repair his or her Unit, keeping the same in good condition. Each Owner's
40 responsibility shall include, but shall not necessarily be limited to, Maintenance,
41 Repair and Replacement of the following items within such Owner's Unit and the
42 cost thereof: interior surfaces of all perimeter and interior walls, ceilings and
43 floors (including carpeting, tile, wall paper, paint or other covering); garbage
44 disposals, ranges, refrigerators, dishwashers, washing machines and dryers,
45 light fixtures, smoke and carbon monoxide detectors, and any and all other
46 appliances of any nature whatsoever; heating, ventilating and air-conditioning
47 equipment servicing such Unit (although such equipment may be located in part

1 outside such Unit); exterior door hardware, gaskets and seals, interior doors,
2 including all hardware on the doors; cabinets; plumbing and other fixtures of any
3 nature whatsoever; light bulbs; and "built-in" features, fireplaces, if any, and any
4 furniture and furnishings. Each Owner shall Maintain, Repair and Replace any
5 smoke or carbon monoxide detectors located in the Owner's Unit. Each Owner
6 shall keep the Exclusive Use Common Area appurtenant to the Owner's
7 Condominium in a clean and neat condition at all times and shall be solely
8 responsible for the Maintenance, Repair and Replacement of any personal
9 property, including furniture and planters, located within the Exclusive Use
10 Common Area appurtenant to their Unit. Each Owner shall have the exclusive
11 right to paint, plaster, panel, tile, wax, paper or otherwise refinish and decorate
12 the inner surfaces of the walls, ceilings, floors, and doors bounding his or her
13 Unit. In the event an Owner fails to maintain the interior of his or her Unit in a
14 manner which the Board deems necessary to preserve the appearance and
15 value of the Project, the Board may notify Owner of the work required and the
16 Owner shall complete such work within sixty (60) days from the giving of such
17 notice. Use of chemicals that may damage the drain pipes and fixtures is strictly
18 forbidden.

19
20 10.4 Owner's Responsibility Regarding Mold. In order to reduce the presence of
21 mold, fungi, spores, pollens and other botanical substances, or other allergens
22 (collectively "Mold") within the Unit, the Owners shall inspect the interior of their
23 Units not less frequently than once each quarter to check for water leaks or other
24 breaches of the watertight integrity of the improvements, and for the presence of
25 Mold. If any water leaks and/or Mold are detected within the Unit, the Owner
26 shall immediately take appropriate corrective steps to repair the leak, and/or
27 remove the Mold and to maintain proper ventilation within enclosed areas, and to
28 maintain humidity levels to reduce the risk of Mold growth, and take such prudent
29 steps as may be appropriate to prevent Mold growth, or eliminate any existing
30 Mold. Any Mold or other infestation detected shall be noted to the Board in
31 writing for appropriate action.

32
33 10.5 Owner's Failure to Maintain. In the event the Owner fails to carry out such
34 maintenance within one (1) week, the Board may, following notice and hearing as
35 provided in the Bylaws, cause such work to be done and charge the cost of the
36 work to such Owner to the Association as a Reimbursement Assessment which,
37 until paid in full, shall be subject to a late charge as provided in **Article 9**
38 ("Assessments and Liens") and shall bear interest at the rate of twelve percent
39 (12%) per annum (but no greater than the maximum rate authorized by law).

40 41 42 **ARTICLE 11 INSURANCE**

43
44 11.1 Insurance Coverage to Be Maintained by Association. The Association shall
45 procure and maintain, as a common expense of all Owners, the types of
46 insurance described in **Section 11.3** ("Hazard Insurance to Be Maintained by

1 Association”), **Section 11.4** (“Commercial General Liability Insurance to Be
2 Maintained by Association”), and **Section 11.5** (“Other Insurance to Be
3 Maintained by Association”), if and to the extent such insurance, with the
4 coverages described below, is available at a reasonable premium cost.
5

6 11.2 Premiums. The costs of insurance obtained by the Association shall be a
7 common expense of the Association, shall be included in the Regular
8 Assessment, and shall be paid for out of the operating fund of the Association.
9

10 11.3 Hazard Insurance to Be Maintained by Association. The Association shall obtain
11 and maintain a master hazard policy insuring all improvements, equipment and
12 fixtures in the Project (including the Units as originally constructed) with policy
13 limits of either: (a) full replacement value of the covered improvements or (b) no
14 less than eighty percent (80%) of replacement cost of the covered improvements,
15 excluding foundations and footings in either instances, unless otherwise required
16 by FNMA or FHLMC requirements as set forth in **Section 11.6** (“Amount, Term,
17 and Coverage”). The following endorsements should be included in any such
18 master hazard policy, if commercially reasonable to obtain:
19

- 20 (a) Changes in building codes (“ordinance or law endorsement”);
 - 21 (b) Inflation guard coverage;
 - 22 (c) Demolition coverage;
 - 23 (d) “Agreed-amount” endorsement (to eliminate a coinsurance problem);
 - 24 (e) Replacement cost endorsement; and
 - 25 (f) Primary coverage endorsement.
- 26
27
28
29
30
31

32 11.4 Commercial General Liability Insurance to Be Maintained by Association. The
33 Association shall maintain commercial general liability insurance insuring the
34 Association, its officers and directors, its manager, and the Owners against any
35 liability incident to ownership, maintenance, and repair of the Common Area, but
36 excluding the liability of an Owner incident to personal bodily injury and property
37 damage occurring within that Owner’s Unit or in any other Unit or upon the
38 Common Area resulting from the negligence of that Owner. The limits of liability
39 shall be set by the Board but shall in no event be less than Three Million Dollars
40 (\$3,000,000) or any higher applicable limit set forth in *Civil Code* section 5805.
41

42 11.4.1 Scope of Coverage. Such liability insurance policy shall insure against
43 bodily injury, death, or property damage occurring in, on or about any
44 portion of the Common Area and if available and at a reasonable cost
45 as determined by the Board shall include:
46

- 47 (i) water damage liability,

- 1
2 (ii) hired and non-owned vehicle coverage, theft and collision
3 coverage,
4
5 (iii) liability for property of others,
6
7 (iv) elevator liability coverage, if applicable,
8
9 (v) off-premises employee coverage, and
10
11 (vi) such other risks as are customarily covered in condominium
12 projects.
13

14 11.4.2 Other Provisions. If available and at a reasonable cost as determined
15 by the Board, such liability insurance policy:
16

- 17 (i) shall contain a waiver of subrogation as to claims against the
18 Association, the Board members, the Owners and members of
19 the Owner's family who reside with such Owner, except in cases
20 of arson or fraud;
21
22 (ii) shall contain a waiver of the defense of invalidity on account of
23 the conduct of any Owner over which the Board has "no
24 control;"
25
26 (iii) shall require that at least thirty (30) days' prior written notice be
27 given to the Association by the insurer before cancellation
28 except that in the case of cancellation for nonpayment of
29 premiums or for fraud the notice shall be given no less than ten
30 (10) days prior to the effective date of the cancellation;
31
32 (iv) shall provide that in no event shall the insurance be brought into
33 contribution with insurance purchased individually by Owners or
34 their Mortgagees; except to the extent that such policy shall be
35 used to pay the property deductible for an insured loss under
36 the Association hazard policy;
37
38 (v) shall exclude policies obtained by the individual Owners from
39 consideration under any "other insurance" clause; and
40
41 (vi) shall contain a provision requiring the insurer to defend lawsuits
42 for which there is coverage under the policy even if the
43 allegations are fraudulent, but authorizing the insurer to make
44 such investigation and settlement of any claim or suit within the
45 policy limit as it deems expedient.
46
47

1
2 11.5 Other Insurance to Be Maintained by Association.
3

4 11.5.1 Directors' and Officers' Insurance. The Association shall maintain
5 directors' and officers' liability insurance with limits to be set by the
6 Board but in no event less than One Million Dollars (\$1,000,000) or any
7 higher applicable limit set forth in *Civil Code* section 5800, and
8 containing a cross-liability endorsement and waiver of subrogation as
9 to the Association, the officers, and the directors, and the agents and
10 employees of any of them. Coverage for prior acts, to the extent
11 obtainable, shall be included.
12

13 11.5.2 Workers' Compensation Insurance. The Association shall maintain
14 workers' compensation insurance to the extent necessary to comply
15 with any applicable laws and may carry such insurance at any time as
16 determined by the Board.
17

18 11.5.3 Fidelity Bond. In accordance with *Civil Code* section 5806, unless the
19 Governing Documents require greater coverage amounts, the
20 Association shall maintain crime insurance, employee dishonesty
21 coverage, fidelity bond coverage, or their equivalent, for its directors,
22 officers, and employees (if any) in an amount that is equal to or more
23 than the combined amount of the Association's reserves and total
24 Assessments for three (3) months. The coverage maintained by the
25 Association shall also include protection in an equal amount against
26 computer fraud and funds transferred fraud. If the Association uses a
27 managing agent or management company, the Association's crime
28 insurance, employee dishonesty coverage, fidelity bond coverage, or
29 their equivalent, shall additionally include coverage for, or otherwise be
30 endorsed to provide coverage for, dishonest acts by that person or
31 entity and its employees. Self-insurance does not meet the
32 requirements of this Section 11.5.3.
33

34 11.5.4 Earthquake Insurance. The Association shall maintain earthquake
35 insurance to the extent required by law, and if not required by law, then
36 to the extent available at commercially reasonable rates in the opinion
37 of the Board.
38

39 11.5.5 Other Insurance. The Association may maintain at any time and from
40 time to time any other insurance and bonds as the Board may from
41 time to time deem necessary or desirable.
42

43 11.6 Amount, Term, and Coverage. The amount, term, and coverage of any policy
44 required hereunder (including the type of endorsements, the amount of the
45 deductible, the named insureds, the loss payees, standard Mortgage clauses,
46 notices of changes or cancellations, and the insurance company rating) shall
47 satisfy the minimum requirements imposed for this type of project by the Federal

1 National Mortgage Association (“FNMA”) and the Federal Home Loan Mortgage
2 Corporation (“FHLMC”) or any successor to either of those entities (except for
3 earthquake insurance, the purchase of which shall be within the discretion of the
4 Board, as provided in Section 11.5.4 (“Earthquake Insurance”). If the FNMA or
5 FHLMC requirements conflict, the more stringent requirement shall be met. If
6 FNMA or FHLMC do not impose requirements on any policy required hereunder,
7 the term, amount and coverage of such policy shall be no less than that which is
8 customary for similar policies on similar projects in the area. The Board shall
9 adopt a policy regarding payment of deductibles on any insurance coverage.
10 Unless the Board determines otherwise, the Association shall pay deductibles
11 required under any insurance claims from Association funds, unless insufficient
12 funds are available to the Association from the Association’s accounts or from
13 funds borrowed by the Association in accordance with this Declaration, in which
14 event the Association shall levy a Special Assessment, in accordance with
15 Section 9.7 (“Regular Assessment”) and Section 9.8 (“Special Assessments”) of
16 this Declaration, with respect to the amount of any such deductible which
17 exceeds funds available to the Association from Association funds or from
18 borrowing.

19
20 11.7 Representation for Claims. Each Owner appoints the Association or any
21 insurance trustee designated by the Association to act on behalf of the Owners in
22 connection with all insurance matters arising from any insurance policy
23 maintained by the Association, including without limitation, representing the
24 Owners in any proceeding, negotiation, settlement or agreement.

25
26 11.8 Waiver of Subrogation. Any insurance maintained by the Association shall
27 contain “waiver of subrogation” as to the Association and its officers, directors
28 and Members, the Owners or Residents of the Condominiums and Mortgagees,
29 and, if obtainable, a cross-liability or severability of interest endorsement insuring
30 each insured against liability to each other insured.

31
32 11.9 Policies and Procedures Regarding the Filing and Processing of Claims. The
33 Board shall adopt policies and procedures regarding the filing and processing of
34 claims for damage and destruction of Common Area improvements or any other
35 matters covered by insurance maintained by the Association.

36
37 11.10 Insurance to Be Maintained by Owner. Owners shall have the following
38 obligations and rights to carry individual insurance:

39
40 11.10.1 HO6 Condominium Owner’s Policy. Each Owner shall be responsible,
41 at his or her sole expense, to carry an “HO6 Condominium Owner’s
42 Policy” or the equivalent insurance covering the following risks which
43 are not covered by the insurance policies carried by the Association:

- 44
45 (i) the Owner’s individual liability for damage to property or injury to
46 the person of others occurring within the Unit or the appurtenant
47 Exclusive Use Common Area, in an amount not less than Three

1 Hundred Thousand Dollars (\$300,000) for each occurrence or in
2 such other amount as the Board may establish from time to time
3 by Rule;

- 4
- 5 (ii) property damage to contents and personal property within the
6 Owner's Condominium in such amount as the Owner shall
7 determine is adequate but not less than Seventy Thousand
8 Dollars (\$70,000);
- 9
- 10 (iii) insurance on Owner upgrades and betterments (as discussed
11 below in **Section 11.10.2** ("Insurance for Upgrades")) in such
12 amount as the Owner shall determine is adequate to cover
13 damage to upgrades and betterments to the extent the cost is
14 not covered by the master property insurance policy;
- 15
- 16 (iv) additional living expenses, loss of use, and loss of rental
17 income;
- 18
- 19 (v) loss assessment coverage in an amount not less than Fifty
20 Thousand Dollars (\$50,000); and
- 21
- 22 (vi) insurance to pay the deductible under the blanket insurance
23 policy carried by the Association pursuant to **Section 11.3**
24 ("Hazard Insurance to Be Maintained by Association") in an
25 amount not less than the deductible under that policy or such
26 amount as the Owner shall determine is adequate.

27

28 11.10.2 Insurance for Upgrades. The hazard insurance carried by the
29 Association pursuant to **Section 11.3** ("Hazard Insurance to Be
30 Maintained by Association") is not intended to cover Owner-installed
31 upgrades or betterments to the extent the replacement cost thereof
32 made after the original construction exceeds the replacement cost of
33 the original improvements. Each Owner shall be entitled to separately
34 insure upgrades or betterments made by the Owner to the Unit or the
35 Exclusive Use Common Area. Any such policy shall contain a waiver
36 of subrogation as to any and all claims against the Association, its
37 officers and directors, the manager, and the Owners and a waiver of all
38 defenses based upon acts of the insureds or the existence of co-
39 insurance. Any Owner obtaining such separate insurance shall deposit
40 with the Board a duplicate copy or a certificate of insurance of each
41 such policy.

42

43 11.10.3 No Overlapping Coverage. No Owner shall obtain or maintain any
44 policy of insurance that reduces the amount of coverage under any
45 policy obtained or maintained by the Association pursuant to **Section**
46 **11.3** ("Hazard Insurance to Be Maintained by Association"), **Section**
47 **11.4** ("Commercial General Liability Insurance to Be Maintained by

1 Association”), or **Section 11.5** (“Other Insurance to Be Maintained by
2 Association”). If any Owner violates the provisions of this **Section**
3 **11.10.3**, any diminution in insurance proceeds otherwise payable to
4 the Association that results from the existence of such other insurance
5 will be chargeable to the Owner who acquired such other insurance
6 and each Owner hereby assigns to the Association the proceeds of
7 any such policy to the extent any such decrease in proceeds in fact
8 occurs (such proceeds to be applied pursuant to the Declaration as if
9 produced by the Association’s coverage). Such Owner will be liable to
10 the Association to the extent of any diminution and the Association
11 shall levy a Reimbursement Assessment against such Owner in the
12 amount of such diminution.
13

14 11.10.4 Other Owner-maintained Insurance. Each Owner shall be responsible,
15 at his or her sole cost and expense, to obtain such other insurance as
16 the Owner shall determine is adequate to cover such other risks as the
17 Owner shall determine.
18

19 11.10.5 Evidence of Insurance; No Obligation of Association. Upon request
20 from the Board, each Owner shall provide evidence of such insurance
21 annually. If an Owner fails to obtain any insurance he or she is
22 obligated or permitted to obtain pursuant to this Declaration, nothing in
23 this Declaration shall be construed to impose any obligation
24 whatsoever on the Association to insure that which the Owner does not
25 insure. The right of the Board to request evidence of insurance that an
26 Owner is obligated to carry pursuant to this Declaration shall not be
27 deemed to impose a duty on the Board or the Association to request
28 such evidence of insurance or impose on the Association any liability
29 to any person arising or claimed to arise out of any action or inaction
30 by the Board, the Association or anyone acting on the Association’s or
31 the Board’s behalf with respect to verifying any Owner’s compliance
32 with the Owner’s obligation to carry insurance.
33

34 11.11 HO4 Renter’s Policy. Each Owner who rents or leases a Unit shall require the
35 tenant to purchase and maintain in force during the tenancy an “HO4 Renter’s
36 Policy” or the equivalent with a minimum personal liability limit of Three Hundred
37 Thousand Dollars (\$300,000). If a tenant fails to obtain any insurance he or she
38 is obligated or permitted to obtain pursuant to this Declaration, nothing in this
39 Declaration shall be construed to impose any obligation whatsoever on the
40 Association to insure that which the tenant does not insure. Upon request from
41 the Board, each Owner shall provide evidence of such tenant’s insurance
42 annually.
43

44 11.12 Insurance Proceeds. Proceeds of all insurance policies owned by the
45 Association shall be received by the Association and shall be distributed to the
46 Association, the Owners, and their Mortgagees subject to the provisions of the
47 Declaration as their interest may appear; *provided, however*, that whenever

1 repair or reconstruction is required, the proceeds of any insurance received by
2 the Association as a result of any loss shall be applied to such repair or
3 reconstruction.
4

5 11.13 Responsibility for Payment of Deductible.
6

7 11.13.1 Damage to Common Area. Subject to the provisions of **Section 6.15**
8 (“Owner’s Liability to Association for Negligent Damage”), in the event
9 of damage to the Common Area (including Exclusive Use Common
10 Area) that is covered by the hazard insurance policy maintained by the
11 Association pursuant to **Section 11.3** (“Hazard Insurance to Be
12 Maintained by Association”), the deductible shall be paid by the
13 Association.
14

15 11.13.2 Damage to Unit. In the event of damage to a Unit that is covered by
16 the hazard insurance policy maintained by the Association pursuant to
17 **Section 11.3** (“Hazard Insurance to Be Maintained by Association”),
18 the Owner of the damaged Unit shall pay the deductible. In the event
19 of earthquake damage to a Unit that is covered by an earthquake
20 insurance policy maintained by the Association for the benefit of the
21 Units, the deductible under such earthquake insurance policy shall be
22 assessed as a Reimbursement Assessment equally against all Unit
23 Owners.
24

25 11.13.3 Allocation of Deductible. In the event of a single casualty that results
26 in damage to Common Area and to one (1) or more Units which
27 damage is covered by the hazard insurance carried by the Association
28 pursuant to **Section 11.3** (“Hazard Insurance to Be Maintained by
29 Association”), the obligation to pay the deductible shall be allocated
30 between the Association and the affected Unit Owner(s) in proportion
31 to the claim settlement amount received by each party; *provided,*
32 *however,* if the repair is the result of the willful or negligent act or
33 omission of an Owner and the cost of the repair is covered by
34 insurance carried by the Association, the Association shall make the
35 repairs and the Owner shall pay any deductible payable under the
36 policy. If the Owner fails to make the payment, the Association may
37 make such payment and charge the amount to the responsible Owner
38 as a Reimbursement Assessment pursuant to **Section 9.10**
39 (“Reimbursement Assessments”).
40

41 11.13.4 Tort Damages. Nothing in this **Section 11.13.4** shall be deemed to
42 affect any person’s right to recover the amount of any deductible paid
43 by such person from any other person responsible for the loss under
44 tort or other theories of liability.
45

46 11.14 Owner’s Liability for Conditions Affecting Insurance. As provided in **Section 6.23**
47 (“Conditions Affecting Insurance”), the responsible Unit Owner shall be liable to

1 the Association if anything is done, placed, or kept within the Project that
2 increases the rate of insurance or results in the cancellation of insurance under
3 any insurance policy maintained by the Association.
4

5 11.15 Insurance Carriers. All insurance policies carried by the Association shall be
6 written by companies that are not prohibited from doing business in the State of
7 California.
8

9 11.16 Annual Review of Policies. The limits and coverage of all insurance policies
10 carried by the Association shall be reviewed at least annually by the Board and
11 increased or decreased in its discretion.
12

13 11.17 Coverage Not Available; Disclaimer. In the event any insurance policy or any
14 endorsement listed in Section 11.3 ("Hazard Insurance to Be Maintained by
15 Association"), Section 11.4 ("Commercial General Liability Insurance to Be
16 Maintained by Association"), and Section 11.5 ("Other Insurance to Be
17 Maintained by Association") is for any reason not available, then the Association
18 shall obtain such other or substitute policy or endorsement as may be available
19 which provides, as nearly as possible, the coverage described above. The
20 Association, and its directors and officers, shall have no liability to any Unit
21 Owner if, after good faith effort, it is unable to obtain or maintain the insurance
22 required pursuant to Section 11.3, Section 11.4, or Section 11.5 because the
23 insurance is no longer available or, if available, can be obtained or maintained
24 only at a cost that the Board in its sole discretion determines is unreasonable
25 under the circumstances, or the Members fail to approve any Special
26 Assessment or increase in the Regular Assessment needed to fund the
27 insurance premiums. In accordance with *Civil Code* section 5810, as soon as
28 reasonably practicable, the Association shall notify the Members by Individual
29 Notice if any of the policies described in Section 7.5.9 of the Bylaws ("Summary
30 of Association's Insurance Policies") have lapsed or been canceled, and are not
31 immediately renewed, restored, or replaced, or if there is a significant change,
32 such as a reduction in coverage or limits or an increase in the deductible for any
33 of those policies. If the Association receives any notice of non-renewal of a
34 policy described in Section 7.5.9 of the Bylaws and replacement coverage will
35 not be in effect by the date the existing coverage will lapse, the Association shall
36 immediately notify the Members by Individual Notice.
37

38 11.18 Copies of Policies. Copies of all Association insurance policies (or certificates of
39 insurance) and paid invoices showing that premiums have been paid shall be
40 retained by the Association and shall be available for inspection by Owners at
41 any reasonable time.
42

43 11.19 Adjustment of Losses. The Board is appointed attorney-in-fact by each Owner to
44 file all claims and to negotiate and agree on the value and extent of any loss
45 under any policy carried by the Association pursuant to Section 11.3 ("Hazard
46 Insurance to Be Maintained by Association"), Section 11.4 ("Commercial General
47 Liability Insurance to Be Maintained by Association"), or Section 11.5 ("Other

1 Insurance to Be Maintained by Association. The Board is granted full right and
2 authority to compromise and settle any claims or enforce any claim by legal
3 action or otherwise and to execute releases in favor of any insured.
4
5

6 **ARTICLE 12 DAMAGE OR DESTRUCTION; CONDEMNATION**
7

8 12.1 Damage or Destruction. If Project improvements are damaged or destroyed by
9 fire or other casualty, the improvements shall be repaired or reconstructed
10 substantially in accordance with the original as-built plans and specifications,
11 modified as may be required by applicable building codes and regulations in
12 force at the time of such repair or reconstruction and subject to such alterations
13 or upgrades as may be approved by the Board, unless either of the follow occurs:
14 (1) the cost of repair or reconstruction is more than fifty percent (50%) of the
15 current replacement costs of all Project improvements, available insurance
16 proceeds are not sufficient to pay for at least eighty-five percent (85%) of the cost
17 of such repairs or reconstruction, and three-fourths (3/4) of the Total Voting
18 Power of the Association residing in Members and their First Mortgagees vote
19 against such repair and reconstruction; or (2) available insurance proceeds are
20 not sufficient to substantially repair or reconstruct the improvements within a
21 reasonable time as determined by the Board, a Special Assessment levied to
22 supplement the insurance fails to receive the requisite approval (if such approval
23 is required) as provided in **Section 9.8.2** ("Permitted Amount of Special
24 Assessments") and the Board, without the requirement of approval by the
25 Owners, is unable to supplement the insurance by borrowing on behalf of the
26 Association sufficient monies to enable the improvements to be substantially
27 repaired or reconstructed within a reasonable time.
28

29 12.2 Process for Repair or Reconstruction. If the improvement is to be repaired or
30 reconstructed and the cost for repair or reconstruction is in excess of twenty-five
31 percent (25%) of the current replacement cost of all the Project improvements,
32 the Board shall designate a construction consultant, a general contractor, and an
33 architect for the repair or reconstruction. All insurance proceeds, Association
34 monies allocated for the repair or reconstruction, and any borrowings by the
35 Association for the repair or reconstruction shall be deposited with a commercial
36 lending institution experienced in the disbursement of construction loan funds
37 (the "depository") as selected by the Board. Funds shall be disbursed in
38 accordance with the normal construction loan practices of the depository that
39 require as a minimum that the construction consultant, general contractor and
40 architect certify within ten (10) days prior to any disbursement substantially the
41 following:
42

- 43 (a) That all of the work completed as of the date of such request for
44 disbursement has been done in compliance with the approved plans and
45 specifications;
46

- 1 (b) That such disbursement request represent monies which either have been
2 paid by or on behalf of the construction consultant, the general contractor
3 or the architect and/or are justly due to contractors, materialmen,
4 engineers, or other persons (whose name and address shall be stated)
5 who have rendered or furnished certain services or materials for the work
6 and giving a brief description of such services and materials and the
7 principal subdivisions or categories thereof and the respective amounts
8 paid or due to each of said persons in respect thereof and stating the
9 progress of the work up to the date of said certificate;
10
11 (c) That the sum then requested to be disbursed plus all sums previously
12 disbursed does not exceed the cost of the work insofar as actually up to
13 the date of such certificate;
14
15 (d) That no part of the cost of the services and materials described in the
16 foregoing **Section 12.1** ("Damage or Destruction") has been or is being
17 made the basis for the disbursement of any funds in any previous or then
18 pending application; and
19
20 (e) That the amount held by the depository, after payment of the amount
21 requested in the pending disbursement request, will be sufficient to pay in
22 full the costs necessary to complete the repair or reconstruction.
23

24 If the cost of repair or reconstruction is less than twenty-five percent (25%) of the
25 current replacement cost of all the Project improvements, the Board shall
26 disburse the available funds for the repair and reconstruction under such
27 procedures as the Board deems appropriate under the circumstances.
28

29 The repair or reconstruction shall commence as soon as reasonably practicable
30 after the date of such damage or destruction and shall be completed as quickly
31 as is reasonably practicable after commencement of reconstruction, subject to
32 delays that are beyond the control of the party responsible for making the repairs.
33 The Owner of the damaged or destroyed improvement immediately shall take
34 such steps as may be reasonably necessary to secure any hazardous condition
35 and to screen any unsightly views resulting from the damage or destruction.
36

37 **12.3 Process if Repair or Reconstruction Not Undertaken.** If the improvements are
38 not repaired or reconstructed in accordance with the foregoing all available
39 insurance proceeds shall be disbursed among the Owners of the damaged Units
40 and their respective Mortgagees in proportion to the respective fair market values
41 of their Condominiums as of the date immediately preceding the date of damage
42 or destruction as determined by a qualified independent appraiser selected by
43 the Board, after first applying the proceeds to the cost of mitigating hazardous
44 conditions on the Project, making provision for the continuance of public liability
45 insurance to protect the interests of the Owners until the Project can be sold, and
46 complying with all other applicable requirements of governmental agencies. In

1 the event of a failure to agree upon an appraiser, the appraiser shall be
2 appointed by the then President of the San Mateo County Bar Association.
3

4 12.4 Material Alteration Resulting from Failure to Repair or Reconstruct. If the failure
5 to repair or reconstruct results in a material alteration of the use of the Project
6 from its use immediately preceding the damage or destruction by the Board (a
7 material alteration shall be conclusively presumed if repair or reconstruction
8 costs exceed twenty-five percent (25%) of the current replacement cost of all
9 Project improvements), the Project shall be sold in its entirety under such terms
10 and conditions as the Board deems appropriate. If any Owner or First Lender
11 disputes the Board's determination as to a material alteration, the dispute shall
12 be submitted to arbitration pursuant to the rules of the American Arbitration
13 Association, and the decision of the arbitrator shall be conclusive and binding on
14 all Owners and their Mortgagees.
15

16 12.5 Proceeds of Sale. If the Project is sold, the sales proceeds shall be distributed to
17 all Owners and their respective Mortgagees in proportion to their fair market
18 values of their Condominiums as of the date immediately preceding the date of
19 damage or destruction as determined by the independent appraisal procedure
20 described above. For the purpose of effecting a sale under this **Section 12.5**,
21 each Owner grants to the Association an irrevocable power of attorney to sell the
22 entire Project for the benefit of the Owners, to terminate the Declaration and to
23 dissolve the Association. In the event the Association fails to take the necessary
24 steps to sell the entire Project as required hereunder within sixty (60) days
25 following the date of a determination by the Board or arbitrator of a material
26 alteration, or if within one hundred twenty (120) days following the date of
27 damage or destruction the Board has failed to make a determination as to a
28 material alteration, any Owner may file a partition action as to the entire Project
29 under *Civil Code* section 4610, or any successor statute, and the court shall
30 order partition by sale of the entire Project and distribution of the sale proceeds
31 as provided herein.
32

33 12.6 Owner's Right of First Refusal. Notwithstanding anything herein to the contrary,
34 any Owner or group of Owners shall have a right of first refusal to match the
35 terms and conditions of any offer made to the Association in the event of a sale
36 of the Project under this **Section 12.6** provided this right is exercised within ten
37 (10) days of receipt by the Owners of a notice from the Association containing
38 the terms and conditions of any offer it has received. If the Owner or group of
39 Owners subsequently default on their offer to purchase, they shall be liable to the
40 other Owners and their respective Mortgagees for any damages resulting from
41 the default. If more than one (1) Owner or group elects to exercise this right, the
42 Board shall accept the offer that in its determination is the best offer.
43

44 12.7 Condemnation. The Association shall represent the Owners in any
45 condemnation proceeding or in negotiations, settlements and agreements with
46 the condemning authority of the Common Area(s), or part thereof. In the event of
47 a taking or acquisition of part or all of the Common Area(s) by a condemning

1 authority, the award or proceeds of settlement shall be payable to the
2 Association, or any trustee appointed by the Association, for the use and benefit
3 of the Owners and their Mortgagees as their interests may appear. In the event
4 of an award for the taking of any Condominium in the Project by eminent domain,
5 the Owner of such Condominium shall be entitled to receive the award for such
6 taking and after acceptance thereof he or she and his or her Mortgagee shall be
7 divested of all interest in the Project if such Owner shall vacate his or her
8 Condominium as a result of such taking. The remaining Owners shall decide by
9 majority vote whether to rebuild or repair the Project, or take other action. The
10 remaining portion of the Project shall be resurveyed, if necessary, and the
11 Declaration shall be amended to reflect such taking and to readjust
12 proportionately the percentages of undivided interest of the remaining Owners in
13 the Project. In the event of a taking by eminent domain of any part of the
14 Common Area, the Association shall participate in the negotiations, and shall
15 propose the method of division of the proceeds of condemnation, where
16 Condominiums are not valued separately by the condemning authority or by the
17 court. Proceeds of condemnation shall be distributed among Owners of
18 Condominiums and their respective Mortgagees according to the relative values
19 of the Condominiums affected by the condemnation, said values to be
20 determined by the method provided in this **Article 12**.

21
22 If there is a substantial taking of the Project (more than fifty percent (50%)), the
23 Owners may terminate the legal status of the Project and, if necessary, bring a
24 partition action under *Civil Code* section 4610 or any successor statute, on the
25 election to terminate by fifty-one percent (51%) of the Total Voting Power of the
26 Association and the approval of Eligible Mortgage Holders holding Mortgages on
27 Condominiums which have at least fifty-one percent (51%) of the votes of
28 Condominiums subject to Eligible Mortgages. The proceeds from the partition
29 sale shall be distributed to the Owners and their respective Mortgagees in
30 proportion to the fair market values of their Condominiums as determined under
31 the method described in this **Article 12**.

32 33 34 **ARTICLE 13 RIGHTS OF MORTGAGEES**

35
36 13.1 Rights of First Mortgagees. No breach of any of the covenants, conditions and
37 restrictions herein contained, nor the enforcement of any lien provisions herein,
38 shall render invalid the lien of any First Mortgagee (meaning a Mortgagee of a
39 Mortgage with first priority over any other Mortgage) on any Condominium made
40 in good faith and for value, but all of said covenants, conditions and restrictions
41 shall be binding upon and effective against any Owner whose title is derived
42 through Foreclosure or trustee's sale, or otherwise. Notwithstanding any
43 provision in the Condominium Documents to the contrary, First Mortgagees shall
44 have the following rights.
45

1 13.1.1 Copies of Project Documents. The Association shall make available to
2 Condominium Owners and First Mortgagees, and to holders, insurers
3 or guarantors of any First Mortgage, current copies of the Declaration,
4 Bylaws, Articles or other Rules concerning the Project and the books,
5 records and financial statements of the Association. "Available" means
6 available for inspection, upon request, during normal business hours or
7 under other reasonable circumstances. The Board may impose a fee
8 for providing the foregoing which may not exceed the reasonable cost
9 to prepare and reproduce the requested documents.

10
11 13.1.2 Audited Financial Statement. Any holder, insurer or guarantor of a
12 First Mortgage shall be entitled, upon written request, to an audited
13 financial statement for the immediately preceding fiscal year, free of
14 charge to the party so requesting. Such statement shall be furnished
15 within one hundred twenty (120) days of the Association's fiscal year-
16 end.

17
18 13.1.3 Notice of Action. Upon written request to the Association, identifying
19 the name and address of the Eligible Mortgage Holder or Eligible
20 Insurer or Guarantor, and the Condominium number or address, such
21 Eligible Mortgage Holder or Eligible Insurer or Guarantor will be
22 entitled to timely written notice of:

- 23
24 (i) any condemnation loss or any casualty loss which affects a
25 material portion of the Project or any Condominium on which
26 there is a First Mortgage held, insured, or guaranteed by such
27 Eligible Mortgage Holder or Eligible Insurer or Guarantor, as
28 applicable;
- 29
30 (ii) any default in performance of obligations under the Project
31 Documents or delinquency in the payment of Assessments or
32 charges owed by an Owner of a Condominium subject to a First
33 Mortgage held, insured or guaranteed by such Eligible Mortgage
34 Holder or Eligible Insurer or Guarantor, which remains uncured
35 for a period of sixty (60) days;
- 36
37 (iii) any lapse, cancellation or material modification of any insurance
38 policy or fidelity bond maintained by the Association;
- 39
40 (iv) any proposed action which would require the consent of a
41 specified percentage of Eligible Mortgage Holders as specified
42 in **Section 13.1.4** ("Consent to Action").

43
44 The Association shall discharge its obligation to notify Eligible
45 Mortgage Holder or Eligible Insurer or Guarantors by sending written
46 notices required herein to such parties, at the address given on the
47 current request for notice.

1
2 13.1.4 Consent to Action.
3

4 (i) except as provided by statute or by other provision of the
5 Governing Documents in case of substantial destruction or
6 condemnation of the Project, and further excepting any
7 reallocation of interests in the Common Area(s) which might
8 occur pursuant to any plan of expansion or phased development
9 contained in the original Project Documents:

10
11 A) the consent of Owners of Condominiums to which at
12 least sixty-seven percent (67%) of the votes in the
13 Association are allocated and the approval of Eligible
14 Mortgage Holders holding Mortgages on
15 Condominiums which have a least fifty-one percent
16 (51%) of the votes of Condominiums subject to Eligible
17 Mortgages, shall be required to terminate the legal
18 status of the Project as a Condominium Project;
19 *provided, however,* that if termination is for reasons
20 other than substantial destruction or condemnation, the
21 agreement of Eligible Mortgage Holders representing at
22 least sixty-seven percent (67%) of the votes of the
23 Mortgaged Unit is required.
24

25 B) the consent of Owners of Condominiums to which at
26 least sixty-seven percent (67%) of the votes in the
27 Association are allocated and the approval of Eligible
28 Mortgage Holders holding Mortgages on Units which
29 have at least fifty-one percent (51%) of the votes of the
30 Condominiums subject to Eligible Mortgages, shall be
31 required to add or amend any material provisions of the
32 Project Documents which establish, provide for, govern
33 or regulate any of the following: (i) voting rights; (ii)
34 increases in Assessments that raise the previously
35 assessed amount by more than twenty-five percent
36 (25%), Assessment Liens, or the priority of Assessment
37 Liens; (iii) reductions in reserves for maintenance,
38 repair, and replacement of Common Areas; (iv)
39 responsibility for maintenance and repairs; (v)
40 reallocation of interests in the general or Restricted
41 Common Areas, or rights to their use; (vi) convertibility
42 of Units into Common Areas or vice versa; (vii)
43 expansion or contraction of the Project, or the addition,
44 annexation, or withdrawal of property to or from the
45 Project; (viii) hazard or fidelity insurance requirements;
46 (ix) imposition or any restrictions on the leasing of
47 Units; (x) imposition of any restrictions on an Owner's

1 right to sell or transfer his or her Unit; (xi) restoration or
2 repair of the Project (after damage or partial
3 condemnation) in a manner other than that specified in
4 the Project Documents; or (xii) any provisions that
5 expressly benefit Mortgage holders, insurers, or
6 guarantors;

7
8 C) an Eligible Mortgage Holder who receives a written
9 request to approve additions or amendments who does
10 not deliver or post to the requesting party a negative
11 response within thirty (30) days after the notice of the
12 proposed addition or amendment shall be deemed to
13 have approved such request, provided the notice has
14 been delivered to the Mortgage holder by certified or
15 registered mail, return receipt requested.

16
17 (ii) except as provided by statute in case of condemnation or
18 substantial loss to the Condominiums and/or common elements
19 of the Project, unless the holder(s) of at least two-thirds (2/3) of
20 the First Mortgages (based upon one (1) vote for each First
21 Mortgage owned), or Owners of the individual Condominiums
22 have given their prior written approval, the Association and/or
23 the Owners shall not be entitled to:

24
25 A) by act or omission, seek to abandon or terminate the
26 Condominium Project (except for abandonment or
27 termination provided by law in the case of substantial
28 destruction by fire or other casualty or in the case of a
29 taking by condemnation or eminent domain);

30
31 B) change the pro rata interest or obligations of any
32 individual Condominium for the purpose of: (i) levying
33 Assessments or charges or allocating distributions of
34 hazard insurance proceeds or condemnation awards; or
35 (ii) determining the pro rata share of ownership of each
36 Condominium in the Common Area, provided that no
37 Owner's undivided interest in the Common Area may
38 be changed without the consent of that Owner;

39
40 C) partition or subdivide any Condominium Unit;

41
42 D) by act or omission, seek to abandon, partition,
43 subdivide, encumber, sell or transfer the Common
44 Area. (The granting of easements for public use or for
45 other public purposes consistent with the intended use
46 of the Common Area by the Condominium Project shall

1 not be deemed a transfer within the meaning of this
2 clause);

3
4 E) use hazard insurance proceeds for losses to any of the
5 Project (whether to Units or to Common Area) for other
6 than the repair, replacement or reconstruction of such
7 Project.

8
9 13.1.5 Right of First Refusal. The right of an Owner to sell, transfer, or
10 otherwise convey his or her Condominium shall not be subject to any
11 right of first refusal or similar restriction.

12
13 13.1.6 Contracts. Any agreement for professional management of the
14 Project, or lease or any other contract providing for services of the
15 developer, sponsor, or builder, may not exceed one (1) year. Any
16 agreement, contract, or lease must provide for termination by either
17 party for cause on thirty (30) days' written notice, or without cause and
18 without payment of a termination fee or penalty on ninety (90) days' or
19 less written notice.

20
21 13.1.7 Reserves. Condominium dues or charges shall include an adequate
22 reserve fund for maintenance, repairs, and replacement of those
23 improvements which the Association is obligated to maintain and that
24 must be replaced on a periodic basis, and shall be payable in
25 installments of Regular Assessments, rather than by Special
26 Assessments.

27
28 13.1.8 Priority of Liens. Any Assessment Lien created under the provisions of
29 this Declaration is expressly made subject and subordinate to the lien
30 and encumbrance of any First Mortgage that encumbers all or any
31 portion of the Project, or any Unit. Each First Lender who comes into
32 possession of the Condominium by virtue of Foreclosure of the
33 Mortgage, or any purchaser at a Foreclosure, will take the
34 Condominium free of any claims for unpaid Assessments and fees,
35 late charges, fines or interest levied in connection with such claims,
36 against the Condominium which accrue prior to the time such First
37 Lender or purchaser at a Foreclosure takes title to the Condominium,
38 except for claims for a pro rata share of such Assessments or charges
39 to all Condominiums including the mortgaged Condominium, and
40 except for Assessment Liens as to which a notice of delinquent
41 assessment has been recorded prior to the Mortgage.

42
43 13.1.9 Distribution of Insurance or Condemnation Proceeds. No provision of
44 the Condominium Documents gives an Owner, or any other party,
45 priority over any rights of First Mortgagees in case of a distribution to
46 Owners of insurance proceeds or condemnation awards for losses to
47 or taking of Condominiums and/or Common Area.

1
2 13.1.10 Status of Loan to Facilitate Resale. Any First Mortgage given to
3 secure a loan to facilitate the resale of a Condominium after acquisition
4 by foreclosure or by a deed in lieu of foreclosure or by an assignment
5 in lieu of foreclosure, shall be deemed to be a loan made in good faith
6 and for value and entitled to all of the rights and protections of
7 Mortgages under this Declaration.

8
9 13.1.11 Right to Appear at Meeting. Any Eligible Mortgage Holder may appear
10 (but cannot vote) at meetings of Owners and the Board to draw
11 attention to violations of this Declaration that have not been corrected
12 or that have been made the subject of remedial proceedings or
13 Assessments.
14

15
16 **ARTICLE 14 ENFORCEMENT; NOTICE; HEARINGS**
17

18 14.1 Violations As Nuisance. Every act or omission constituting or resulting in a
19 violation of any of the provisions of the Governing Documents shall be deemed to
20 constitute a nuisance and, in addition to any other remedies which may be
21 available, such nuisance may be abated or enjoined by the Association or its
22 officers or Board of Directors or by any Owner; *provided, however*, that the Board
23 shall not be obligated to take action to abate or enjoin a particular violation if, in
24 the exercise of its discretion, the Board determines that acting to abate or enjoin
25 such violation is not likely to foster or protect the interests of the Association and
26 its Members as a whole. Notwithstanding the preceding sentence and without
27 limiting the generality of the proviso therein, nothing in the Governing Documents
28 shall be deemed to impose upon the Association, the Board, or the officers,
29 employees, or agents of the Association a duty to intervene in any physical
30 dispute or altercation or any criminal or alleged criminal activity other than to
31 notify law enforcement officials.
32

33 14.2 Violation of Law Is a Violation of the Declaration. Any violation of a state,
34 municipal, or local law, ordinance or regulation pertaining to the ownership,
35 occupancy, or use of any property within the Project is hereby declared to be a
36 violation of this Declaration and subject to any and all of the enforcement
37 procedures set forth herein.
38

39 14.3 Owner's Responsibility for Conduct and Damages. Each Owner shall be fully
40 responsible for informing members of his or her household, Contract Purchasers,
41 tenants, invitees, and guests of the provisions of the Governing Documents, and
42 shall be fully responsible for the conduct, activities, and any Governing
43 Document violation of any of them, and for any damage to the Project or the
44 Association resulting from the negligent or intentional conduct of any of them or
45 the conduct of any pet belonging to any of them. If a Condominium is owned
46 jointly by two (2) or more persons, the liability of each Owner in connection with

1 the obligations imposed by the Governing Documents shall be joint and several;
2 that is, each co-Owner individually shall be fully liable and responsible and all co-
3 Owners collectively shall be fully liable and responsible. The foregoing
4 provisions of this **Section 14.3** are in addition to and shall not limit the generality
5 of the provisions of **Section 6.10.2** (“Indemnification Regarding Business
6 Activity”), **Section 6.25** (“Animals”), and **Section 8.11** (“Disclaimer of Liability”).
7

8 14.4 No Avoidance. No Owner may avoid the burdens or obligations imposed by the
9 Governing Documents through non-use of any Common Area facilities or by
10 abandonment of his or her Unit.
11

12 14.5 Enforcement Rights Are Cumulative. To the fullest extent permitted by law,
13 including *Civil Code* section 5975, the Association, its directors, officers, or
14 agents, and any Owner shall have the right to enforce any and all provisions of
15 the Governing Documents by any proceeding at law or in equity, or, with respect
16 to action by the Association, through the use of such other remedies (including
17 self-help remedies that do not breach the peace or otherwise violate applicable
18 law or this Declaration) as are available and deemed appropriate by the Board.
19 Each remedy provided is cumulative and not exclusive.
20

21 14.6 Injunctions. Except for the non-payment of any Assessment levied pursuant to
22 the provisions of this Declaration, it is hereby declared that a remedy at law to
23 recover damages for a default in the performance of any of the terms and
24 provisions of any of the Governing Documents or for the breach or violation of
25 any such provisions is inadequate and that the failure of any Owner, Contract
26 Purchaser, member of his or her household, tenant, invitee, guest, or household
27 pets or any other Resident or user of any of the property within the Project to
28 comply with any provision of the Governing Documents may be enjoined in any
29 judicial proceedings initiated by the Association, its officers or Board of Directors,
30 or by any Owner or by their respective successors in interest.
31

32 14.7 Limitation on Association’s Disciplinary Rights. To the extent provided in *Civil*
33 *Code* section 4510, the Association shall not have the power and authority to
34 cause a forfeiture or abridgment of an Owner’s right to the full use and
35 occupancy of his or her Unit as the result of the failure by such Owner, members
36 of his or her household, Contract Purchaser, tenants, invitees, guests or pets to
37 comply with any provision of the Governing Documents, except where such
38 forfeiture or abridgment is the result of the judgment of a court of competent
39 jurisdiction, a decision arising out of an arbitration proceeding, or a foreclosure or
40 sale under private power of sale for failure of such Owner to pay Assessments
41 levied by the Association pursuant to this Declaration and except to the extent of
42 the Association’s rights pursuant to **Section 9.15.3** (“Owner’s Right to Discuss
43 Payment Plan”). The provisions of this **Section 14.7** shall not affect the
44 Association’s right to impose other sanctions including imposing Enforcement
45 Assessments as provided in **Section 14.8** (“Imposing Sanctions”).
46

1 14.8 Imposing Sanctions. Upon an explicit finding and for reasons specified by the
2 Board following a hearing called by the Board and conducted in accordance with
3 this **Article 14**, the Board shall have the power to impose sanctions on a Member
4 who is in default in the payment of any Assessment or Additional Charge levied
5 by the Board or is found to be in violation of any provision of the Governing
6 Documents. Sanctions may include loss of good standing, suspension of other
7 rights, and/or monetary penalties (fines), as described below.

8
9 14.8.1 Loss of Good Standing. The Board may suspend a Member's good
10 standing for so long as the Member remains in default of such payment
11 or until the violation is remedied. When a Member is not in good
12 standing, the Member (or in the case of a Member that is not a natural
13 person, its representative, shall be disqualified from serving on the
14 Board.

15
16 14.8.2 Monetary Penalties (Fines). The Board may adopt a policy imposing
17 monetary penalties or fines as Enforcement Assessments in
18 accordance with a schedule of fines adopted by the Board pursuant to
19 *Civil Code* section 5850 and distributed to the Members in the annual
20 policy statement pursuant to *Civil Code* section 5310. Multiple fines
21 may be imposed for multiple violations. The schedule of fines may be
22 changed by the Board by a Rule change pursuant to *Civil Code* section
23 4360.

24
25 14.8.3 Monthly Sanctions for Continuing Violations. In the case of a
26 continuing violation, such as an uncorrected architectural violation,
27 where an Owner fails to remedy the violation after notice from the
28 Board to do so, the Board may impose sanctions, including monetary
29 penalties, such sanctions to remain in effect for a period of one (1)
30 month or until the continuing violation is remedied, whichever occurs
31 sooner. (By way of example and not limitation, a violation in the nature
32 of parking every day in a prohibited parking space would *not* constitute
33 a "continuing violation" but each instance would constitute a separate
34 violation.) If the continuing violation has not been remedied within the
35 one-month period, the Board may impose separate and successive
36 sanctions for the continuing violation, provided the Board conducts a
37 separate hearing, not more frequently than once a month, before
38 imposing each successive sanction. The Board may limit the scope of
39 such hearing to facts and circumstances occurring subsequent to the
40 previous hearing relating to the subject continuing violation.

41
42 14.8.4 Reimbursement Assessment Not a Sanction. The imposition of a
43 Reimbursement Assessment pursuant to the Declaration does not
44 constitute and shall not be deemed to be a sanction.

45
46 14.9 Investigation of Complaints. Upon receipt of a written complaint from an Owner
47 or a Resident, the Board shall conduct an investigation of the allegations in the

1 complaint and shall make relevant findings upon which the Board shall base a
2 decision to pursue or not pursue the matter. If the Board decides not to pursue a
3 matter, it shall notify the complaining party in writing stating the reason(s) for its
4 decision.

5
6 14.10 Written Notice of Violation. If the Board determines, whether on its own initiative
7 or pursuant to a written complaint, that a violation of the Governing Documents
8 exists or has occurred, it shall notify the responsible Owner(s) by written notice in
9 compliance with **Section 14.11** (“Notices: Content, Delivery”).

10
11 14.11 Notices: Content, Delivery. Any notice of violation required or given under this
12 **Article 14.11** shall be in writing and shall comply with *Civil Code* section 5855 as
13 to content and time of service and *Civil Code* section 4040 as to method of
14 service.

15
16 14.11.1 Content of Notice of Violation. Any notice given by the Association to a
17 Member shall comply with *Civil Code* section 5855 and, at a minimum,
18 set forth a brief description of the act or omission constituting the
19 alleged violation of the Governing Documents; a reference to the
20 specific Governing Document provision or provisions alleged to have
21 been violated; if applicable, a statement that the Member may request
22 a hearing by the Board; the date, time, and location of any hearing
23 called by the Board; and any sanction, disciplinary action, or other
24 enforcement action being contemplated by the Board.

25
26 14.11.2 Delivery of Notice. Any notice may be given by any method provided
27 for in *Civil Code* section 4040; *provided, however*, that (i) if notice is
28 given by mail, it shall be sent postage prepaid by United States first-
29 class mail and/or by certified mail, return-receipt requested; and (ii) if
30 given by the Association to a Member, it shall be sent to the most
31 recent address for the affected Member as shown on the records of the
32 Association. Pursuant to *Civil Code* section 4050, if sent by United
33 States mail, such notice shall be deemed delivered upon deposit in the
34 United States mail, postage prepaid. If such notice is sent by
35 electronic means, delivery is complete at the time of the transmission,
36 as set forth in *Civil Code* section 4050.

37
38 14.11.3 Owner’s Address for Notice. It shall be each Owner’s responsibility to
39 notify the Association in writing of any change in the Owner’s address
40 for the purpose of receiving notices from the Association. The fact that
41 a different address appears on correspondence to the Association from
42 an Owner shall not constitute such written notice, unless it is expressly
43 stated that such address is a change of address for the purpose of
44 receiving notice from the Association. Upon transfer of title to a
45 Condominium, the transferee shall be responsible for notifying the
46 Association of such transfer. The notification shall set forth the
47 address of the Condominium, the names of the transferee and the

1 transferor, and the date of sale or other transfer. Prior to receipt of
2 such notification, any and all communications required or permitted to
3 be given by the Association or the Board to the Condominium Owner
4 shall be deemed to be duly made and given to the transferee if duly
5 and timely made and given to the person shown as the Owner of the
6 Condominium and at the address in the Association's records.
7

8 14.11.4 Notice to Co-Owners or Occupants. Unless otherwise provided by law,
9 when a Unit is owned by two (2) or more co-Owners or is occupied by
10 two or more Residents, notice to one (1) Owner or to one (1) Resident
11 shall be deemed notice to all Owners or to all occupants, as the case
12 may be.
13

14 14.12 Hearing Called by the Board; Executive Session; Open Meeting. To the extent
15 required by *Civil Code* section 5855, whenever the Board determines to conduct
16 a hearing, it shall notify the affected Owner(s) and/or Resident(s) in writing by
17 Individual Delivery, at least ten (10) days before the Board meeting at which the
18 matter will be considered. If the matter concerns Member discipline or the
19 imposition of sanctions, the Board shall meet in executive session if requested by
20 the Member, unless (and then only to the extent) applicable law requires that
21 certain actions by the Board be conducted at an open meeting of the Board, such
22 as *Civil Code* section 5673 concerning a decision to record a lien for delinquent
23 Assessments. If the matter concerns compliance with architectural approval
24 requirements, the hearing shall be conducted in open meeting pursuant to *Civil*
25 *Code* section 4765. In the Board's discretion, other interested person(s) may
26 attend a hearing and may present information relevant to the subject matter of
27 the hearing. If a notified Owner or Resident fails to attend a noticed hearing, the
28 Board may nevertheless conduct its deliberations and make a determination
29 based on its own investigation and any other information supplied to it that the
30 Board deems reasonably reliable.
31

32 14.13 Owner's Request for Hearing. An Owner who has received a notice of violation
33 sent pursuant to **Section 14.10** ("Written Notice of Violation") or a notice of
34 corrective action sent pursuant to **Section 14.15** ("Enforcement by Association in
35 Emergency Situations") or as otherwise provided in the Governing Documents,
36 may request a hearing before the Board by submitting a written request to the
37 Board. If an Owner is requesting a meeting to discuss a payment plan for a past
38 due debt owed to the Association, the meeting shall be scheduled and conducted
39 as provided in **Section 9.15.3** ("Owner's Right to Discuss Payment Plan"). If the
40 Owner is requesting a hearing concerning a notice of violation sent pursuant to
41 **Section 14.10** or a notice of corrective action sent pursuant to **Section 14.15**, the
42 request for hearing must be submitted within ten (10) days after the date of such
43 notice. The Board shall schedule a hearing at its next regular meeting that is at
44 least five (5) days after its receipt of an Owner's request for hearing or, in the
45 Board's discretion, at another time agreed by the Board and the Owner.
46 Hearings shall be conducted in executive session or at an open meeting as

1 provided in **Section 14.12** (“Hearing Called by the Board; Executive Session;
2 Open Meeting”).
3

4 **14.14 Notice of Hearing Decisions.** Within fifteen (15) days after a hearing is
5 conducted, the Board shall notify the Owner or Resident in writing as to its
6 decision. If the Board decides to impose sanctions, the notice shall describe the
7 sanctions imposed and, if applicable, their effective dates.
8

9 **14.15 Enforcement by Association in Emergency Situations.**

10
11 **14.15.1 Definition of Emergency Situation.** For purposes of this **Section 14.15**,
12 the following shall constitute emergency situations:
13

- 14 (i) an immediate and unreasonable infringement of or threat to the
15 safety or peaceful enjoyment of Residents of the Project,
16
17 (ii) a traffic or fire hazard,
18
19 (iii) a threat of material damage to or destruction of the Project or
20 any portion thereof,
21
22 (iv) a violation of any provision of the Governing Documents that is
23 of such a nature that there is no material question regarding the
24 identity of the violator or whether the violation has occurred
25 (such as parking violations).
26

27 **14.15.2 Immediate Corrective Action.** Notwithstanding any other provisions of
28 the Governing Documents, under circumstances that constitute an
29 emergency, the Board or its duly-authorized agents may undertake
30 immediate corrective action. The Board shall promptly thereafter send
31 written notice of the corrective action to the affected Owner including
32 notice of any Reimbursement Assessment assessed to the Owner for
33 costs incurred by the Association in connection therewith. If the Owner
34 requests a hearing pursuant to **Section 14.13** (“Owner’s Request for
35 Hearing”), enforcement of any Reimbursement Assessment imposed
36 by the Board shall be held in abeyance and shall be pursued only if
37 affirmed by the Board at the hearing.
38

39 **14.16 Internal Dispute Resolution.**

40
41 **14.16.1 Fair, Reasonable, and Expeditious Procedure.** The provisions of
42 **Article 8** (“Architectural and Unit Remodeling Considerations”) and of
43 **Section 14.9** (“Investigation of Complaints”) through **Section 14.15**
44 (“Enforcement by Association in Emergency Situations”) are intended
45 to provide a fair, reasonable, and expeditious procedure for resolving
46 disputes between the Association and any Member that are subject to
47 *Civil Code* sections 5900 through 5920 (which apply to, among other

1 things, enforcement of applicable provisions of the *Corporations Code*
2 and enforcement of the Governing Documents). The above-
3 referenced provisions of the Declaration shall constitute the
4 Association's "internal dispute resolution" process as required by *Civil*
5 *Code* section 5905.

6
7 14.16.2 Statutory Default Procedures. If the Association shall fail to comply
8 with the Association's internal dispute resolution process, then the
9 Association and the affected Member shall abide by the statutory
10 default procedures provided in *Civil Code* section 5915, or successor
11 statute. Any resolution so agreed upon by the parties thereto, that is
12 not in conflict with the law or the Governing Documents, shall bind the
13 parties and shall be judicially enforceable as provided in *Civil Code*
14 section 5910.

15
16 14.16.3 Alternative Dispute Resolution May Also Apply. If (a) the subject
17 matter of the dispute (including, among other things, enforcement of
18 applicable provisions of the *Corporations Code* and enforcement of the
19 Governing Documents) and the remedy sought (including certain kinds
20 of declaratory, injunctive, or writ relief, which may be in conjunction
21 with certain limited monetary relief, but excluding small claims actions
22 and excluding Assessment disputes) are subject to *Civil Code* sections
23 5925 through 5965 and (b) the Association and the affected Member
24 do not agree on a resolution through the foregoing internal dispute
25 resolution process provided for in **Section 14.16.1** ("Fair, Reasonable,
26 and Expeditious Procedure"), then no party to the dispute may pursue
27 a civil remedy that is subject to *Civil Code* sections 5925 through 5965,
28 without first complying with the "alternative dispute resolution"
29 (hereinafter, "ADR") procedures set forth in that statute and referenced
30 in **Section 14.17** ("Alternative Dispute Resolution Before Initiating
31 Lawsuit").
32

33 14.16.4 Annual Description of Internal Dispute Resolution Process. The
34 Association shall annually provide the Members with a description of
35 the internal dispute resolution process required by *Civil Code* section
36 5920 as part of the annual policy statement prepared pursuant to *Civil*
37 *Code* section 5310. Such description may consist of a copy of **Article 8**
38 ("Architectural and Unit Remodeling Considerations") and **Section 14.9**
39 ("Investigation of Complaints") through this **Section 14.16** ("Internal
40 Dispute Resolution").
41

42 **14.17 Alternative Dispute Resolution Before Initiating Lawsuit.**

43
44 14.17.1 Annual Summary. As provided in *Civil Code* section 5965, the
45 Association shall annually provide to its Members a summary of the
46 provisions concerning ADR contained in *Civil Code* sections 5925
47 through 5965 as part of the annual policy statement prepared pursuant

1 to *Civil Code* section 5310. Such summary may consist of a copy of
2 this **Section 14.17**. Such summary shall include the following
3 language:
4

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

10
11 14.17.2 When ADR Applies. The requirements of this **Section 14.17** apply to
12 civil action or proceedings as defined in *Civil Code* section 5925(b)
13 when the remedy sought is solely for declaratory, injunctive, or writ
14 relief or if for the foregoing relief in conjunction with monetary damages
15 not in excess of the jurisdictional amount for a small claims action as
16 stated in *California Code of Civil Procedure* sections 116.220 and
17 116.221, all as provided in *Civil Code* section 5930(b). *Civil Code*
18 sections 5925 through 5965 apply to disputes between Members as
19 well as to disputes between the Association and a Member. The ADR
20 requirements of this **Section 14.17** do not apply to Assessment
21 disputes or to an action in small claims court.
22

23 14.17.3 Statutory ADR Process. In accordance with *Civil Code* sections 5925
24 through 5965, the Association or a Member may not file an
25 “enforcement action” as defined in the statute unless the parties have
26 endeavored to submit their dispute to “alternative dispute resolution” as
27 the term is defined in *Civil Code* section 5925(a) and as the process is
28 specified in *Civil Code* sections 5935, 5940, and 5945.
29

30 14.18 Non-waiver of Enforcement. Failure to enforce any provision of the Governing
31 Documents at any time shall not be deemed a waiver of the right to do so
32 thereafter with respect to the same or any other violation of any provision of the
33 Governing Documents.
34

35 14.19 Costs and Attorney Fees. In an action to enforce the Governing Documents, the
36 prevailing party shall, to the fullest extent permitted by law, including *Civil Code*
37 section 5975, be entitled to recover the full amount of all costs including attorney
38 fees incurred in responding to and/or in enforcing any Governing Document
39 provision. Without limiting the generality of the foregoing, in the event an Owner
40 pursuant to *Civil Code* section 4605 brings a civil action for violation of *Civil Code*
41 section 4600 (concerning the granting of exclusive use of a portion of the
42 Common Area to a Member) or pursuant to *Civil Code* section 4955, a civil action
43 for violation of the Common Interest Open Meeting Act (*Civil Code* sections 4900
44 through 4955) if the Association shall prevail in any such action, the Association
45 shall be entitled to recover reasonable attorney fees except to the extent
46 prohibited by law. The remedies of the prevailing party to recover the amount of

1 such costs, expenses, and attorney fees shall include, but shall not necessarily
2 be limited to, the imposition of a Reimbursement Assessment.
3
4

5 **ARTICLE 15** **AMENDMENT**

6
7 15.1 Required Approval. Subject to any applicable requirements of **Section 12.4**
8 (“Material Alteration Resulting from Failure to Repair or Reconstruct”), this
9 Declaration may be amended by the affirmative vote of Members representing at
10 least a majority of the Total Voting Power of the Association; *provided, however,*
11 that, upon advice of legal counsel licensed to practice law in the State of
12 California including the drafting by legal counsel of appropriate amendatory
13 provisions, the Board shall have the authority without the requirement of Member
14 approval to amend any provision of the Declaration (i) to resolve any conflict
15 between the Declaration and applicable law which may arise due to the
16 enactment or amendment of a statute or due to a development in applicable case
17 law or (ii) to conform the provisions of the Declaration to changes in applicable
18 statutory law that impose requirements that are non-discretionary in nature.
19

20 15.2 Amendment Must Be Recorded. Any amendment of the Declaration shall be
21 signed and acknowledged by the duly-authorized officer(s) of the Association and
22 recorded in the Office of the County Recorder.
23

24 15.3 Presumption of Validity. There will be a presumption subsequent to the
25 recording of an amendment to this Declaration pursuant to **Section 15.2**
26 (“Amendment Must Be Recorded”) that all votes and consents required to pass
27 the same pursuant to **Section 15.1** (“Required Approval”) were duly obtained in
28 accordance with the Governing Documents and applicable law. Such
29 presumption may be rebutted by an action commenced within one (1) year from
30 the date the amendment is recorded. In the absence of any such action, such
31 presumption shall thereafter become conclusive.
32
33

34 **ARTICLE 16** **GENERAL PROVISIONS**

35
36 16.1 Headings. The headings used in this Declaration are for convenience only and
37 are not to be used in interpreting the meaning of any of the provisions of this
38 Declaration, or otherwise.
39

40 16.2 Severability. The provisions of this Declaration shall be deemed independent
41 and severable, and the invalidity or partial invalidity or unenforceability of any
42 provision hereof shall not invalidate any other provisions hereof.
43

44 16.3 Liberal Construction. The provisions of this Declaration shall be liberally
45 construed to effectuate its purpose of fostering a plan of community ownership

1 and occupancy and of management of the Project for the benefit of the
2 community.

3
4 16.4 Amendment to Referenced Statutes; Time for Performance. References in the
5 Declaration to particular statutes, including sections of the *Civil Code* or the
6 *Corporations Code*, shall be deemed to include any successor statute and any
7 amendments to existing or successor statutes. Whenever this Declaration states
8 a time for the performance of any act by the Association which by law (as it may
9 exist from time to time) must be performed at or within a specified time, the time
10 for the performance of such act shall be deemed to be the widest timeframe
11 permitted under then-applicable law.

12
13 16.5 Number; Gender. The singular shall include the plural and the plural the singular
14 unless the context requires the contrary, and the masculine, feminine, and neuter
15 shall each include the masculine, feminine, or neuter, as the context requires.

16
17 16.6 Exhibits. All exhibits attached to this Declaration are incorporated by this
18 reference as though fully set forth herein.

19
20 16.7 Power of Attorney. To the extent necessary to carry out and enforce the
21 provisions of this Declaration, an irrevocable power of attorney coupled with an
22 interest is granted to the Association by the Owners and each of them.

23
24 16.8 Term. The covenants, conditions, restrictions, limitations, reservations, grants of
25 easement, rights, rights-of-way, liens, charges, and equitable servitudes
26 contained in this Declaration shall run with and shall benefit and burden all of the
27 real property subject to this Declaration, including without limitation the Units and
28 Common Areas, and shall inure to the benefit of and be binding upon the
29 Owners, the Association, its Board of Directors and officers, and their respective
30 agents and successors in interest, for a term of thirty (30) years from the date of
31 recordation of this Declaration and thereafter the term shall be automatically
32 extended for successive periods of ten (10) years each, unless within the six (6)
33 months prior to the expiration of the initial thirty-year term or within six months
34 prior to the expiration of any ten-year extension period a written instrument,
35 approved by Owners entitled to vote and holding at least a majority of the Total
36 Voting Power of the Association, terminating the effectiveness of this Declaration
37 shall be recorded in the Office of the County Recorder of San Mateo County,
38 State of California.

39
40 ///

41
42 ///

43
44 ///

45
46 ///

47

1 IN WITNESS WHEREOF, we, the Members of THE MENLO COMMONS
2 ASSOCIATION, pursuant to the requisite approval, and by means of the signatures of
3 the President and the Secretary, do hereby affirm, approve, and adopt the foregoing
4 Third Amended and Restated Declaration of Covenants, Conditions and Restrictions of
5 The Menlo Commons Association, which Third Amended and Restated Declaration of
6 Covenants, Conditions and Restrictions shall be recorded with the County Recorder of
7 San Mateo County, State of California.
8

9
10 DATED: _____

THE MENLO COMMONS
ASSOCIATION, a California nonprofit
mutual benefit corporation

11
12
13
14
15
16 _____
17 President's Name

18
19
20 _____
21 Secretary's Name
22

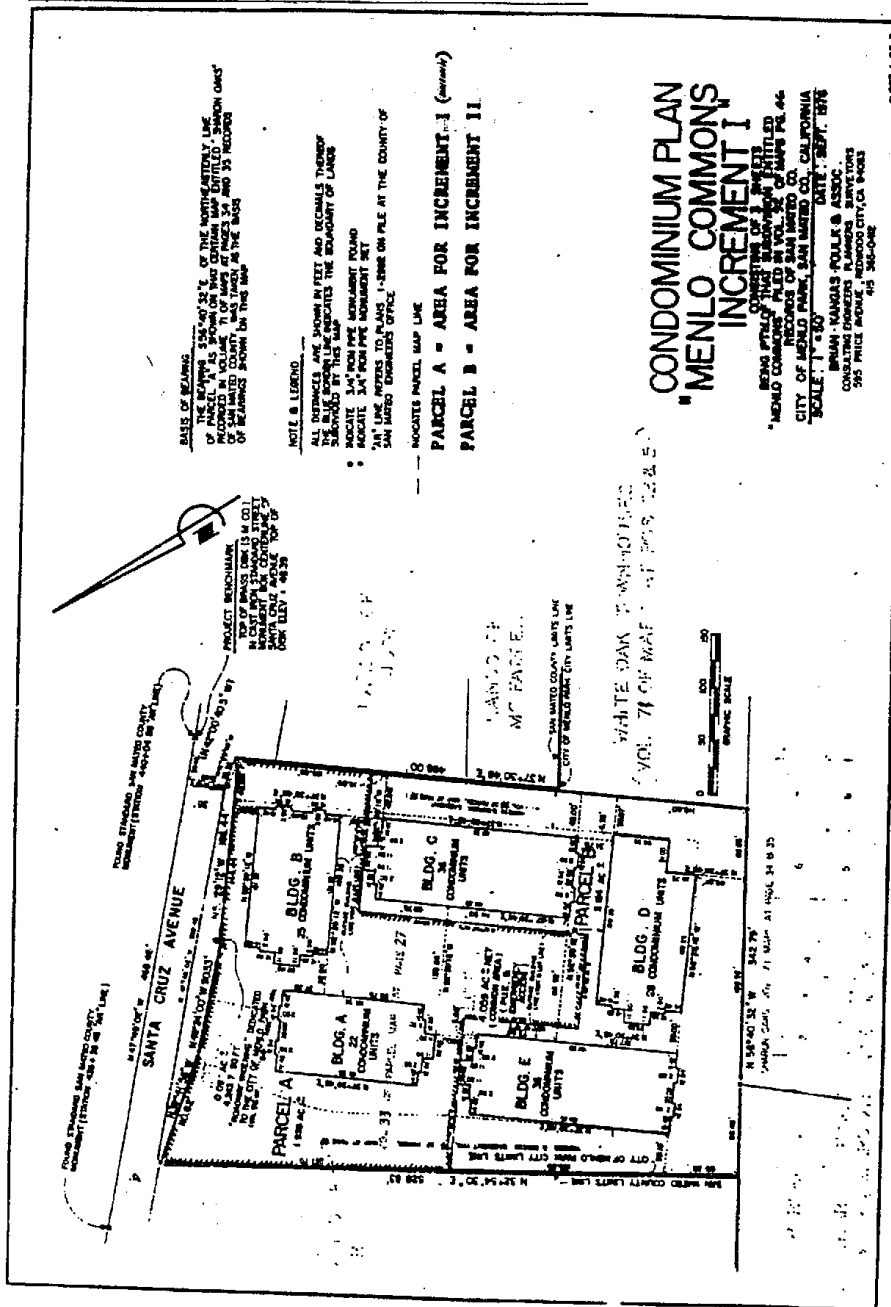
EXHIBIT A

(Section 1.12)

Condominium Plans for This Project

1
2
3
4
5
6
7
8 The Condominium Plan for “Menlo Commons Increment I” was included as Exhibit A to
9 the Declaration of Covenants, Conditions and Restrictions Establishing a Plan of
10 Condominium Ownership for The Menlo Commons recorded in the San Mateo County
11 Recorder’s Office on March 11, 1977, in Volume 7405, Pages 331 through 393.

12
13 The Condominium Plan for “Menlo Commons Increment II” was included as Exhibit A to
14 the Declaration of Intent to Merge Establishing a Plan of Condominium Ownership for
15 The Menlo Commons Increments I and II recorded in the San Mateo County Recorder’s
16 Office on December 14, 1977, in Volume 7687, Pages 415 through 446.



SHEET 1 OF 3

CONDOMINIUM PLAN
"MENLO COMMONS"
 CITY OF MENLO PARK, CALIF.
 SHEET 102

1st FLOOR - FLOOR PLAN
BUILDING "A"
 1st FLOOR ELEV. - 64.33'
 1st FLOOR CEILING ELEV. - 73.33'

BASEMENT - FLOOR PLAN
BUILDING "A"
 GARAGE (LOOR ELEV. - 62.03')
 GARAGE CEILING ELEV. - 62.54'

GENERAL LEGEND

1. All dimensions are in feet and inches.

2. All dimensions are to the center of the wall unless otherwise noted.

3. All dimensions are to the finished surface unless otherwise noted.

4. All dimensions are to the center of the door unless otherwise noted.

5. All dimensions are to the center of the window unless otherwise noted.

6. All dimensions are to the center of the column unless otherwise noted.

7. All dimensions are to the center of the beam unless otherwise noted.

8. All dimensions are to the center of the slab unless otherwise noted.

9. All dimensions are to the center of the wall unless otherwise noted.

10. All dimensions are to the center of the ceiling unless otherwise noted.

11. All dimensions are to the center of the floor unless otherwise noted.

12. All dimensions are to the center of the foundation unless otherwise noted.

13. All dimensions are to the center of the footing unless otherwise noted.

14. All dimensions are to the center of the pile unless otherwise noted.

15. All dimensions are to the center of the pier unless otherwise noted.

16. All dimensions are to the center of the column unless otherwise noted.

17. All dimensions are to the center of the beam unless otherwise noted.

18. All dimensions are to the center of the slab unless otherwise noted.

19. All dimensions are to the center of the wall unless otherwise noted.

20. All dimensions are to the center of the ceiling unless otherwise noted.

21. All dimensions are to the center of the floor unless otherwise noted.

22. All dimensions are to the center of the foundation unless otherwise noted.

23. All dimensions are to the center of the footing unless otherwise noted.

24. All dimensions are to the center of the pile unless otherwise noted.

25. All dimensions are to the center of the pier unless otherwise noted.

GENERAL LEGEND

1. All dimensions are in feet and inches.

2. All dimensions are to the center of the wall unless otherwise noted.

3. All dimensions are to the finished surface unless otherwise noted.

4. All dimensions are to the center of the door unless otherwise noted.

5. All dimensions are to the center of the window unless otherwise noted.

6. All dimensions are to the center of the column unless otherwise noted.

7. All dimensions are to the center of the beam unless otherwise noted.

8. All dimensions are to the center of the slab unless otherwise noted.

9. All dimensions are to the center of the wall unless otherwise noted.

10. All dimensions are to the center of the ceiling unless otherwise noted.

11. All dimensions are to the center of the floor unless otherwise noted.

12. All dimensions are to the center of the foundation unless otherwise noted.

13. All dimensions are to the center of the footing unless otherwise noted.

14. All dimensions are to the center of the pile unless otherwise noted.

15. All dimensions are to the center of the pier unless otherwise noted.

16. All dimensions are to the center of the column unless otherwise noted.

17. All dimensions are to the center of the beam unless otherwise noted.

18. All dimensions are to the center of the slab unless otherwise noted.

19. All dimensions are to the center of the wall unless otherwise noted.

20. All dimensions are to the center of the ceiling unless otherwise noted.

21. All dimensions are to the center of the floor unless otherwise noted.

22. All dimensions are to the center of the foundation unless otherwise noted.

23. All dimensions are to the center of the footing unless otherwise noted.

24. All dimensions are to the center of the pile unless otherwise noted.

25. All dimensions are to the center of the pier unless otherwise noted.

CONDOMINIUM PLAN
"MENLO COMMONS"
 CITY OF MENLO PARK, CALIF.
 SHEET 102

BASEMENT - FLOOR PLAN
BUILDING "A"
 GARAGE (LOOR ELEV. - 62.03')
 GARAGE CEILING ELEV. - 62.54'

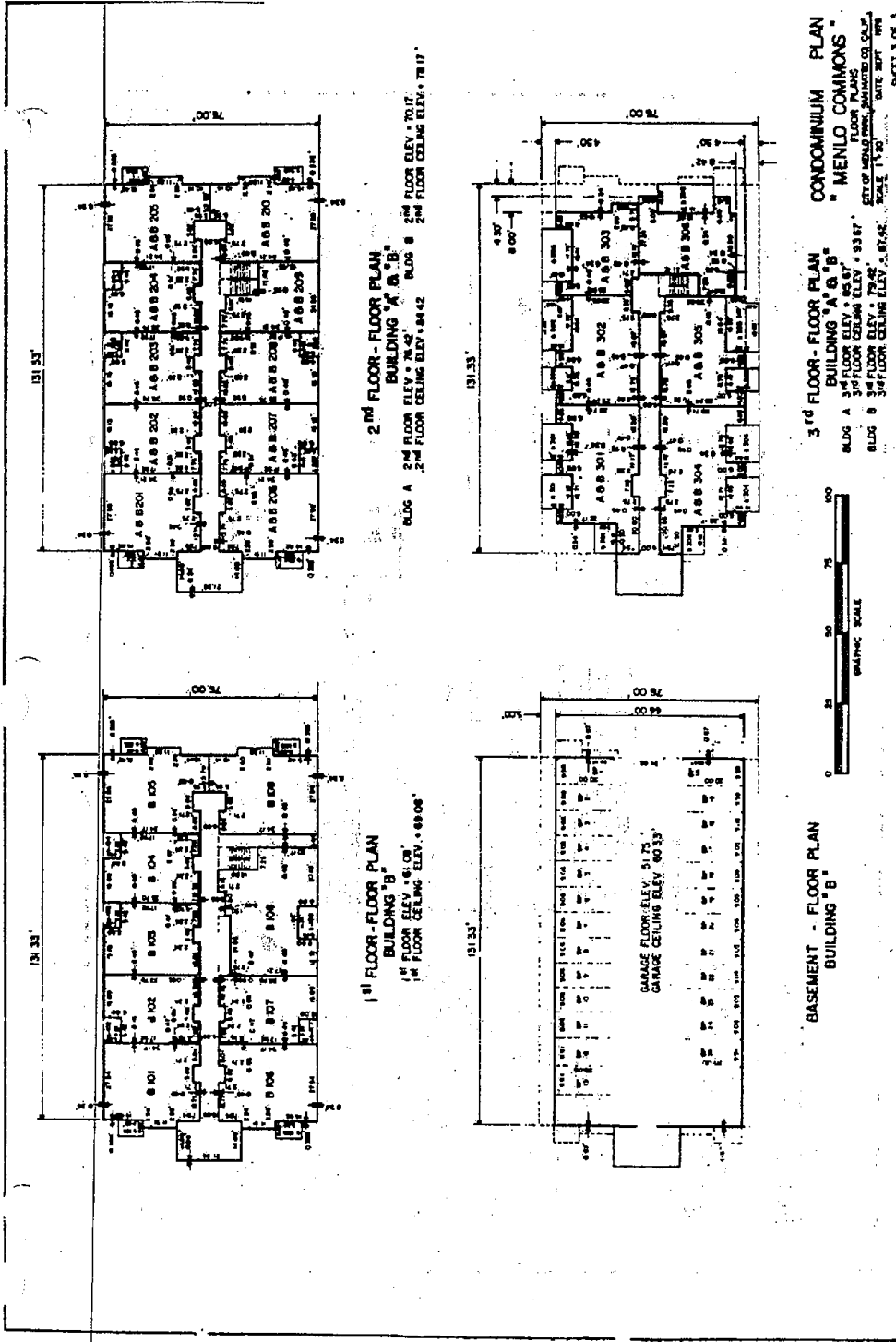


EXHIBIT "A"

CONDOMINIUM PLAN "MENLO COMMONS INCREMENT II"

CONSISTING OF 10 SHEETS
BEING A RESUBDIVISION OF PARCEL B OF PARCEL MAPS
RECORDED IN BOOK 33 OF MAPS AT PAGE 87
RECORDS OF SAN MATEO COUNTY
CITY OF MENLO PARK, SAN MATEO COUNTY, CALIFORNIA

DATE: JUNE, 1977
BRIAN-KINGAS-FOLK & ASSOCIATES, 505 PRICE AVENUE
REINWOOD CITY, CALIFORNIA

RECORDER'S OFFICE SAN MATEO COUNTY

OWNER'S CERTIFICATE

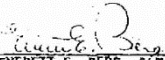
WE HEREBY CERTIFY THAT WE ARE ALL RECORD OWNERS OF THE REAL PROPERTY AND WE HEREBY CERTIFY THAT WE CONSENT TO THE RECORDING OF THIS CONDOMINIUM PLAN PURSUANT TO THE PROVISIONS OF THE CALIFORNIA CONDOMINIUM ACT (TITLE 6, PART 4, DIVISION SECOND).

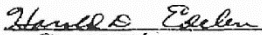
OWNERS


EVERETT E. BERG, A MARRIED MAN, RUTH A. BERG, HIS WIFE D.B.A. GUARDIAN RETIREMENT SERVICE & SUTTER HILL LIMITED, A CALIFORNIA CORPORATION, D.B.A. MENLO COMMONS, A CALIFORNIA JOINT VENTURE

GUARDIAN RETIREMENT SERVICE

SUTTER HILL LIMITED, A CALIFORNIA CORPORATION


EVERETT E. BERG, A MARRIED MAN

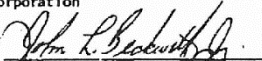

HAROLD E. EICHEN
CHAIRMAN


RUTH A. BERG, HIS WIFE

TRUSTEE

FIRST AMERICAN TITLE INSURANCE COMPANY
A California Corporation



C. W. WOODHOUSE JR.
VICE PRESIDENT

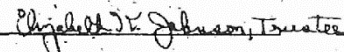

JOHN L. DEAK
CONTINENTAL AUXILIARY COMPANY ASSISTANT SECRETARY
A California Corporation


ERIC J. GAULT
EXECUTIVE AGENT

BENEFICIARY

BANK OF AMERICA NATIONAL TRUST & SAVINGS ASSOCIATION

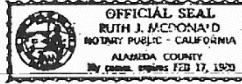

ELIZABETH K. JOHNSON, AS TRUSTEE OF THE NEVA HULSE JOHNSTON TRUST


ELIZABETH K. JOHNSON, Trustee

Sheet 1 of 18
VOL 7687 PAGE 429

CONDOMINIUM PLAN "MENLO COMMONS INCREMENT II"
CITY OF MENLO PARK, SAN MATEO COUNTY, CALIFORNIA

ACKNOWLEDGEMENT



STATE OF CALIFORNIA)
COUNTY OF Alameda)SS

ON THIS 9th DAY OF December, 1977, BEFORE ME Ruth J. McDonald A NOTARY PUBLIC IN AND FOR THE COUNTY OF Alameda STATE OF CALIFORNIA, RESIDING THEREIN, DULY COMMISSIONED AND SWORN, PERSONALLY APPEARED EVERETT E. BERG, A HARRIED MAN AND RUTH A. BERG, HIS WIFE DOING BUSINESS AS GUARDIAN RETIREMENT SERVICES, KNOWN TO ME TO BE A JOINT VENTURER OF "MENLO COMMONS", THE JOINT VENTURE THAT EXECUTED THE WITHIN-INSTRUMENT AND KNOWN TO ME TO BE THE PERSON WHO EXECUTED THE SAME ON BEHALF OF THE JOINT VENTURE NAMED THEREIN AND SAID INDIVIDUAL BEING KNOWN TO ME TO BE ONE OF THE JOINT VENTURERS OF "MENLO COMMONS", A JOINT VENTURE, THAT EXECUTED THE WITHIN INSTRUMENT AND THEY ACKNOWLEDGED TO ME THAT SUCH JOINT VENTURE EXECUTED THE SAME, BOTH FOR ITSELF AND AS SUCH JOINT VENTURER AND THAT SUCH JOINT VENTURER EXECUTED THE SAME AS OWNER.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND AFFIXED MY OFFICIAL SEAL THE DAY AND YEAR IN THIS CERTIFICATE FIRST ABOVE WRITTEN.

MY COMMISSION EXPIRES:
2/17/80

Ruth J. McDonald
NOTARY PUBLIC IN AND FOR THE COUNTY OF Alameda STATE OF CALIFORNIA

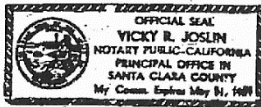
ACKNOWLEDGEMENT

STATE OF CALIFORNIA)
COUNTY OF San Francisco)SS

ON THIS 9th DAY OF December, 1977, BEFORE ME Vicky R. Joslin A NOTARY PUBLIC IN AND FOR THE COUNTY OF Santa Clara STATE OF CALIFORNIA, RESIDING THEREIN, DULY COMMISSIONED AND SWORN, PERSONALLY APPEARED Harold D. Edelen KNOWN TO ME TO BE THE Chairman of the Board OF SUTTER HILL LIMITED, A CORPORATION, THE CORPORATION THAT EXECUTED THE WITHIN INSTRUMENT AND KNOWN TO ME TO BE THE PERSON WHO EXECUTED THE SAME ON BEHALF OF THE CORPORATION NAMED THEREIN AND SAID CORPORATION BEING KNOWN TO ME TO BE ONE OF THE JOINT VENTURERS OF "MENLO COMMONS", THE JOINT VENTURE THAT EXECUTED THE WITHIN INSTRUMENT AND HE ACKNOWLEDGED TO ME THAT SUCH CORPORATION EXECUTED THE SAME, BOTH FOR ITSELF AND AS SUCH JOINT VENTURER AND THAT SUCH JOINT VENTURER EXECUTED THE SAME AS OWNER.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND AFFIXED MY OFFICIAL SEAL THE DAY AND YEAR IN THIS CERTIFICATE FIRST ABOVE WRITTEN.

MY COMMISSION EXPIRES:
May 31, 1981



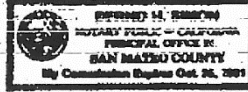
Vicky R. Joslin
NOTARY PUBLIC IN AND FOR THE COUNTY OF Santa Clara STATE OF CALIFORNIA

RECORDER'S OFFICE SAN MATEO COUNTY

CONDOMINIUM PLAR "MENLO COMMONS INCREMENT 11"
CITY OF MENLO PARK, SAN MATEO COUNTY, CALIFORNIA

ACKNOWLEDGEMENT

STATE OF CALIFORNIA }
COUNTY OF SAN MATEO } SS



ON THIS 13TH DAY OF DECEMBER, 1977, BEFORE ME BERND H. SIMON
A NOTARY PUBLIC IN AND FOR THE COUNTY OF SAN MATEO STATE OF
CALIFORNIA RESIDING THEREIN, DULY COMMISSIONED AND SWORN, PERSONALLY APPEARED
C.H. WOODHAMS JR. AND JOHN L. BECKWITH JR.
TO ME TO BE THE VICE PRESIDENT AND ASSISTANT SECRETARY
RESPECTIVELY OF FIRST AMERICAN TITLE INSURANCE
COMPANY THE CORPORATION THAT
EXECUTED THE WITHIN INSTRUMENT, AND KNOWN TO ME TO BE THE PERSONS WHO EXECUTED
THE SAME ON BEHALF OF THE CORPORATION NAMED THEREIN AND THEY ACKNOWLEDGED TO
ME THAT SUCH CORPORATION EXECUTED THE SAME AS TRUSTEE

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND AFFIXED MY OFFICIAL SEAL THE
DAY AND YEAR IN THIS CERTIFICATE FIRST ABOVE WRITTEN.

MY COMMISSION EXPIRES:

Oct. 25, 1981

Bernd H. Simon
NOTARY PUBLIC, STATE OF CALIFORNIA

RECORDER'S OFFICE SAN MATEO COUNTY

ACKNOWLEDGEMENT

STATE OF CALIFORNIA }
COUNTY OF San Francisco } SS

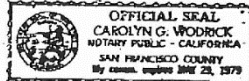
ON THIS 9th DAY OF December, 1977, BEFORE ME Carolyn G. Wodrick
A NOTARY PUBLIC IN AND FOR THE COUNTY OF San Francisco STATE OF
CALIFORNIA RESIDING THEREIN, DULY COMMISSIONED AND SWORN, PERSONALLY APPEARED
Gordon W. Hargreaves AND
TO ME TO BE THE executive agent AND
RESPECTIVELY OF Continental Annuity Company THE CORPORATION THAT
EXECUTED THE WITHIN INSTRUMENT, AND KNOWN TO ME TO BE THE PERSONS WHO EXECUTED
THE SAME ON BEHALF OF THE CORPORATION NAMED THEREIN AND THEY ACKNOWLEDGED TO
ME THAT SUCH CORPORATION EXECUTED THE SAME AS trustee

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND AFFIXED MY OFFICIAL SEAL THE
DAY AND YEAR IN THIS CERTIFICATE FIRST ABOVE WRITTEN.

MY COMMISSION EXPIRES:

May 29, 1979

Carolyn G. Wodrick
NOTARY PUBLIC, STATE OF CALIFORNIA



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Sheet 3 of 18

CONDOMINIUM PLAN "MENLO COMMONS INCREMENT 11"
CITY OF MENLO PARK, SAN MATEO COUNTY, CALIFORNIA

ACKNOWLEDGEMENT

STATE OF CALIFORNIA)
COUNTY OF San Francisco) SS

ON THIS 9th DAY OF December, 1977, BEFORE ME Carolyn G. Woodrick
A NOTARY PUBLIC IN AND FOR THE COUNTY OF San Francisco, STATE OF
CALIFORNIA RESIDING THEREIN, DULY COMMISSIONED AND SWORN, PERSONALLY APPEARED
Gordon W. Harveys AND UNKNOWN
TO ME TO BE THE Vice President AND
RESPECTIVELY OF Bank of America National Trust and Savings
Association THE CORPORATION THAT
EXECUTED THE WITHIN INSTRUMENT, AND KNOWN TO ME TO BE THE PERSONS WHO EXECUTED
THE SAME ON BEHALF OF THE CORPORATION NAMED THEREIN AND THEY ACKNOWLEDGED TO
ME THAT SUCH CORPORATION EXECUTED THE SAME AS beneficiary

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND AFFIXED MY OFFICIAL SEAL THE
DAY AND YEAR IN THIS CERTIFICATE FIRST ABOVE WRITTEN.

MY COMMISSION EXPIRES:

May 29, 1979



NOTARY PUBLIC, STATE OF CALIFORNIA

ACKNOWLEDGEMENT

STATE OF CALIFORNIA)
COUNTY OF San Mateo) SS

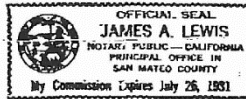
ON THIS 9 DAY OF December, 1977, BEFORE ME James A. Lewis
A NOTARY PUBLIC, STATE OF CALIFORNIA, DULY COMMISSIONED AND SWORN, PERSONALLY
APPEARED Elizabeth K. Johnson Trustee KNOWN TO ME
TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE WITHIN INSTRUMENT, AND
ACKNOWLEDGED TO ME THAT THEY EXECUTED THE SAME AS OWNER.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND AFFIXED MY OFFICIAL SEAL
IN THE COUNTY OF San Mateo, THE DAY AND YEAR IN THIS CERTIFICATE
FIRST ABOVE WRITTEN.

MY COMMISSION EXPIRES:

7/26/81

NOTARY PUBLIC, STATE OF CALIFORNIA



ENGINEER'S CERTIFICATE

I, STANLEY A. KANGAS, HEREBY CERTIFY THAT I AM A REGISTERED CIVIL ENGINEER
IN THE STATE OF CALIFORNIA, AND THAT THIS CONDOMINIUM PLAN CONSISTING OF 18
SHEETS, WAS PREPARED UNDER MY SUPERVISION, AND IS BASED UPON THE ARCHITECTURAL
PLANS PREPARED BY ALBERT A. HOOVER & ASSOCIATES AND THIS MAP TRULY REPRESENTS
THE UNIT CONSTRUCTED AND THEIR COMMON AREA. I ALSO CERTIFY THAT THE BOUNDARY
SURVEY MADE UNDER MY DIRECTION DURING THE MONTH OF SEPTEMBER, 1976 IS TRUE
AND COMPLETE AS SHOWN, AND THAT THE MONUMENTS ARE OF THE CHARACTER SHOWN AND
OCCUPY THE POSITIONS INDICATED AND ARE SUFFICIENT TO ENABLE THE SURVEY TO BE
RETRACED.

DATE Dec 13, 1977

Stanley A. Kangas
STANLEY A. KANGAS, R.C.E. 13726

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Sheet 4 of 18

RECORDER'S OFFICE SAN MATEO COUNTY

CONDOMINIUM PLAN "MENLO COMMONS INCREMENT 11"
CITY OF MENLO PARK, SAN MATEO COUNTY, CALIFORNIA

RECORDER'S OFFICE SAN MATEO COUNTY

NOTES

1. MENLO COMMONS, INCREMENT 11, IS A MAP OF A PROJECT AS THE TERM IS DEFINED IN SECTION 1350(3) OF THE CIVIL CODE OF THE STATE OF CALIFORNIA AND THE SUBDIVISION DEPICTED HEREON IS SUBJECT TO THE PROVISIONS OF THE CALIFORNIA CONDOMINIUM ACT, TITLE 6, PART 4, DIVISION SECOND OF THE CIVIL CODE.
2. CONDOMINIUM PROJECT, CONDOMINIUM, COMMON AREA, UNIT, PARKING SPACE, AND BALCONY ARE ALL DEFINED IN THE CONDITIONS, COVENANTS, AND RESTRICTIONS ESTABLISHING A PLAN OF CONDOMINIUM OWNERSHIP FOR THE MENLO COMMONS AS RECORDED IN THE OFFICE OF THE COUNTY RECORDER OF SAN MATEO COUNTY ON 3-11-77 IN VOL 7405 OF OFFICIAL RECORDS AT PAGE 331 (91155-AK) AND AS SUPPLEMENTED BY DECLARATION OF INTENT TO MERGE, ESTABLISHING A PLAN OF CONDOMINIUM OWNERSHIP, RECORDED OF EVEN DATE HEREMITH.
3. ALL BUILDING WALLS AND ALL WALLS OF UNITS ARE AT RIGHT ANGLES TO EACH OTHER UNLESS SHOWN OTHERWISE.
4. ALL DIMENSIONS AND ELEVATIONS SHOWN ARE IN FEET AND DECIMALS THEREOF.
5. ALL WALL THICKNESSES ARE AS NOTED ON THE UNIT DIMENSION PLAN.
6. IN INTERPRETING DEEDS AND OTHER DOCUMENTS IN CONNECTION WITH THIS SUBDIVISION MAP, THE EXISTING PHYSICAL BOUNDARIES OF THE UNIT OR OF A UNIT RECONSTRUCTED IN SUBSTANTIAL ACCORDANCE WITH THE ORIGINAL PLANS THEREOF SHALL BE CONCLUSIVELY PRESUMED TO BE ITS BOUNDARIES RATHER THAN THE BOUNDARIES AS EXPRESSED AND DELINEATED ON THIS SUBDIVISION MAP, REGARDLESS OF SETTLING OR LATERAL MOVEMENT OF THE BUILDING OR REGARDLESS OF MINOR VARIANCE BETWEEN BOUNDARIES SHOWN ON SAID MAP AND THOSE OF THE BUILDING.
7. THE RIGHTS OF EMERGENCY ACCESS TO THE PROVIDERS OF EMERGENCY SERVICES ARE RESERVED ACROSS ALL DRIVEWAYS AND EASEMENTS HEREON.
8. EACH AREA DESIGNATED WITH A "B" AND A UNIT NUMBER IS A BALCONY.
9. EACH AREA DESIGNATED WITH A "P" AND A BUILDING AND A NUMBER IS A COVERED "PARKING SPACE".

BASIS OF BEARING

THE BEARING SOUTH 56°40'32" EAST OF THE NORTHEASTERLY LINE OF PARCEL "A" AS SHOWN ON THAT CERTAIN MAP ENTITLED "SHARON OAKS" RECORDED IN VOLUME 71 OF MAPS AT PAGES 34 AND 35 RECORDS OF SAN MATEO COUNTY, WAS TAKEN AS THE BASIS OF BEARINGS SHOWN ON THIS MAP.

NOTE AND LEGEND

ALL DISTANCES ARE SHOWN IN FEET AND DECIMALS THEREOF.
THE BLUE BORDER LINE INDICATES THE BOUNDARY OF LANDS SUBDIVIDED BY THIS MAP.

- ⊙ INDICATES 3/4" IRON PIPE MONUMENT FOUND
- ⊙ INDICATES 3/4" IRON PIPE MONUMENT SET

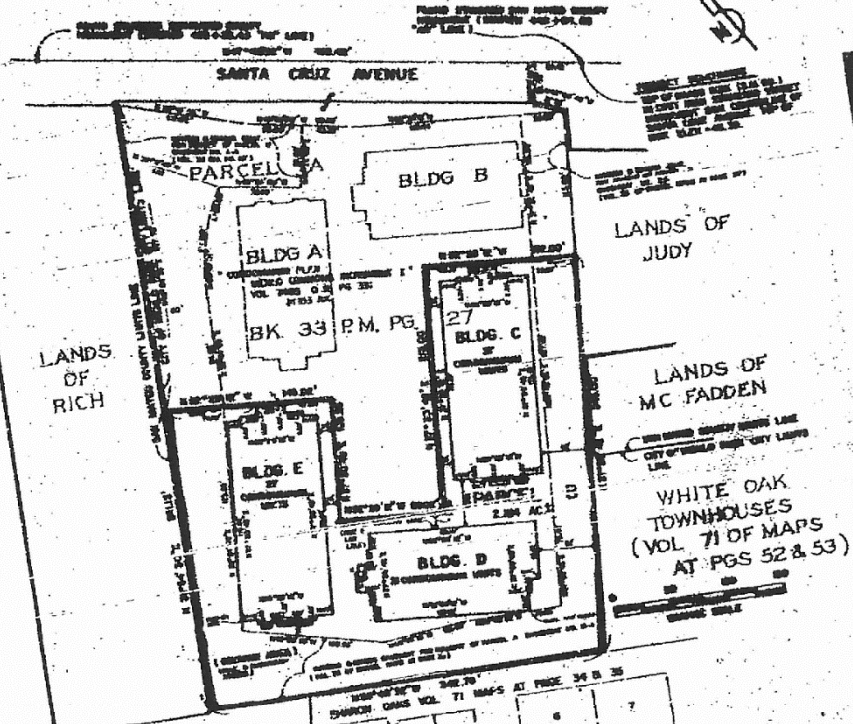
"AR" LINE REFERS TO PLANS 1-2992 ON FILE AT THE COUNTY OF SAN MATEO ENGINEER'S OFFICE

— INDICATES PARCEL MAP LINE

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Page 5 of 18

CONDOMINIUM PLAN "MENLO COMMONS INCREMENT 11"
CITY OF MENLO PARK, SAN MATEO COUNTY, CALIFORNIA

RECORDER'S OFFICE SAN MATEO COUNTY



PARCEL A

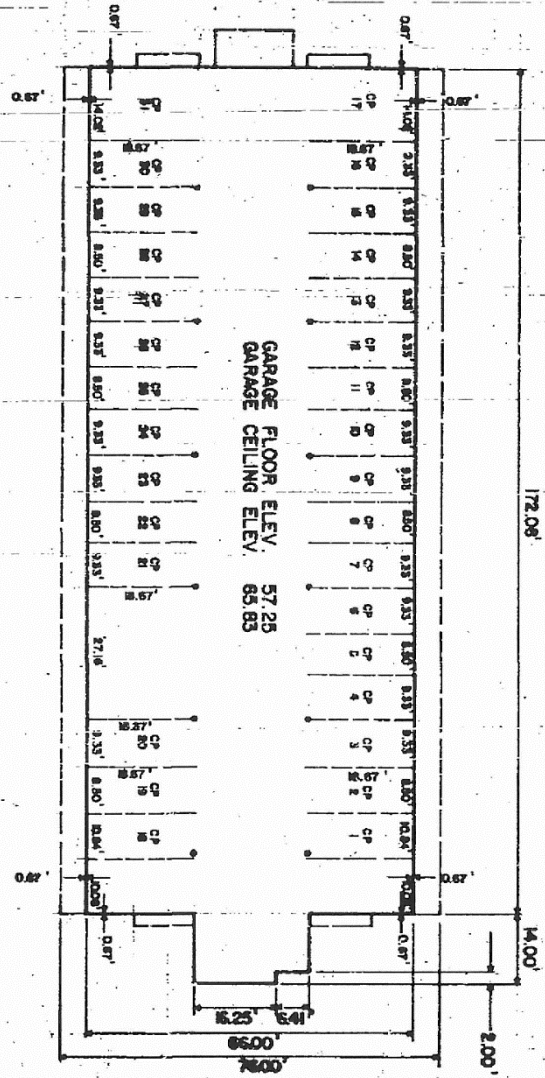
1	2	3	4	5	6	7
SHARON HEIGHTS UNIT NO 14 VOL. 65 MAPS AT PAGE 38 & 39						

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Sheet 6 of 18

CONDOMINIUM PLAN "MENLO COMMONS INCREMENT II"
 CITY OF MENLO PARK, SAN MATEO COUNTY, CALIFORNIA

SCALE: 1" = 20'

RECORDER'S OFFICE SAN MATEO COUNTY

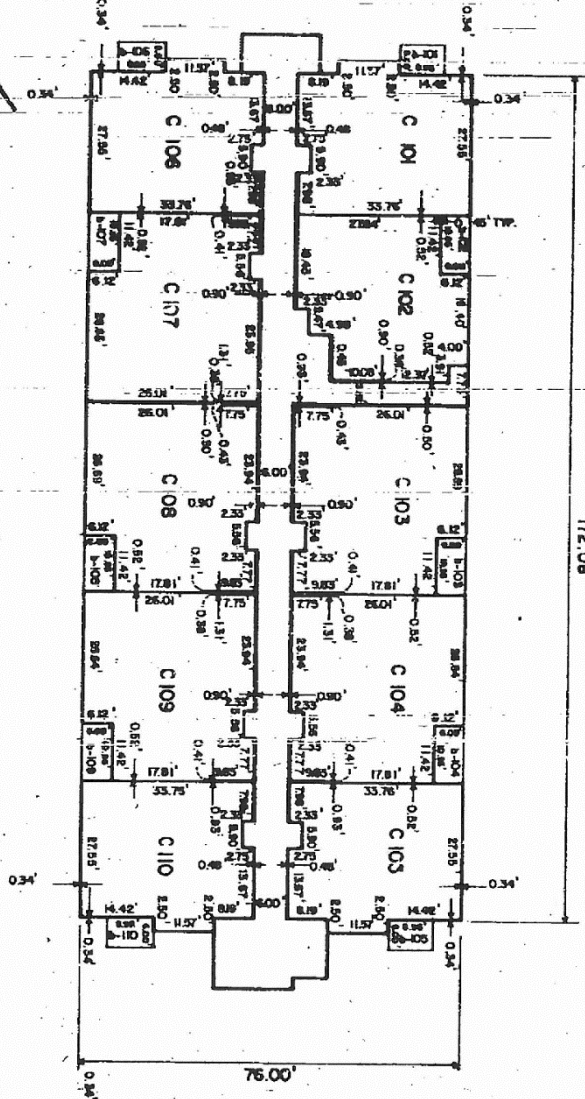


BASEMENT - FLOOR PLAN
 BUILDING "C"

VOL 7687 PAGE 135
 Sheet 7 of 18

CONDOMINIUM PLAN "MENLO COMMONS INCREMENT II"
CITY OF MENLO PARK, SAN MATEO COUNTY, CALIFORNIA

RECORDER'S OFFICE SAN MATEO COUNTY



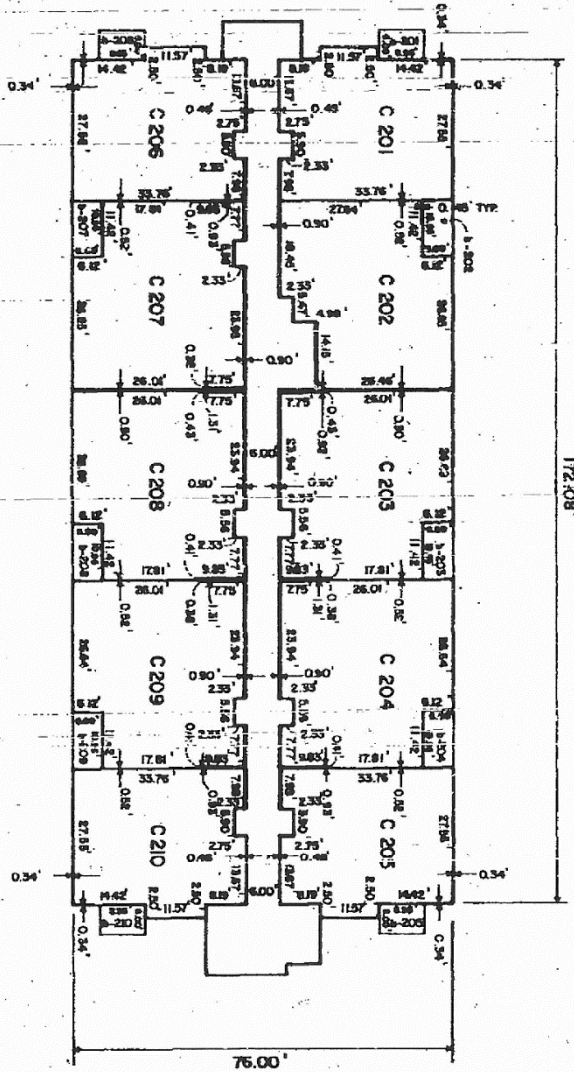
1st FLOOR ELEV. = 66.58'
2nd FLOOR CEILING ELEV. = 74.56'
1st FLOOR - FLOOR PLAN
BUILDING "C"

MAP 7687 PAGE 436
Sheet 8 of 18

CONDOMINIUM PLAN "MENLO COMMONS INCREMENT II"
 CITY OF MENLO PARK, SAN MATEO COUNTY, CALIFORNIA

SCALE: 1" = 20'

RECORDER'S OFFICE SAN MATEO COUNTY



2nd FLOOR ELEV. = 75.67'
 2nd FLOOR CEILING ELEV. = 83.67'

2nd FLOOR - FLOOR PLAN
 BUILDING "C"

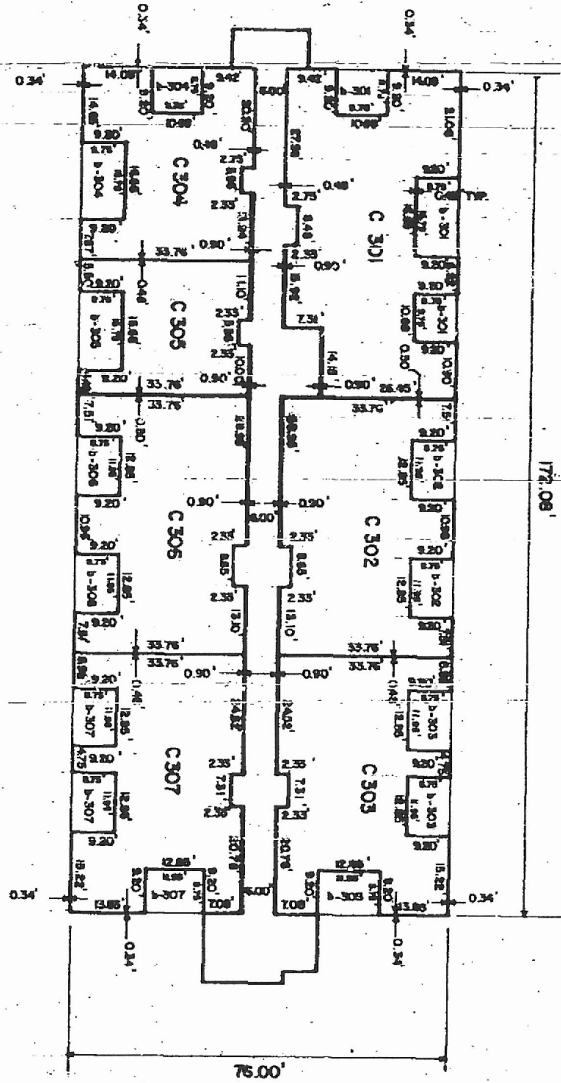
VOL 7687 PAGE 437

Sheet 9 of 18

CONDOMINIUM PLAN "MENLO COMMONS INCREMENT II"
 CITY OF MENLO PARK, SAN MATEO COUNTY, CALIFORNIA

SCALE: 1" = 20'

RECORDER'S OFFICE SAN MATEO COUNTY



3rd FLOOR ELEV. = 84.92'
 3rd FLOOR CEILING ELEV. = 92.92'
3rd FLOOR - FLOOR PLAN
BUILDING "C"

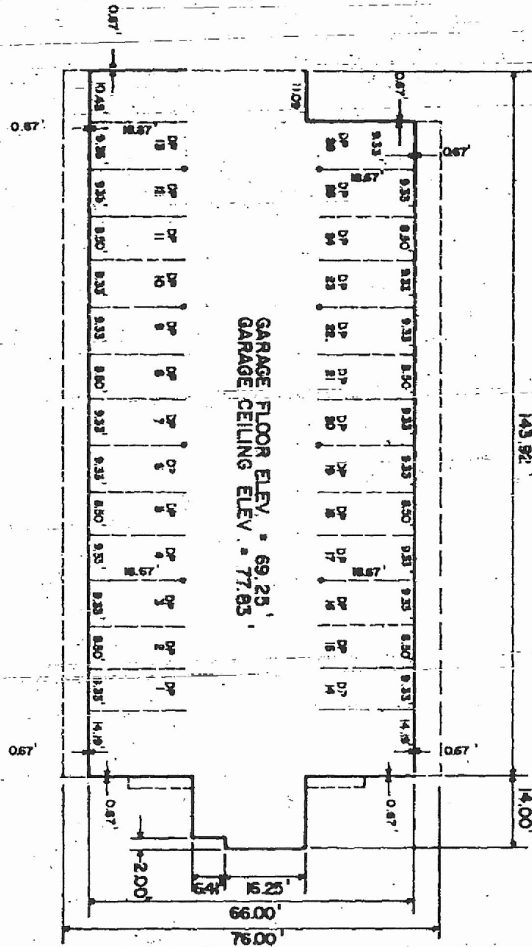
7087 PAGE 438

Sheet 10 of 18

CONDOMINIUM PLAN "MENLO COMMONS INCREMENT II"
 CITY OF MENLO PARK, SAN MATEO COUNTY, CALIFORNIA

SCALE: 1" = 20'

RECORDER'S OFFICE SAN MATEO COUNTY



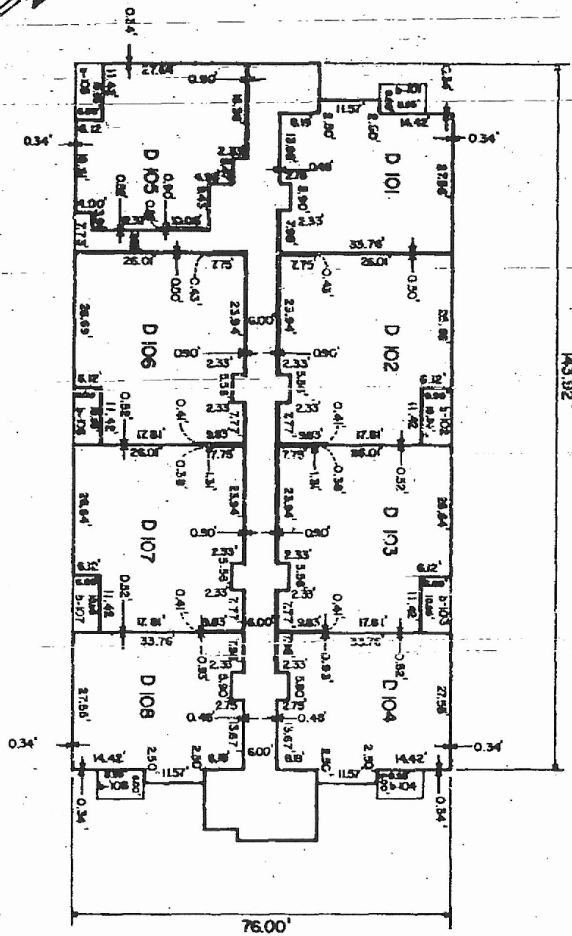
BASEMENT-FLOOR PLAN
 BUILDING "D"

VOL 7687 PAGE 439
 Sheet 11 of 18

CONDOMINIUM PLAN "MENLO COMMONS INCREMENT II"
CITY OF MENLO PARK, SAN MATEO COUNTY, CALIFORNIA

SCALE: 1" = 20'

RECORDER'S OFFICE SAN MATEO COUNTY



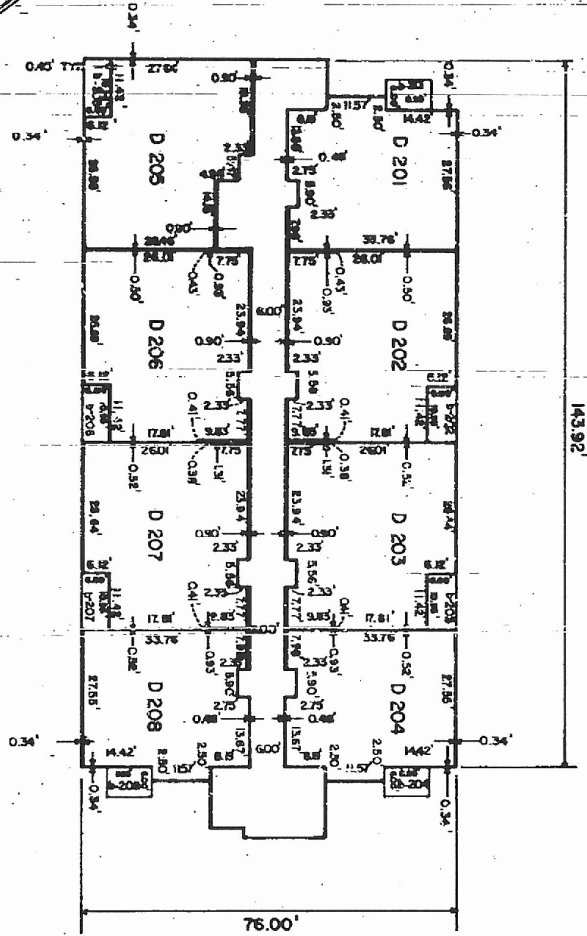
1st FLOOR ELEV. = 78.58'
1st FLOOR CEILING ELEV. = 86.58'
1st FLOOR - FLOOR PLAN
BUILDING "D"

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CONDOMINIUM PLAN "MENLO COMMONS INCREMENT 11"
CITY OF MENLO PARK, SAN MATEO COUNTY, CALIFORNIA

SCALE: 1" = 20'

RECORDER'S OFFICE SAN MATEO COUNTY



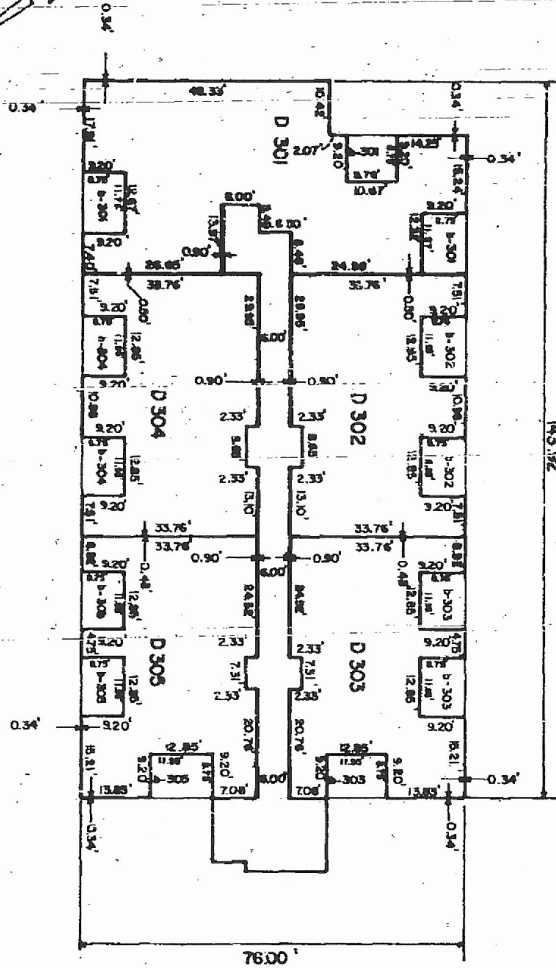
2nd FLOOR ELEV. = 87.67'
2nd FLOOR CEILING ELEV. = 95.67'
2nd FLOOR FLOOR PLAN
BUILDING "D"

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CONDOMINIUM PLAN "MENLO COMMONS INCREMENT II"
CITY OF MENLO PARK, SAN MATEO COUNTY, CALIFORNIA

SCALE: 1" = 20'

RECORDER'S OFFICE SAN MATEO COUNTY



3rd FLOOR ELEV. = 96.92'
3rd FLOOR CEILING ELEV. 104.92'

3rd FLOOR - FLOOR PLAN
BUILDING "D"

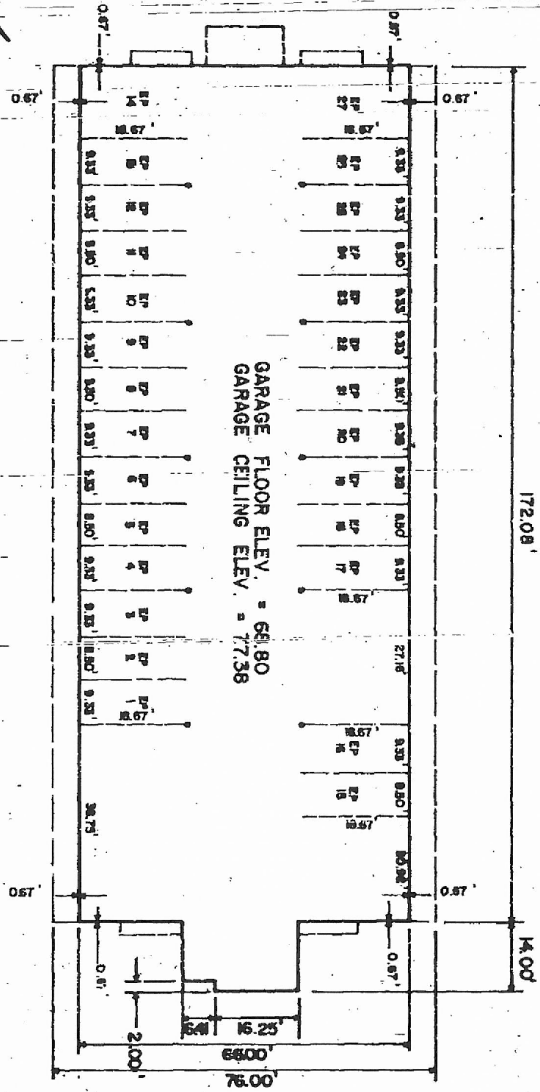
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CONDOMINIUM PLAN "MENLO COMMONS INCREMENT II"
 CITY OF MENLO PARK, SAN MATEO COUNTY, CALIFORNIA

SCALE: 1" = 20'

RECORDER'S OFFICE SAN MATEO COUNTY



**BASEMENT - FLOOR PLAN
 BUILDING "E"**

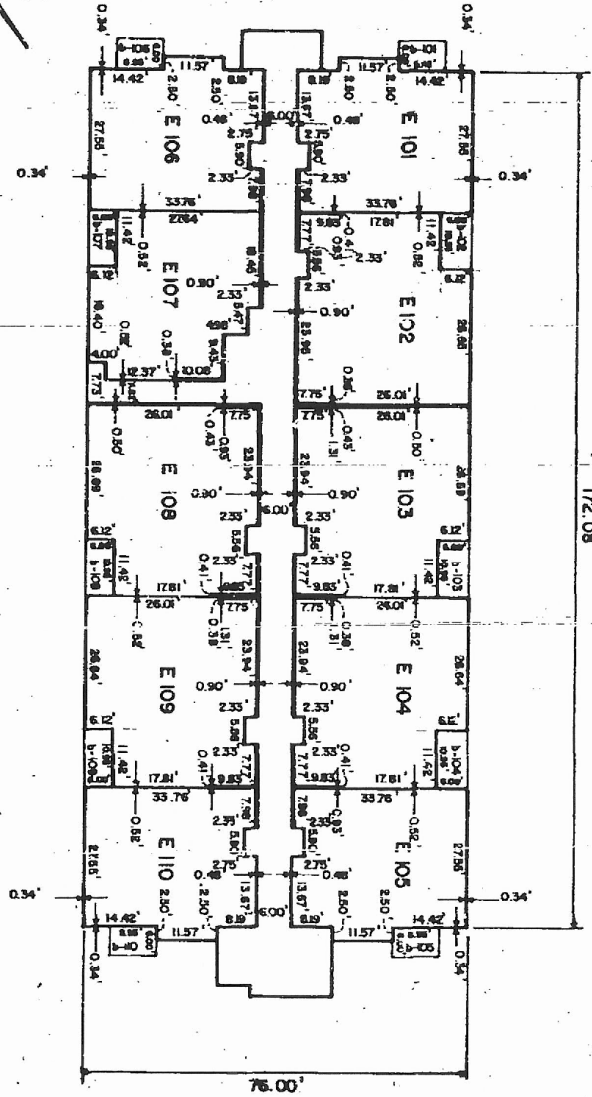
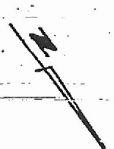
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CONDOMINIUM PLAN "MENLO COMMONS INCREMENT 11"
 CITY OF MENLO PARK, SAN MATEO COUNTY, CALIFORNIA

SCALE: 1" = 20'

RECORDER'S OFFICE SAN MATEO COUNTY



1st FLOOR ELEV. = 78.13
 1st FLOOR CEILING ELEV. = 86.13

1st FLOOR - FLOOR PLAN
 BUILDING "E"

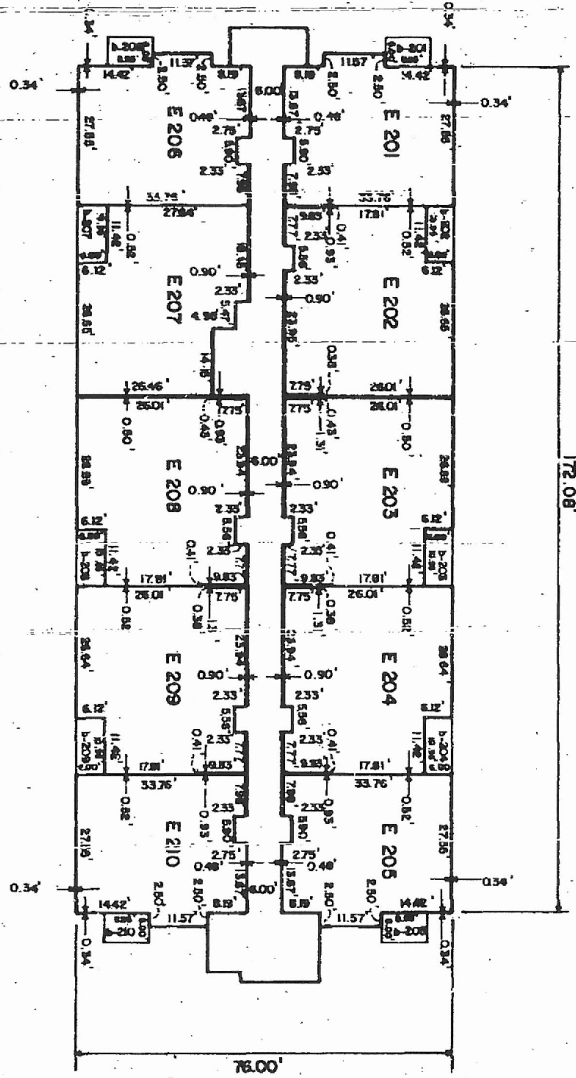
NO. 7637 PAGE 444

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CONDOMINIUM PLAN "MENLO COMMONS INCREMENT II"
CITY OF MENLO PARK, SAN MATEO COUNTY, CALIFORNIA

SCALE: 1" = 20'

RECORDER'S OFFICE SAN MATEO COUNTY



2nd FLOOR ELEV. = 87.22
2nd FLOOR CEILING ELEV. = 95.22

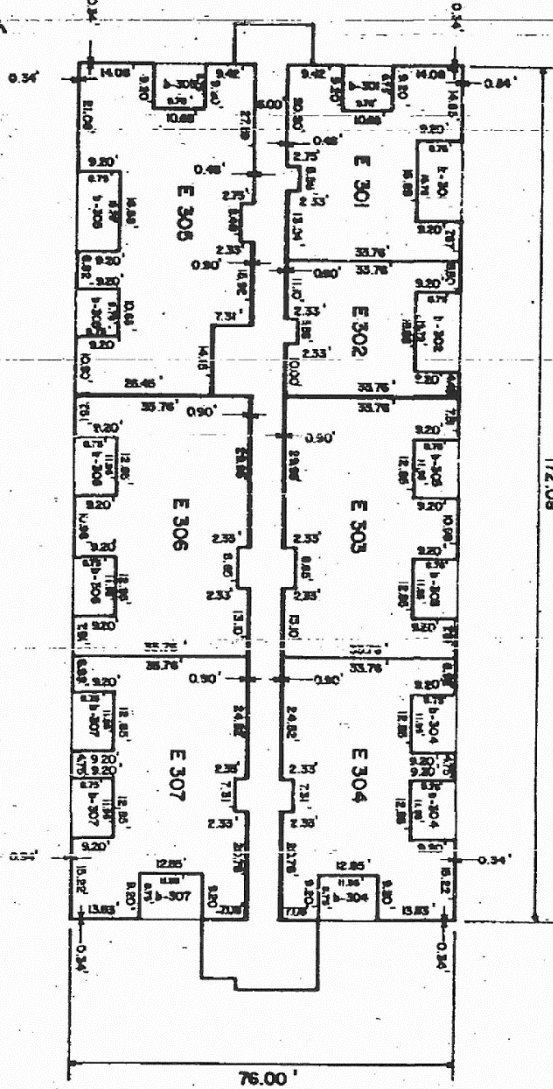
2nd FLOOR - FLOOR PLAN
BUILDING "E"

VR 7687 PCE 445
Sheet 17 of 18

CONDOMINIUM PLAN "MENLO COMMONS INCREMENT II"
CITY OF MENLO PARK, SAN MATEO COUNTY, CALIFORNIA

SCALE: 1" = 20'

RECORDER'S OFFICE SAN MATEO COUNTY



3rd FLOOR ELEV. = 96.47
3rd FLOOR CEILING ELEV. = 104.47

3rd FLOOR - FLOOR PLAN
BUILDING "E"

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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

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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		

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Building E 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

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EXHIBIT C

(Article 10)

Items Covered by Maintenance Provisions

	Responsibility	
	<u>Association</u>	<u>Owner</u>
10		x
11		x
12		x
13		x
14	x	
15		x
16	x	
17		x
18		x
19		x
20		x
21		x
22	x	
23		x
24		x
25		x
26		x
27		x
28	x	
29	x	
30	x	
31		x
32	x	
33		x
34		x
35		x
36		x
37	x	
38		x
39		x
40	x	
41	x	
42		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.

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EXHIBIT D

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 subdivision (b) of Section 54. A "disabling injury or illness" means an illness or injury which results in a condition meeting the definition of disability set forth in subdivision (b) of Section 54.

(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

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

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

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

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

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

20 (4) "Senior citizen housing development" means a residential development developed,
21 substantially rehabilitated, or substantially renovated for, senior citizens that has at least
22 35 dwelling units. Any senior citizen housing development which is required to obtain a
23 public report under Section 11010 of the Business and Professions Code and which
24 submits its application for a public report after July 1, 2001, shall be required to have
25 been issued a public report as a senior citizen housing development under Section
26 11010.05 of the Business and Professions Code. No housing development constructed
27 prior to January 1, 1985, shall fail to qualify as a senior citizen housing development
28 because it was not originally developed or put to use for occupancy by senior citizens.

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

1 (6) "Cohabitant" refers to persons who live together as husband and wife, or persons
2 who are domestic partners within the meaning of Section 297 of the Family Code.

3 (7) "Permitted health care resident" means a person hired to provide live-in, long-term,
4 or terminal health care to a qualifying resident, or a family member of the qualifying
5 resident providing that care. For the purposes of this section, the care provided by a
6 permitted health care resident must be substantial in nature and must provide either
7 assistance with necessary daily activities or medical treatment, or both.

8 A permitted health care resident shall be entitled to continue his or her occupancy,
9 residency, or use of the dwelling unit as a permitted resident in the absence of the
10 senior citizen from the dwelling unit only if both of the following are applicable:

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

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

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

24 (c) The covenants, conditions, and restrictions and other documents or written policy
25 shall set forth the limitations on occupancy, residency, or use on the basis of age. Any
26 such limitation shall not be more exclusive than to require that one person in residence
27 in each dwelling unit may be required to be a senior citizen and that each other resident
28 in the same dwelling unit may be required to be a qualified permanent resident, a
29 permitted health care resident, or a person under 55 years of age whose occupancy is
30 permitted under subdivision (h) of this section or under subdivision (b) of Section 51.4.
31 That limitation may be less exclusive, but shall at least require that the persons

1 commencing any occupancy of a dwelling unit include a senior citizen who intends to
2 reside in the unit as his or her primary residence on a permanent basis. The application
3 of the rules set forth in this subdivision regarding limitations on occupancy may result in
4 less than all of the dwellings being actually occupied by a senior citizen.

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

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

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

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

28 (h) Any person who has the right to reside in, occupy, or use the housing or an
29 unimproved lot subject to this section on January 1, 1985, shall not be deprived of the
30 right to continue that residency, occupancy, or use as the result of the enactment of this
31 section.

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

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

9

MEMBER DRAFT 4/18/2023