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APN: 682-330-001-4; 682-330-002-5; 682-330-003-6; 682-330-004-7; 682-330-005-8

**DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS AND
RESERVATION OF EASEMENTS FOR**

MAGNESIA FALLS PLAZA

(COMMERCIAL CONDOMINIUMS)

AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS AND
RESERVATION OF EASEMENTS FOR
MAGNESIA FALLS PLAZA
(COMMERCIAL CONDOMINIUMS)

NOTE: CERTAIN DISPUTES ARISING UNDER THIS DECLARATION, INCLUDING DISPUTES CONCERNING THE DESIGN OR CONSTRUCTION OF THE PROJECT, SHALL BE SUBMITTED TO JUDICIAL REFERENCE OR ARBITRATION, WHICH ARE FORMS OF ALTERNATIVE DISPUTE RESOLUTION, IN ACCORDANCE WITH SECTION 12.4.

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**AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS,
RESTRICTIONS AND RESERVATION OF EASEMENTS
FOR
MAGNESIA FALLS PLAZA**

This Amended and Restated Declaration of Covenants, Conditions, Restrictions and Reservation of Easements ("Declaration") is made by Magnesia Falls Plaza, LLC, a California limited liability company, and by Terrace Partners, LLC, a California limited liability company (together referred to as "Declarant"). This Declaration supersedes and replaces in its entirety the Declaration of Covenants, Conditions, and Restrictions and Reservation of Easements recorded in Official Records of Riverside County, California on June 15, 2016, as Document No. 2016-0244370. The capitalized terms used in the Preamble below are defined in Article 1.

PREAMBLE

A. Declarant is the owner of real property in the City of Rancho Mirage, County of Riverside, California, described as follows:

Parcel 1 of Parcel Map No. 36913, filed May 4, 2016 in Book 240 of Parcel Maps, at Pages 34 and 35, in the Office of the Recorder of Riverside County, in the State of California.

B. Declarant intends to create a "condominium project," as defined in Civil Code §6542 and to impose mutually beneficial restrictions under a general plan for subdividing, maintaining, improving, and selling the Condominiums in the Project for the benefit of all the Condominiums under the Commercial and Industrial Common Interest Development Act (CC §§6500–6876) (the "*Commercial CID Act*"). The general plan of development anticipates governance by an incorporated association established under California law to which will be assigned the powers of (1) maintaining and administering the Association Property, (2) administering and enforcing the Governing Documents, and (3) collecting and disbursing the Assessments and charges hereinafter created. The members of the Association will be the Owners of the Units in the Project. The Association shall exercise the powers required under Civil Code §6752.

C. The Project is to be held, conveyed, encumbered, leased, used and improved subject to covenants, conditions, restrictions and easements in this Declaration, all of which are in furtherance of a plan for subdividing, maintaining, improving and selling the Condominiums in the Project. All provisions of this Declaration are imposed as equitable servitudes on the Project. All covenants, conditions, restrictions and easements in this Declaration shall run with and burden the Project, and be binding on and for the benefit of all of the Project and all Persons acquiring any interest in the Project.

ARTICLE 1. DEFINITIONS AND INTERPRETATION

1.1 **DEFINITIONS.** Unless otherwise expressly provided, the following words and phrases when used in this Declaration have the following meanings.

1.1.1 Annual Assessment. Annual Assessment means a charge against the Owners and their Condominiums representing their share of the Common Expenses. The Annual Assessment is a regular assessment as described in Civil Code §6800.

1.1.2 Articles. Articles means the Articles of Incorporation of the Association currently in effect.

1.1.3 Assessment. Assessment means any Annual Assessment, Capital Improvement Assessment, Reconstruction Assessment, Compliance Assessment and Special Assessment.

1.1.4 Association. Association means Magnesia Falls Plaza Owners Association, a California nonprofit corporation (formed pursuant to the California Nonprofit Mutual Benefit Corporation Law) or successor statutes, and its successors-in-interest. The Association is an "association" as defined in Civil Code §6528.

1.1.5 Association Property. Association Property means real or personal property designated by Declarant or the Board as Association Property and therefore made subject to the restrictions on Association Property established in the Governing Documents. Any references in this Declaration to Association Property are references to the Association Property as a whole and to portions thereof. The Association Property is "*common area*" as defined in Civil Code §6532(a). The Association Property in the Project consists of all the real property described in the Condominium Plan (EXCEPT FOR the Units and the Common Area shown in the Condominium Plan), and the Improvements and easements located thereon or maintained by the Association, including without limitation:

(a) Condominium Building. Each Condominium Building (but excluding the Units), the components of the Condominium Building as listed in Section 1.1.17, and related Improvements such as exterior lighting fixtures and utility cabinets on building exteriors and facilities for the delivery of utilities to the Project (except for outlets that are located in the Unit).

(b) Other Improvements. Monument signs, parking areas, covered parking structures, driveways, ramps, passageways, private alleys, curbs, gutters, drainage facilities, sidewalks and pedestrian ways, landscaped and irrigated areas, sprinklers, sprinkler pipes and sprinkler heads that protrude through the airspace of a Unit, patio areas, walls, fences, drainage facilities, lighting, and detention basins.

(c) Easements Granted to or Reserved for the Association. The easements described in the Governing Documents, or in the Map or in other Recorded instruments and granted to the Association; provided, however, the Association shall only have the responsibility for maintenance of such easements where such maintenance responsibility is given to the Association.

1.1.6 Board or Board of Directors. Board or Board of Directors means the Association's Board of Directors.

1.1.7 Budget. Budget means a written, itemized estimate of the Association's income and Common Expenses prepared pursuant to the Bylaws.

1.1.8 Bylaws. Bylaws mean the Bylaws of the Association as currently in effect.

1.1.9 Capital Improvement Assessment. Capital Improvement Assessment means a charge against the Owners and their Condominiums representing their share of the Association's cost for installing or constructing capital Improvements on the Association Property. Capital Improvement Assessments shall be levied in the same proportion as Annual Assessments.

1.1.10 City. City means the City of Rancho Mirage, California, and its various departments, divisions, employees, and representatives.

1.1.11 Close of Escrow. Close of Escrow means the date on which a deed is Recorded conveying a Condominium from Declarant to an Owner other than Declarant.

1.1.12 Common Area. Common Area means the volumes of airspace described in the Condominium Plan, which shall be owned by Owners in the Project as tenants-in-common. The Common Area constitutes the real property held in undivided interest as required under Civil Code §6542(b). The undivided interest allocated to each Unit shall be described in the grant deed conveying the Unit to an Owner.

1.1.13 Common Expenses. Common Expenses means those expenses for which the Association is responsible under this Declaration. Common Expenses include the actual and estimated costs of, and reserves for, maintaining, managing and operating the Association Property (including amounts required by this Declaration), including:

(a) the cost of all utilities (including sewer and water) and mechanical and electrical equipment serving the Association Property, and any other utility services provided by the Association under a master meter;

(b) the costs and fees attributable to managing and administering the Association, including compensating the Manager, accountants, attorneys and employees, all insurance covering the Project and the Directors, officers and agents of the Association, and bonding the members of the Board;

(c) the cost of services such as trash removal from the Association Property, landscape maintenance, sweeping and cleaning of the parking areas, HVAC maintenance, and other services benefiting the Association Property or the Owners, if the Association elects or is required to provide such services;

(d) the cost of fire alarm monitoring and system testing and maintenance;

(e) unpaid Special Assessments, Reconstruction Assessments, Compliance Assessments and Capital Improvement Assessments;

(f) taxes paid by the Association;

(g) amounts paid by the Association for discharge of any lien or encumbrance levied against the Project as a whole; and

(h) all other expenses incurred by the Association for the Project, for the common benefit of the Owners.

1.1.14 Common Utility Area. Common Utility Area means that portion of a Condominium Building designated as a Utility Room and/or a Common Utility Area on the Condominium Plan and subject to easements in favor of the Owners for purposes of maintaining certain utility improvements therein. Without limitation, the space above t-bar ceiling support in any Unit (above 8' 6"), and air space between adjacent Demising Walls are Common Utility Areas.

1.1.15 Compliance Assessment. Compliance Assessment means a monetary charge imposed against an Owner and his Condominium in accordance with Civil Code §6824(a) to recover costs incurred by the Association in the repair of damage to Association Property.

1.1.16 Condominium. Condominium means an estate in real property as defined in Civil Code §6542(b), consisting of an undivided ownership interest in the Common Area, together with a separate ownership interest in a Unit and all easements appurtenant thereto.

1.1.17 Condominium Building. Condominium Building means one of the four building structures in the Project each containing Units, as shown on the Condominium Plan. Each Condominium Building encloses Units shown in the Condominium Plan, but the Condominium Building is not part of

the Units. For purposes of interpreting this Declaration and the Condominium Plan, the Condominium Building is intended to include the following components:

(a) the shell (including the roof, foundation and exterior surfaces and the finishes thereon) and the core of the Condominium Building;

(b) all structural support elements existing in, on, under and throughout the Condominium Building that carry roof, ceiling and upper floor loads to the foundation, including all separate or common footings, girders, columns, joists, braces, foundations, temporary and permanent tieback systems, load-bearing walls and other standard support elements, and every wall, column, floor, ceiling, footing, foundation or other vertical or horizontal Improvement in the Condominium Building, but not including any wall between rooms in a Unit which is not necessary for the structural support of the Condominium Building (for purposes hereof, any wall or other structure which carries roof, ceiling or upper floor loads is "necessary for structural support");

(c) any HVAC systems which benefit the entire Condominium Building;

(d) all exterior walls of the Condominium Building and their surface treatments (including siding, stone, stucco, plaster, paint and stain);

(e) fixtures that are outside the boundaries of the Units, including exterior lighting fixtures and utility cabinets on Condominium Building exteriors, facilities for the delivery of utilities to the Project (except for outlets that are located in the Unit);

(f) exterior fire extinguishers, fire sprinkler systems serving each Condominium Building including fire sprinkler pipes and fire sprinkler heads that protrude into the airspace of the Unit; and

(g) all or any portion of any stairway, vault, air shaft, mechanical shaft, duct, pipe, line, main, conduit, lighting, flue and any other equipment, fixtures, machinery, system or apparatus which benefits the entire Condominium Building.

1.1.18 Condominium Plan. Condominium Plan means the Recorded plan, as currently in effect, for the Project consisting of (a) a description or survey map of the Project, which shall refer to or show monumentation on the ground, (b) a three dimensional description of the Project, one or more dimensions of which may extend for an indefinite distance upwards or downwards in sufficient detail to identify the Association Property, Common Area and each Unit, and (c) a certificate consenting to the Recordation thereof signed and acknowledged by the record owner of fee title to the Project, and by either the trustee or the Mortgagee of each Recorded Mortgage encumbering the Project or portion thereof.

1.1.19 County. County means Riverside County, California, and its various departments, divisions, employees and representatives.

1.1.20 Declarant. Declarant means Magnesia Falls Plaza, LLC, a California limited liability company, and by Terrace Partners, LLC, a California limited liability company, as tenants in common, and each of their successors and any Person to which either shall have assigned any of its rights as Declarant by an express written assignment. As used in this Section, "successor" means a Person who acquires a Declarant or substantially all of a Declarant's assets by sale, merger, reverse merger, consolidation, sale of stock or assets, operation of law or otherwise. Declarant shall determine in its sole discretion the time, place and manner in which it discharges its obligations and exercises the rights reserved to it under this Declaration.

1.1.21 Declarant Rights Termination Date. Declarant Rights Termination Date means the date on which Declarant, or any of its successors or assigns who have obtained Declarant rights in accordance with the terms of this Declaration, no longer owns any Condominium in the Project.

1.1.22 Declaration. Declaration means this instrument, as may be amended from time to time.

1.1.23 Defect Claim. Defect Claim means a construction defect claim against Declarant or any Declarant Party (as defined in Section 12.4) for defects in the design or construction of the Project.

1.1.24 Defect Claims Period. Defect Claims Period means the period beginning at the first Close of Escrow and ending on the expiration of all statutes of limitation or repose applicable to Defect Claims under applicable California law (including any tolling periods).

1.1.25 Demising Wall. Demising Wall means the wall between Units under different ownership. A Unit will extend to the centerline of the Demising Wall. The airspace within the Demising Wall shall be subject to a reciprocal easement in favor of the of the adjoining Owners as a Common Utility Area as described in 1.1.14, and installation of fixtures within the Units.

1.1.26 Design Guidelines. Design Guidelines mean the rules or guidelines setting forth architectural and design standards adopted pursuant to this Declaration.

1.1.27 Exclusive Use Common Area. Exclusive Use Common Area (or "EUCA") means the patios adjacent to each Unit and HVAC Unit Areas, and those other portions of Association Property over which exclusive easements, licenses or other rights are reserved for the benefit of specified Owners and their Permittees.

1.1.28 Fiscal Year. Fiscal Year means the fiscal accounting and reporting period of the Association.

1.1.29 Governing Documents. Governing Documents means this Declaration, the Articles, Bylaws, Design Guidelines, Rules and Regulations, and Supplemental Declarations.

1.1.30 Governmental Requirements. Governmental Requirements means all applicable laws, rules, regulations, orders, ordinances, codes, subdivision requirements, zoning restrictions, map conditions and all other legal requirements of the City, and any other governmental agency with jurisdiction over the Project, including Hazardous Materials Laws.

1.1.31 Hazardous Materials. Hazardous Materials means any hazardous or toxic substances, materials or wastes which are or become regulated by any local governmental authority, the State of California or the United States, and includes, without limitation, any material or substance which is included in the definitions of (i) "hazardous waste," "extremely hazardous waste," "restricted hazardous waste," "hazardous substance," "extremely hazardous substance," "hazardous material," "acutely hazardous waste," "hazardous chemical substance or mixture," "imminently hazardous chemical substance or mixture," "toxic substances," "toxic air contaminant," "hazardous air pollutant," "toxic pollutant," "medical waste" or "solid waste" under the Health and Safety Code, Chapter 11 of Title 22 of the California Code of Regulations, the Federal Water Pollution Control Act, the Federal Resource Conservation and Recovery Act, the Federal Hazardous Materials Transportation Act, the Federal Comprehensive Environmental Response Compensation and Liability Act, the Federal Water Pollution Control Act, the Federal Clean Air Act, the Clean Water Act, the Superfund Amendments and Reauthorizations Act of 1986 under the California Administrative Code, or under any other federal, state and local laws, statutes, regulations, orders, rules or common law decision, and (ii) pesticides, petroleum, asbestos, polychlorinated biphenyls, solvents, flammable explosives, urea formaldehyde, or radioactive materials and waste. Hazardous Materials do not include products typically used at projects similar to the Project if they exist merely in small amounts that do not require remediation and do not pose a hazard to the health or safety of persons on or about the Project nor do they include radioactive waste materials in amounts normally generated by medical offices or laboratories in projects similar to the Project (e.g., a radiology practice or diagnostic laboratory) as such uses are permitted under the zoning applicable to the

Project, so long as such waste materials are stored, handled and disposed of in accordance with applicable Hazardous Materials Laws.

1.1.32 Hazardous Materials Laws. Hazardous Materials Laws means the federal and state laws cited in the immediately preceding Section as well as any other federal, state or local laws, ordinances or regulations governing the use, storage or disposal of Hazardous Materials.

1.1.33 HVAC Unit Area. HVAC Unit Area means an Exclusive Use Common Area located on the roof of each Condominium Building where the HVAC units and all related equipment serving individual Units in the Condominium Building are located.

1.1.34 Improvement. Improvement means (a) each Condominium Building, patio area and any appurtenance thereto and all components thereof, (b) any directory or monument signs, directional signs, poles, trash enclosures, exterior lights, exterior light fixtures located on the exterior of the Condominium Building or any other exterior area of the Project, (c) any type of railings, ramps, walls, antennae, awnings, stairways or decks, (d) any public or private utility lines, or other pipes, sewers, ducts, chutes, conduits, wires or other utility installations located anywhere within the Project except related ductwork within the Unit, (e) all plantings, irrigation and drainage facilities and landscaping softscape or hardscape, (f) all fences and perimeter walls, (g) all driveways, sidewalks and parking areas, and (h) any Proposed Alteration as defined in Article 5 of this Declaration. The term Improvement shall also include any installation, construction, remodeling, replacement, refinishing, or alteration of any of the foregoing.

1.1.35 Include, Including. Whether capitalized or not, include and including means "includes without limitation" and "including without limitation," respectively.

1.1.36 Maintain, Maintenance. Whether capitalized or not, maintain and maintenance mean "maintain, repair and replace" and "maintenance, repair and replacement," respectively; provided however, that maintain or maintenance shall not include repair and replace(ment) where the context or specific language of this Declaration provides another meaning.

1.1.37 Manager. Manager means the Person retained by the Association to perform management functions of the Association as limited by the Governing Documents and the terms of the agreement between the Association and the Person. The Manager may be Declarant or an affiliate of Declarant.

1.1.38 Membership. Membership means the voting and other rights, privileges, and duties established in the Governing Documents for Association members.

1.1.39 Mortgage. Mortgage means any Recorded document, including a deed of trust, pledging one or more Condominiums or Association Property as security for an obligation and which constitutes a first-priority lien.

1.1.40 Mortgagee. Mortgagee means a Person to whom a Mortgage is made, or the assignee of the Mortgagee's rights under the Mortgage by a Recorded instrument, and includes a beneficiary under a deed of trust.

1.1.41 Mortgagor. Mortgagor means a Person who has mortgaged his property, and includes a trustor under a deed of trust.

1.1.42 Notice and Hearing. Notice and Hearing means written notice and a hearing before the Board as provided in the Bylaws.

1.1.43 Official Records. Official Records means the Official Records of the County.

1.1.44 Operating Funds. Operating Funds means that portion of the Assessments allocated for the daily operation of the Association.

1.1.45 Owner. Owner means the Person or Persons, including Declarant, holding fee simple interest to a Condominium. The term Owner includes sellers under executory contracts of sale but excludes Mortgagees.

1.1.46 Permittee. Permittee means any Person from time to time entitled to the use and occupancy of any Unit or any portion thereof under any lease, deed or other arrangement with an Owner, and the officers, directors, employees, agents, contractors, customers, visitors, invitees, licensees and concessionaires of such Person.

1.1.47 Person. Person means a natural individual or any legal entity recognized under California law. When the word "person" is not capitalized, it refers only to natural persons.

1.1.48 Project. Project means all of the real property (including all Improvements thereon) covered by this Declaration and subject to the jurisdiction of the Association following Recordation of the Condominium Plan and the Close of Escrow whereby the number of Assessment Units attributable to Units owned by other than Declarant or an affiliate of Declarant exceed 60% of the total number of Assessment Units. The Project is a "commercial or industrial common interest development" and a "condominium project" as defined in California Civil Code §§6531 and 6542(a).

1.1.49 Reconstruction Assessment. Reconstruction Assessment means a charge against an Owner and his Condominium representing the Owner's share of the Association's cost to reconstruct any Improvements on the Association Property. Such charge shall be levied among all Owners and their Condominiums in the same proportions as Annual Assessments.

1.1.50 Record or File. Record or File means, concerning any document, the entry of such document in Official Records.

1.1.51 Reserve Funds. Reserve Funds means that portion of the Assessments allocated for the future repair and replacement of, or additions to, the major components of Association-maintained Improvements and amounts necessary to cover the deductibles under all insurance policies maintained by the Association.

1.1.52 Rules and Regulations. Rules and Regulations or Rules means the current rules and regulations for the Project.

1.1.53 Signs. Signs means any advertising, placards, signs, names, billboards, placards, insignia, numerals, addresses, and descriptive words of any type affixed, inscribed, constructed, or maintained within the Project or on any portion of a Condominium Building or EUCA.

1.1.54 Special Assessment. Special Assessment means any Assessment levied in connection with any expense incurred or to be incurred in accordance with the Governing Documents which cannot be imposed as an Annual Assessment, Capital Improvement Assessment, Reconstruction Assessment or Compliance Assessment.

1.1.55 Supplemental Declaration. Supplemental Declaration means an instrument executed, acknowledged and Recorded by Declarant which imposes conditions, covenants, or restrictions or reserves easements for all or a portion of the Project in addition to the conditions, covenants, restrictions and easements established by this Declaration. A Supplemental Declaration may modify this Declaration only as it applies to the property encumbered by the Supplemental Declaration.

1.1.56 Unit. Unit means a separate interest in space as defined in Civil Code §6542(b). Each Unit is a separate freehold estate, as separately shown, numbered and designated in the Condominium Plan.

(a) Each Unit includes entry doors and door frames, the glass portions of all windows, doors and other glass surfaces that are constructed on or within exterior walls of the Condominium Building adjacent to such Unit, and those portions of gas, water and waste pipes, ducts, chutes, conduits, wires and other utility installations that protrude into the Unit (but not fire sprinkler heads or pipes that protrude into the Unit).

(b) The boundaries of each Unit are approximately shown in the Condominium Plan. In interpreting deeds, this Declaration and the Condominium Plan, the actual boundaries of each Unit shall be deemed to extend to the centerline of the Demising Walls, and the interior unfinished Unit-facing surfaces of the exterior walls, ceilings, and floors encompassing the Unit, as constructed or reconstructed in substantial accordance with the original plans for the Unit. The foregoing interpretation shall apply notwithstanding any description expressed in the deed, the Condominium Plan or the Declaration, regardless of settling or lateral movements of Improvements, and regardless of variances between Unit boundaries shown in the Condominium Plan or deed and those of the Improvement.

1.2 INTERPRETATION.

1.2.1 General Rules. This Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for creating, operating and maintaining the Project. As used in this Declaration, the singular includes the plural and the plural the singular. The masculine, feminine and neuter each includes the other, unless the context dictates otherwise. Any reference in this Declaration to time of performance of obligations or to elapsed time means consecutive calendar days, months or years, as applicable, unless otherwise expressly provided.

1.2.2 Articles, Sections, and Exhibits. The Article and Section headings are inserted for convenience only and may not be considered in resolving questions of interpretation or construction. Unless otherwise indicated, any references in this Declaration to articles, sections or exhibits are to Articles, Sections and Exhibits of this Declaration. The Exhibits attached to this Declaration are incorporated in this Declaration by this reference. The locations and dimensions of any Improvements shown on the Exhibits are approximate only and the as-built location and dimension of any such Improvements shall control.

1.2.3 Priorities and Inconsistencies. If there are conflicts or inconsistencies between this Declaration and the Articles, Bylaws, Rules and Regulations, or the Condominium Plan, then the provisions of this Declaration shall prevail; however, the conflicting documents shall be construed to be consistent with the Declaration to the extent possible.

1.2.4 Severability. The provisions of this Declaration are independent and severable. If for any reason, any provision of this Declaration becomes invalid, partially invalid, unenforceable, illegal, null and void, or against public policy, or if for any reason, a court of competent jurisdiction determines that any provision of this Declaration is invalid, partially invalid, unenforceable, illegal, null and void, or against public policy, the validity and enforceability of the remaining provisions of this Declaration shall remain in effect to the fullest extent permitted by law.

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

1.2.6 Supplemental Declarations. Declarant may, in connection with all or a portion of the Project, Record one (1) or more Supplemental Declarations, which shall designate the use classifications in the real property described therein, and which may supplement this Declaration with such additional covenants, conditions, restrictions and land uses as Declarant may deem appropriate for the affected real property. A Supplemental Declaration may impose additional, different or more restrictive conditions, covenants, restrictions, land uses and limitations as Declarant may deem advisable, taking into account the particular requirements of the real property affected thereby. If there is any conflict between any

Supplemental Declaration and the Declaration, the Supplemental Declaration shall control as to the real property affected by such Supplemental Declaration.

1.2.7 No Representations or Warranties. Nothing in this Declaration constitutes a representation or warranty, express or implied, in connection with the Project, its physical condition, zoning, compliance with laws, fitness for intended use, or in connection with the subdivision, sale, operation, maintenance, cost of maintenance, taxes or regulation of the Project. Declarant makes no representation or warranty as to the future enforceability of any provision of this Declaration or any other Governing Document.

ARTICLE 2. MAINTENANCE COVENANTS AND USE RESTRICTIONS

The Project shall be held, used and enjoyed subject to the following restrictions and subject to the exemptions and rights of Declarant set forth in the Governing Documents.

2.1 REPAIR AND MAINTENANCE.

2.1.1 Maintenance Obligations and Standards. The specific items listed in *Exhibit B* to this Declaration shall be maintained by the party indicated. If an item is not listed in *Exhibit B*, then it shall be maintained in accordance with the general rules established in this Declaration and the current adopted Budget.

(a) By Association.

(1) The Association shall maintain the Association Property and those portions of the Exclusive Use Common Areas that are designated for Association maintenance in Exhibit B or in the Governing Documents. The Association shall maintain everything it is obligated to maintain in a clean, sanitary and attractive condition reasonably consistent with the level and frequency of maintenance reflected in the current adopted Budget; provided, such maintenance shall conform with all maintenance standards required by this Declaration, by the City and as otherwise adopted by the Association prior to the Declarant Rights Termination Date (the "*Maintenance Requirements*").

(2) The Association may contract with a Manager for the performance of maintenance and repair and for conducting other activities on behalf of the Association, provided that any contract with a person or firm employed as a Manager shall be limited to a duration of not more than one (1) year, except with the approval by vote or written consent of Members entitled to exercise not less than a majority of the voting power of the Members.

(3) Without limiting the Association's obligations hereunder, the following conditions of approval of the Condominium by the City shall apply: "Maintenance shall be in compliance with all City standards for the same, the on-site and off-site landscaping and integrated architectural features required by this entitlement. Landscape maintenance shall consist of regular watering, mowing, pruning, fertilizing, clearing debris and weeds, the removal and replacement of irrigation systems, in compliance with all relevant and applicable provisions of the Rancho Mirage Municipal Code. Integrated architectural features must be kept in a manner which maintains the desirability of the immediate area and neighboring areas and respect the harmonious relationship with existing and adjoining developments. Due regard for preservation of each feature and its intended irrigation with surrounding landscaping, buildings, structures, screening and signs is required. All features must be maintained in a manner commonly accepted by professionals who are experts in the care and preservation of each particular type of feature."

(4) Until expiration of the Defect Claims Period, the Board shall provide prior written notice to Declarant of any proposed material decrease in the level of, or frequency for, maintenance of the Association Property from that set forth in the Maintenance Requirements, and Declarant shall have the right, exercisable by written notice to the Board within thirty (30) days after

notification from the Board of the proposed modification of maintenance level or frequency, to veto such decrease. Each Owner shall immediately notify the Association of any dangerous, defective or other condition in the Project which could cause injury to persons or property.

(b) By Owners. Each Owner shall maintain the Unit and those portions of the Exclusive Use Common Area that are designated for Owner maintenance in Exhibit B or in the Governing Documents, in a clean, sanitary and attractive condition and as directed in the Governing Documents and in conformance with the Maintenance Requirements. Each Owner shall immediately notify the Association of any dangerous, defective or other condition in such Owner's Unit or Exclusive Use Area which could cause injury to person or property.

2.1.2 Commencement of Association Maintenance Obligations. The Association's obligation to maintain the Association Property commences on the first day of the calendar month following the date on which maintenance responsibility for such Association Property is tendered by Declarant. Until the Association is responsible for maintaining the Association Property, Declarant shall maintain such Association Property.

2.1.3 Acceptance of Association Property. The Association must accept ownership of, or maintenance responsibility for, or both, each portion of Association Property when tendered by Declarant, and the Association shall execute an acceptance of Association Property if requested to do so by Declarant. No Owner shall interfere with the exercise of the foregoing obligations by the Association, or with the rights of Declarant.

2.1.4 Association Power to Perform Owner Obligations. If an Owner fails to maintain any Improvement that the Owner is obligated to maintain, the Association has the power but not the duty to perform the maintenance at the Owner's expense. In an emergency, the Association may perform the maintenance immediately; in all other cases, the Association may perform the maintenance after Notice and Hearing. For purposes hereof, an "emergency" is any situation where the Board determines that there is an imminent threat of injury to persons or damage to property.

2.1.5 Disputes Regarding Maintenance Obligations. Disputes between Owners or between any Owner and the Association regarding maintenance shall be resolved in accordance with the enforcement process described in Section 12.1.

2.1.6 Damage by Owners. Each Owner is liable to the Association for all damage to the Association Property that is sustained due to the negligence or willful act of the Owner or the Owner's Permittees. The Association may, after Notice and Hearing, levy a Compliance Assessment against the Owner to reimburse the Association for costs incurred by the Association in the repair of damage to Association Property and facilities for which the Owner or the Owner's Permittees were responsible. The amount of the Compliance Assessment may include (a) the amount of any deductible payable on the insured portion of the loss (if the Association elects to make a claim under its insurance policy), (b) all costs and expenses actually incurred by the Association to correct damage that is not covered by the Association's insurance or for which no claim has been made, and (c) the amount of the increase in premiums payable by the Association, to the extent the increase is caused by or results from damage attributable to the Owner or the Owner's Permittees. In accordance with Civil Code §6824(a), the Association shall have the power to impose a lien for the Compliance Assessment.

2.1.7 Environmental Compliance. Each Owner shall comply, and shall ensure that all of its Permittees comply, with all laws, rules, regulations, judgments, orders, permits, licenses, agreements, covenants, restrictions, requirements or the like relating to the environmental condition of the Project or the presence of Hazardous Materials in, on, above, under or otherwise affecting the Project including, without limitation, the Hazardous Materials Laws. Each Owner shall protect, indemnify, defend, and hold Declarant, each other Owner and the Association, and each of their respective members, managers,

partners, directors, officers, employees, shareholder, agents, lenders, successors and assigns harmless from and against all claims, expenses, liabilities, loss, damage, and costs, including reasonable attorney fees, arising as a result (directly or indirectly) of or in connection with any violation of the preceding sentence occurring within such Owner's Unit or, to the extent arising from actions of such Owner or any Permittee of such Owner, within the Association Property.

2.2 PERMITTED USES. Except as otherwise set forth herein, the Units may be used for any uses which are permitted under this Declaration and applicable Governmental Requirements. Any uses other than general office use, including but not limited to those which require issuance of a conditional use permit or amendments thereto under applicable Governmental Requirements shall further require the approval of Declarant until the Declarant Rights Termination Date, and thereafter the Board. Any change in use which would impact the parking requirements or traffic mitigation requirements for the Project as a whole shall further require the approval of Declarant until the Declarant Rights Termination Date, and thereafter the Board. Approvals or disapprovals by Declarant under this Section shall be made in the sole discretion of Declarant.

2.3 PROHIBITED USES. The following operations and uses shall not be permitted in the Project unless specifically authorized by Declarant until the Declarant Rights Termination Date, and thereafter by the Board:

- (a) recycling facilities;
- (b) storage or refining of Hazardous Materials, except if incident to a permitted use and in compliance with all Governmental Requirements, including all Hazardous Materials Laws;
- (c) any business that is primarily sexually oriented, such as a business offering nude or semi nude entertainment, a massage parlor, escort service, adult theater, adult bookstore or similar businesses;
- (d) any operation or use that would increase the rate of insurance for the Project or any Unit within the Project (provided, however, that operations or uses which are normal and customary to any permitted use but which would nonetheless cause an increase in the rate of insurance for the Project or any other Unit may be conducted with the prior written permission of Declarant, until the Declarant Rights Termination Date, and thereafter the Board, if the Owner requesting such permission reimburses any additional insurance costs incurred by the Association or any other Owner as a result of such operation or use);
- (e) use of any portion of the Project for temporary lodging or residential purposes (provided, however, that this Section shall not be interpreted to prohibit overnight occupancy by patients of medical practices occupying the Project for not more than thirty-two (32) days);
- (f) use of any portion of the Project for Oakland Raiders fan club offices; and
- (g) use of any portion of the Project for auction, sale or other similar commercial activities without the prior written approval of Declarant until the Declarant Rights Termination Date, and thereafter the Board (which may be withheld in their respective sole discretion).

2.4 LEASES. Each lease or other rental agreement for a Unit shall provide that failure by the tenant to comply with the Governing Documents constitutes a default of the tenant under the lease or rental agreement.

2.5 NUISANCES. No Owner shall commit or suffer to be committed any public or private nuisance or other act or thing which may unreasonably interfere with any other Owner or the use of any other Unit. It is the intent of this Declaration that nuisances be determined in accordance with applicable law using objective standards, and not based on individual subjective criteria. No Person may use any Condominium for any use that would violate the provisions of the Governing Documents or increase the

rate of insurance for the Project or any other Condominium in the Project. Notwithstanding the foregoing, the conduct of any activities in the Project which are normal and customary for Projects similar in nature and permitted uses shall not, to the extent otherwise permitted by this Declaration and the applicable zoning for the Project, be deemed to constitute a nuisance or otherwise violate this restriction, so long as the activities are conducted in compliance with objective performance standards contained in applicable Governmental Requirements.

2.6 TRASH AND WASTE MATERIALS. There shall be no outdoor storage of trash or waste materials of any kind in the Project, except in trash containers placed in outdoor trash enclosures. In no event shall any Owner or Permittee thereof deposit any trash or other materials within such trash receptacles except in strict compliance with all applicable Hazardous Materials Laws. Without limiting the foregoing, waste materials requiring special handling and transportation must be stored in appropriate containers within the Unit as required under applicable Hazardous Materials Laws, and kept out of regular outdoor trash containers. Any outside storage prohibited by this Section may be removed by the Association at the expense of the offending Owner.

2.7 OWNER IMPROVEMENTS ON ASSOCIATION PROPERTY. No mechanical equipment may be placed on the roof or outside of a Condominium Building, including air conditioning, heating and ventilating equipment and vents, except as part of the original construction of the Condominium Building, without the approval of Declarant until the Declarant Rights Termination Date, and thereafter the Board, and the City, if required.

2.8 LOADING FACILITIES. No loading and unloading activities shall be conducted in any manner which may obstruct free traffic flow during normal business hours or otherwise constitute a nuisance or create a safety hazard. All temporary loading and unloading activities shall be subject to such reasonable restrictions as may be imposed by the Board (including restrictions on the maximum duration of loading and unloading activities, and the hours during which such activities are undertaken).

Any Owner or Permittee desiring to use any hallways or elevators located within the Condominium Buildings for delivery of furniture, equipment, or other heavy materials shall contact the Manager or such other representative of the Association as may be designated by the Board not less than one (1) business day before the anticipated delivery and shall comply with all reasonable procedures required by the Association in connection therewith as may be deemed advisable by the Association to protect against damage to the Association Property.

2.9 PARKING RESTRICTIONS.

2.9.1 General Restrictions. No vehicle may be parked within any portion of the Association Property other than within the striped parking spaces, and in a manner not extending beyond the limits of the striped parking space. No parking shall be permitted which may obstruct free traffic flow, constitute a nuisance, or otherwise create a safety hazard. No Person may repair, maintain or restore any vehicle in the Association Property parking area.

2.9.2 Parking Spaces. Parking spaces in striped stalls along drive aisles are free and unreserved and available to all Owners and their Permittees on a first-come, first-served basis. The Board shall have the authority to create exclusive and non-exclusive licenses for the Owners or Permittees of a Unit to use numbered parking stalls in the Association Property parking area, and may charge a fee for such licenses.

2.9.3 Regulation and Restriction by Board. The Board has the power to: (a) establish additional rules and regulations concerning parking in the Association Property, including designating "parking," "visitor parking," "handicapped parking," and "no parking" areas, and exclusive use parking areas available to Owners on a fee basis; (b) prohibit any vehicle parking or operation in the Project if it determines in its sole discretion that the activity is a nuisance, (c) establish systems of controlled parking in the Project as the Board may determine reasonably necessary to ensure compliance with City parking

requirements and the equitable use of available parking within the Project, and (d) enforce all parking and vehicle use regulations applicable to the Project, including the removal of violating vehicles in accordance with California Vehicle Code §22658 or other applicable laws. The City may, but is not required to, enforce such restrictions, rules and regulations, in addition to applicable laws and ordinances.

2.9.4 Reciprocal Parking Easement. Parking rights and uses are further subject to the terms and conditions of the reciprocal access and parking agreement with Rancho Las Palmas Shopping Center.

2.10 SIGNS.

2.10.1 Sign Program. Each individual Owner shall be responsible for the cost of erecting and maintaining any and all identification signs as provided for herein below. The location, size and style of signs within the Project are a matter of paramount importance in the development of a first-class business center. Therefore, no signs, posters, displays or other advertising devices of any character shall be erected or maintained on, or shown or displayed from, the Units without the consent and approval of the City and of the Declarant or, following the Declarant Rights Termination Date, the Architectural Committee, and a determination thereby of conformity with standards to be established by the Architectural Committee (the "Sign Program"). Unless and until a Sign Program is established, signage in the Project is subject to the original Sign Program for Rancho Las Palmas Shopping Center.

2.10.2 Enforcement Authority A Sign Program adopted by the Architectural Committee shall not regulate the content of political Signs; provided however, the Sign Program may regulate the time, place and manner of posting of political Signs. All signs shall be constructed, placed or installed in the Project in conformance with the Sign Criteria (as defined in the Sign Program). Notwithstanding anything herein to the contrary, no sign of any kind shall be displayed on any portion of the Project except such sign or signs which strictly conform to the regulations of the City. The Board, at its election, may summarily cause all unauthorized signs to be removed and destroyed, or, at the expense of the offending Owner to be brought into conformity with this Declaration and any sign standards adopted hereunder.

2.10.3 For Sale or Lease Signs. Any sign advertising the Condominium for sale or lease must be placed on the Association Property in a location authorized by the Committee and such sign shall comply with the style and dimension criteria approved by the Declarant or, following the Declarant Rights Termination Date, the Architectural Committee. This Section 2.10 shall not apply to any signs used by Declarant or its agents in connection with the original construction and sale of the Units.

2.11 OWNERSHIP OF TWO OR MORE CONTIGUOUS UNITS.

2.11.1 Consolidated Use and Occupancy. The Owner of two or more Units that are contiguous may consolidate such Units for purposes of occupancy and use. Nonstructural Demising Walls shall be deemed the perimeter wall of such occupancy whether in a single Unit or consolidated Units. In the event the Owner of such consolidated Units sells, transfers or conveys any one or more of the Units, then prior to the recordation of the Deed or instrument of transfer, a Demising Wall shall be constructed to divide the Units retained and the Units transferred.

2.11.2 Physical Alterations. No load-bearing walls or common utilities shall be removed, altered or damaged in the course of construction under 2.11.1. No modification shall be made which affects the structural integrity of the Project or impairs any other Owner's reasonable use of such Owner's Unit, the airspace within any Demising Wall, the Association Property, or the utilities that may be located therein, or the value of the Project. All costs and expenses of such modifications and subsequent restoration of the modifications shall be borne by the Owner of the Units so joined. Such modifications shall not change the status of the Units, which shall continue to be treated as separate Condominium Units.

2.12 MECHANICS LIENS. No Owner may cause or permit any mechanics lien to be filed against the Association Property or another Owner's Condominium for labor or materials alleged to have been

furnished or delivered to such Owner. Any Owner who permits a mechanics lien to be so filed shall cause the lien to be discharged no later than five (5) days after receipt of written notice to discharge the lien is received from the Board. If the Owner fails to remove a mechanics lien after written notice from the Board, the Board may discharge the lien and levy a Compliance Assessment against the violating Owner to recover the cost of discharge.

2.13 **COMMONLY METERED UTILITIES.** If any utility services are not separately metered to measure individual condominium usage, but instead are commonly metered to the Condominium Buildings, the Association has the power to enter into contracts with metering service companies for submetering, billing and collection of utility charges to each Owner. The Association may require each Owner to pay to the Association a deposit as determined by the Association as security for such Owner's obligation to pay submetered utility charges when due.

ARTICLE 3. INDEMNIFICATION; NON-LIABILITY

3.1 IDENTIFICATION.

3.1.1 For Association Representatives. To the fullest extent authorized by law, the Association has the power and duty to indemnify Board members, Association officers, and all Association committee members for all damages, pay all expenses incurred, and satisfy any judgment or fine levied, as a result of any action or threatened action brought because of an act or omission within what such Person reasonably believed to be the scope of the Person's Association duties ("*Official Act*"). Board members, Association officers, and all Association committee members are deemed to be agents of the Association for purposes of obtaining indemnification from the Association pursuant to this Section when they are performing Official Acts. The entitlement to indemnification under this Declaration inures to the benefit of the estate, executor, administrator and heirs of any person entitled to such indemnification.

3.2.2 For Other Agents of the Association. To the fullest extent authorized by law, the Association has the power, but not the duty, to indemnify any other Person acting as an agent of the Association for damages incurred, pay expenses incurred, and satisfy any judgment or fine levied, as a result of any action or threatened action because of an Official Act.

3.1.3 Provided by Contract. The Association also has the power, but not the duty, to contract with any Person to provide indemnification in addition to any indemnification authorized by law on such terms and subject to such conditions as the Association may impose.

3.2 NON-LIABILITY.

3.2.1 General Rule. No Person is liable to any other Person, or to the Association or any party claiming in the name of the Association, for injuries or damage resulting from such Person's Official Acts, except to the extent that such injuries or damage result from the Person's willful or malicious misconduct. The Association is not liable for damage to property in the Project unless caused by the negligence of the Association, the Board, the Association's officers, the Manager or the Manager's staff.

3.2.2 Non-liability of Volunteer Board Members and Officers. Except as provided in Corporations Code §5047.5, a volunteer Board member or volunteer Association officer shall not be personally liable to any Person who suffers injury, including bodily injury, emotional distress, wrongful death or property damage or loss as a result of the negligent act or omission of the volunteer officer or Board member occurring (1) within the scope of such volunteer's duties, (2) in good faith, (3) in a manner that the volunteer believes to be in the best interest of the Association, and (4) is in the exercise of the volunteer's policymaking judgment, so long as the Association keeps one or more policies of insurance which include coverage for general liability of the Association in the amount required by Corporations Code §5047.5(e) and that insurance is in effect for the cause of action being brought.

3.2.3 Non-liability of Owners. Under Civil Code §6840, no Owner shall be liable for any cause of action in tort which can be brought against the Owner solely because of the Owner's undivided interest in the Common Area so long as the Association maintains insurance which includes coverage for general liability of the Association in the amount required by Civil Code §6840 and that insurance is in effect for the cause of action being brought.

ARTICLE 4. THE ASSOCIATION

4.1 GENERAL DUTIES AND POWERS. The Association has the duties and powers enumerated and described in the Governing Documents, in addition to the general and implied powers that a nonprofit mutual benefit corporation organized under California Law may have that are necessary or proper in operating for the general welfare of the Owners, subject only to the limits on the exercise of such powers listed in the Governing Documents. Unless otherwise indicated in the Articles, Bylaws, or this Declaration, the powers of the Association are exercised by the Board.

4.2 SPECIFIC DUTIES AND POWERS. In addition to its general powers and duties, the Association has the following specific powers and duties.

4.2.1 Association Property. The power and duty to accept, maintain and manage the Association Property in accordance with the Governing Documents. The Association may install or remove capital Improvements on the Association Property. The Association may reconstruct, replace or refinish any Improvement on the Association Property.

4.2.2 Utilities. The power and duty to obtain, for the benefit of the Project, all water, gas and electric services necessary for the Association Property, and all commonly metered utilities.

4.2.3 Granting Rights. The power to grant exclusive or nonexclusive easements, licenses, rights of way or other interests in the Association Property, to the extent any such grant is reasonably required (a) for Improvements to serve the Project, (b) for purposes of conformity with the as-built location of Improvements installed or authorized by Declarant or the Association, (c) in connection with any lawful lot line adjustment, or (d) for other purposes consistent with the intended use of the Project. This power includes the right to create and convey easements for one or more Owners over portions of the Association Property. The Association may de-annex any portion of the Project from the encumbrance of the Declaration in connection with any lawful lot line adjustment.

4.2.4 Employ Personnel. The power to employ Persons necessary for the effective operation and maintenance of the Association Property, including legal, management and accounting services.

4.2.5 Insurance. The power and duty to keep insurance for the Association Property in accordance with this Declaration.

4.2.6 Sewers and Storm Drains. The power and duty to maintain any private sewer systems, private storm drains, or private drainage facilities in the Association Property in accordance with the Governing Documents.

4.2.7 Rules and Regulations; Design Guidelines. The power, but not the duty, to adopt, amend, repeal and create exceptions to Rules and Regulations concerning use of the Project, parking restrictions, minimum standards of property maintenance, Design Guidelines, and any other matter under the Association's jurisdiction. Neither Declarant nor the Association shall be liable in damages to any Owner, or to any other Person subject to or affected by this Declaration, on account of the establishment, amendment, restatement, deletion or waiver of any Rules or Regulations or Design Guidelines.

4.2.8 Borrowings. The power to borrow money for purposes authorized by the Articles, Bylaws, Declaration or any Supplemental Declarations, and to use the Association Property as security for the borrowing. The foregoing shall include the right to pledge the Association's right, title and interest

in and to Assessments collected in accordance with this Declaration, provided that such pledge shall exempt therefrom any portion of such Assessments necessary to fund the provision of essential services which the Association is obligated to perform hereunder.

4.2.9 Contracts. The power to enter into contracts, including contracts with Owners or other Persons to provide services or to maintain Improvements in the Project and elsewhere which the Association is not otherwise required to provide or maintain by this Declaration.

4.2.10 Standing to Resolve Disputes. The Association shall have standing to institute, defend, settle or intervene in litigation, alternative dispute resolution or administrative proceedings (each, an "Action") in its own name as the real party in interest and without joining the Owners, in matters pertaining to (a) damage to the Association Property, (b) damage to portions of the Condominiums which the Association is obligated to maintain or repair, and (c) damage to portions of the Condominiums which arises out of, or is integrally related to, damage to the Association Property or portions of the Condominiums that the Association is obligated to maintain or repair (each, a "Claim"). However, the Association shall not have standing to institute, defend, settle or intervene in any Action in any matter pertaining only to an individual Condominium and not included in clauses (b) or (c) above.

The Association may, in its sole discretion, elect to institute, intervene in, continue, settle or dismiss an Action at any time. If the Association institutes or intervenes in an Action on a Claim, the Association's standing shall be exclusive, and the Owners shall thereafter be barred from instituting a new Action or maintaining a pending Action on the same Claim. The Association's election to institute or intervene in an Action on a particular Claim shall not create any affirmative obligation on the part of the Association to maintain, settle or dismiss the Action, except in the Association's sole discretion, and subject to Section 12.4. If the Association elects to settle an Action, the terms of the settlement shall be binding on the Owners, and the Owners shall be barred from instituting or continuing any other Action on the same Claim. If the Association elects to dismiss an Action, the dismissal shall be with prejudice to the institution or continuation by one or more Owners of any Action on the same Claim.

4.3 STANDARD OF CARE.

4.3.1 General Scope of Powers. Rights and powers conferred on the Board or committees or representatives of the Association by the Governing Documents are not duties, obligations or disabilities charged upon those Persons unless the rights and powers are explicitly identified as including duties or obligations in the Governing Documents or law. Unless a duty to act is imposed on the Board or committees or representatives of the Association by the Governing Documents or law, the Board and the committees or representatives have the right to decide to act or not act. Any decision not to act is not a waiver of the right to act in the future.

4.3.2 Business Affairs. This Section 4.3.2 applies to Board member actions in connection with management, personnel, maintenance and operations, insurance, contracts and finances. Each Board member shall perform the duties of a Board member in good faith, in a manner the Board member believes to be in the best interests of the Association and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances. When performing Board duties, a Board member is entitled to rely on information, opinions, reports or statements, including financial data prepared or presented by:

(a) one (1) or more officers or employees of the Association whom the Board member believes to be reliable and competent in the matters presented;

(b) counsel, independent accountants or other Persons as to matters which the Board member believes to be within such Person's professional or expert competence; or

(c) a committee of the Board upon which the Board member does not serve, as to matters under its designated authority, which committee the Board member believes to merit confidence, so long as, in any such case, the Board member acts in good faith, after reasonable inquiry when the need therefor is indicated by the circumstances and without knowledge that would cause such reliance to be unwarranted.

This Section 4.3.2 is intended to be a restatement of the business judgment rule established in applicable law as it applies to the Association. All modifications and interpretations of the business judgment rule applicable to the Association shall be interpreted to modify and interpret this Section 4.3.2.

4.3.3 Association Governance. This Section 4.3.3 applies to Board actions and decisions in connection with interpretation and enforcement of the Governing Documents, architectural and landscaping control, regulation of uses within the Project, rule making and oversight of committees. Actions taken or decisions made in connection with these matters shall be reasonable, fair and nondiscriminatory.

4.4 MEMBERSHIP.

4.4.1 Generally. Every Owner shall automatically acquire a Membership in the Association and retain the Membership until such Owner's Condominium ownership ceases, at which time such Owner's Membership shall automatically cease. Ownership of a Condominium is the sole qualification for Membership.

4.4.2 Transfer. Memberships are not assignable or transferable except to the Person to whom title to the Condominium is transferred, and every Membership is appurtenant to and may not be separated from the fee ownership of the Condominium. A prohibited transfer is void and will not be reflected in the records of the Association. Any Owner who has sold the Owner's Condominium to a contract purchaser under an agreement to purchase may delegate in writing the Owner's Membership rights to the contract purchaser. The Association may levy a reasonable transfer fee against a new Owner and such Owner's Condominium (which fee shall be paid through escrow or added to the Annual Assessment chargeable to such new Owner, at the Board's discretion) to reimburse the Association for the administrative cost of transferring the Membership to the new Owner on the Association's records.

4.4.3 Classes of Membership. The Association classes of voting Membership are as follows:

(a) Class A. Class A members are all Owners except Declarant. Each Class A member is entitled to exercise voting power in the Association with one (1) vote for each Condominium owned by it which is subject to assessment.

(b) Class B. Declarant shall be the Class B member and shall be entitled to ten (10) times the voting power attributable to each Condominium owned by Declarant, computed in accordance with Section 4.4.3(a).

(c) Class C. The Class C member shall be Declarant. The Class C Membership shall not be considered a part of the voting power of the Association. The Class C member is entitled to select a majority of the members of the Board until the Declarant Rights Termination Date.

4.5 COMMENCEMENT OF ASSOCIATION FUNCTIONS. Notwithstanding anything to the contrary in this Declaration, including Section 1.1.48 regarding the jurisdiction of the Association over the Project, until such time as Declarant tenders maintenance of the Association Property to the Association, as described in Sections 2.1.2 and 2.1.3 above, the Declarant shall be responsible for management, maintenance and control, and the expense thereof, of the Association Property and of the Association, and all other matters described in this Declaration as a right or responsibility of the Association. Such tender and transition, and activation of the Association rights and responsibilities

hereunder, shall occur upon the Close of Escrow that brings the total number of Units owned by other than Declarant or an affiliate of Declarant to more than 60% of the total number of Units in the Project.

ARTICLE 5. ARCHITECTURAL CONTROL

5.1 ARCHITECTURAL CONTROL REQUIREMENTS.

5.1.1 Improvements Requiring Approval. No Owner shall permit or cause any portion of such Owner's Unit or Exclusive Use Common Area, or any additional Improvements located therein, to be altered, installed, constructed, reconstructed, replaced, assembled, maintained, relocated, removed or demolished (each, a "Proposed Alteration") unless such Proposed Alteration conforms to all applicable Governmental Requirements and any Design Guidelines adopted pursuant to this Declaration. Without limiting the foregoing, the following Proposed Alterations shall further require the approval of the Approving Authority (as defined in Section 5.2):

- (a) any Proposed Alteration which would be visible from outside of a Unit;
- (b) any Proposed Alteration which would pierce, modify or otherwise impact the roof, perimeter walls, Demising Walls, load-bearing or utility-bearing walls, ceilings, foundations or other structural or utility bearing portions of a Condominium Building;
- (c) any Proposed Alteration that would impact in any manner operation of any mechanical systems serving any other Owner's Unit within a Condominium Building;
- (d) any Proposed Alteration which would materially increase the load on any utility services provided by the Association or otherwise adversely impact any utility improvements installed within the Project for the delivery of such utility services or any common utility services benefiting more than a single Unit;
- (e) any Proposed Alteration that would cause a significant increase in the cost of insurance to be carried pursuant to Article 8 by the Association or the Owner of any other Unit; and
- (f) any other Proposed Alteration which would materially, adversely impact the use and occupancy of any other Owner's Unit (other than temporary, minor impacts resulting from construction activity related to the performance of such Proposed Alteration).

5.1.2 Submittals. To obtain approval for a Proposed Alteration, the Owner shall submit a set of plans and specifications to the Approving Authority showing the Proposed Alteration in sufficient detail to enable the Approving Authority to make its determination. Within thirty (30) days after receiving the Owner's submittal, the Approving Authority shall approve or disapprove such submittal, or request such additional plans and specifications or other information as are reasonably necessary to enable the Approving Authority to make its determination.

5.1.3 Inspection. The Approving Authority may inspect any work for which approval of plans is required under this Article. The right to inspect includes the right to require any Owner to take such action as may be necessary to remedy (including removal of) any noncompliance with the plans for the work approved by the Approving Authority.

5.1.4 Identical Replacements. Approving Authority consent shall not be required for the restoration or replacement of any Owner Improvement which will be substantially identical to the original improvements located within the Unit at the time the Unit was originally constructed, or any Owner Improvement subsequently installed within the Unit but previously approved by the Approving Authority.

5.1.5 Declarant Exempt. Declarant need not obtain approval from the Approving Authority with respect to its construction or development activities.

5.2 **APPROVING AUTHORITY.** Before the Declarant Rights Termination Date, Declarant shall be the "*Approving Authority*" for purposes of exercising all approval, inspection and enforcement rights set forth in this Article. Notwithstanding the foregoing, Declarant may delegate its rights as Approving Authority to the Board at any time before the Declarant Rights Termination Date. Upon any such delegation, but in any event from and after the Declarant Rights Termination Date, the Board shall be the Approving Authority for purposes of this Article; provided, however, the Board may appoint a committee of members of the Association (the "*Architectural Review Committee*") and delegate to such Architectural Review Committee its authority hereunder. From and after any such delegation, the Architectural Review Committee shall be deemed to be the Approving Authority. The Approving Authority shall further have the power to retain consultants to advise the Approving Authority in connection with the review, approval and inspection of any Proposed Alteration. Notwithstanding any approval by the Approving Authority, the Owner is responsible for complying with all applicable Governmental Requirements, and for consulting and using qualified consultants and contractors when designing, installing or constructing any Proposed Alteration.

5.2.1 **Basis of Approval.** The Approving Authority may disapprove any submittals hereunder if it determines that the Proposed Alteration will or could (a) adversely affect the integrity of the structural, mechanical or common utility systems in the Condominium Building, (b) significantly increase insurance or utility costs for the Association or any other Owner, (c) materially adversely affect the use or occupancy of any other Owner's Unit, (d) cuts the slab, or (e) is not otherwise in harmony or conformity with the appearance of the Project or the applicable Governmental Requirements, this Declaration or any Design Guidelines adopted pursuant to this Declaration.

5.2.2 **No Liability.** Neither the Approving Authority nor any Person retained by the Approving Authority in connection with the review and approval of Proposed Alterations, nor their respective agents, employees, attorneys or consultants (collectively, "*Approving Authority Parties*"), shall be liable or responsible on account of (a) the approval or disapproval of any submittal under this Article, (b) any construction, performance or nonperformance by an Owner or its Permittees of any work, whether or not pursuant to approved submittals, (c) any damage that results from improvements installed, constructed or modified by or at the direction of an Owner or its Permittees, or (d) any mistake in judgment, negligence, act or omission in the Approving Authority's exercise of its powers hereunder. Every Person who makes a submittal for approval of a Proposed Alteration agrees by reason of such submittal, and every Owner or occupant of a Condominium, by acquiring an interest in any Condominium affected by such Proposed Alteration, agrees not to bring any suit or action against Declarant, the Association or the Approving Authority or any Approving Authority Parties, seeking to recover damages. Approval of any submittal by the Approving Authority shall not constitute the assumption of any responsibility by, or impose any liability upon, Declarant, the Association or the Approving Authority or any Approving Authority Parties, with respect to the accuracy or sufficiency of the submittal.

ARTICLE 6. PROPERTY EASEMENTS AND RIGHTS

6.1 EASEMENTS.

6.1.1 **Maintenance and Repair.** Declarant reserves for the benefit of the Association and all Association agents, officers and employees, nonexclusive easements over the Project as necessary to fulfill the obligations and perform the duties of the Association.

6.1.2 **Encroachments.** Declarant reserves a reciprocal easement appurtenant to each Condominium over the other Condominiums and the Association Property to accommodate (a) any existing encroachment of any wall or any other Improvement installed by Declarant or approved by the Approving Authority, and (b) shifting, movement or natural settling of any Condominium Building or other Improvements.

6.1.3 Easements for Public Service Use. Declarant reserves easements over the Project for public services of the local government agencies, including the right of law enforcement and fire protection personnel to enter the Project to carry out their official duties.

6.1.4 Owners' Easements in Association Property. Declarant reserves nonexclusive easements, including for pedestrian and vehicular access, over the Association Property as reasonably necessary for the use and enjoyment of each Condominium. This easement is appurtenant to and passes with title to every Condominium, but is to be exercised subject to the rights, restrictions, covenants and easements in the Governing Documents and the Association's right to reasonably restrict access to rooftops, maintenance facilities and other areas of the Association Property that are designated from time to time by the Board.

6.1.5 Exclusive Use Common Areas. Declarant reserves exclusive easements over the Association Property for use and enjoyment of Exclusive Use Common Areas as defined in this Declaration. The Exclusive Use Common Area easements shall be conveyed by Recorded deed, and shall be appurtenant to and run with the Owner's Unit, subject to the right of the Association and its representatives to enter the Exclusive Use Common Areas to carry out Association maintenance and other obligations as provided in the Governing Documents.

6.1.6 Drainage Easements. Declarant reserves reciprocal nonexclusive easements for drainage and catchment of water over, across and on the Project, and for maintenance of stormwater systems.

6.1.7 Utility Easements. Declarant reserves easements over the Association Property and each Unit for purposes of installing, repairing and maintaining utility improvements and telecommunications systems which serve the Units; provided, however, that no such utility improvements or telecommunications systems or any wires, conduits, or other facilities or equipment related thereto may be installed within any other Owner's Unit except with respect to a "drop" or "false" ceiling, within that portion of the Unit which is above the drop ceiling.

6.1.8 Common Utility Area. Declarant reserves a non-exclusive easement over the Common Utility Area for purposes of installing and maintaining electrical meters and other utility and/or telecommunications equipment serving the Units; provided, however, that (i) no Owner shall have the right to use the Common Utility Area, or to install any electrical meters and other utility and/or telecommunications equipment therein in any manner which would materially interfere with, damage or otherwise adversely impact any electrical meters and other utility and/or telecommunications equipment installed within such Common Utility Area by or on behalf of the Association or any other Owner and (ii) Declarant and/or the Board shall have the right to impose Rules and Regulations on use of the Common Utility Area by the Owners (including, without limitation, regulations restricting the size, type and quantity of electrical meters and other utility and/or telecommunications equipment which may be maintained within the Common Utility Area by each Owner).

6.1.9 Reciprocal Access and Parking Easement. Association Property, including but not limited to non-exclusive parking spaces and driveways, is subject to the terms and conditions of the reciprocal access and parking easement covering the Project and the adjacent Rancho Las Palmas Shopping Center.

6.2 DELEGATION OF USE. Any Owner may delegate the Owner's right to use the Association Property in writing to the Owner's tenants, contract purchasers or subtenants who occupy such Owner's Unit, subject to regulation by the Board.

6.3 RIGHT OF ENTRY.

6.3.1 Association. The Association has the right to enter the Exclusive Use Common Areas and the Units to inspect the Project, and may take whatever corrective action it determines to be necessary or proper. Entry may be made after at least three (3) days' advance written notice to the Owner or occupant

of the Unit except for emergency situations, which shall not require notice. Any damage to a Unit or Exclusive Use Common Area caused by such entry shall be repaired by the Association.

6.3.2 Owners. Each Owner shall permit other Owners, and their representatives, to enter that Owner's Exclusive Use Common Area and Unit to install, maintain, operate and repair mechanical or electrical services serving a Unit if (a) requests for entry are made in advance, (b) entry is made at a time reasonably convenient to the Owner or occupant whose Exclusive Use Common Area or the Unit is to be entered, and (c) the entered Exclusive Use Common Area or the Unit is left in substantially the same condition as existed immediately preceding such entry. Any damage to the Exclusive Use Common Area or the Unit caused by such entry shall be repaired by the entering Owner.

6.4 DECLARANT'S EASEMENTS.

6.4.1 Access and Construction Easement Over Association Property. Declarant reserves for its benefit and for the benefit of Declarant's agents, employees, contractors, customers and invitees nonexclusive easements over the Association Property for access, ingress, egress, use and enjoyment in connection with (a) the promotion and marketing of the Project, including the sale, leasing or financing of Condominiums, (b) completing any Improvement in the Project which Declarant considers desirable to implement Declarant's plan for development and sale of the Project, (c) complying with any applicable Governmental Requirements, or (d) otherwise exercising any of the rights reserved for Declarant in this Declaration; provided, however, such use shall not unreasonably interfere with the rights of enjoyment of the Owners established by this Declaration. Without limiting the generality of the foregoing, Declarant may erect and maintain Signs and sales offices and permit prospective purchasers, lessees and lenders to enter upon the Association Property as Declarant deems reasonably necessary in connection with the promotion or marketing of the Project.

6.4.2 Inspection, Maintenance and Repair. Declarant reserves for its benefit and for the benefit of Declarant's agents, employees and contractors nonexclusive easements for access over the Project to perform necessary inspection, maintenance and repair of any Improvement constructed, installed or altered by Declarant in connection with the development of the Project, as deemed necessary and proper by Declarant. The foregoing easement shall terminate upon expiration of the Defect Claims Period.

6.4.3 Utility Easements. Declarant reserves easements over the Project to install and maintain utilities for public and private utility purposes, including access to read and maintain meters. Declarant reserves the right to grant additional easements and rights-of-way throughout the Project to utility companies and public agencies as Declarant deems necessary for the proper development and disposal of the Project. Such right of Declarant shall expire on the Close of Escrow for the sale of the last Condominium in the Project.

ARTICLE 7. ASSESSMENTS

7.1 PERSONAL OBLIGATION TO PAY ASSESSMENTS. Each Owner shall pay to the Association all Assessments established and collected pursuant to this Declaration. All Assessments, together with late payment penalties, interest, costs, and reasonable attorney fees for the collection thereof, are a charge and a continuing lien on the Condominium against which such Assessment is made. Each Assessment, together with late payment penalties, interest, costs and reasonable attorney fees, is also the personal obligation of the Person who was the Owner of the Condominium when the Assessment accrued. The personal obligation for delinquent Assessments may not pass to any new Owner unless expressly assumed by the new Owner or unless the new Owner has actual or constructive knowledge of such delinquent Assessments.

7.2 ASSOCIATION ACCOUNTS. The Association shall establish such Association accounts as the Board deems necessary into which shall be deposited all money paid to the Association and from which

disbursements shall be made, as provided in this Declaration. The Association accounts may be established as trust accounts at a banking or savings institution.

7.3 **PURPOSE OF ASSESSMENTS.** The Assessments shall be used exclusively to (a) promote the Owners' welfare, (b) operate, improve and maintain the Association Property, and (c) discharge any other Association obligations under the Governing Documents.

7.4 **WAIVER OF USE.** Waiver of use and enjoyment of the Association Property or abandonment of a Condominium by an Owner shall not exempt such Owner from personal liability for Assessments duly levied by the Association, nor release such Owner's Condominium from the liens and charges thereof.

7.5 **ANNUAL ASSESSMENTS.**

7.5.1 Commencement of Annual Assessments. Annual Assessments shall commence on all Condominiums in the Project on the first day of the first calendar month following conveyance of the Association Property to the Association, at which time the Association's maintenance obligations shall commence. Each Owner shall be notified of the date on which Annual Assessments commence at least thirty (30) days before the date of commencement. Annual Assessments for fractions of a month shall be prorated. Declarant shall pay its full prorata share of the Annual Assessments on all unsold Condominiums for which Annual Assessments have commenced. The Board shall fix the amount of the Annual Assessment against each Condominium at least thirty (30) days in advance of each Annual Assessment period. Written notice of any change in the amount of any Annual Assessment, Capital Improvement Assessment or Reconstruction Assessment shall be sent by first-class mail to every Owner subject thereto not less than thirty (30) days before the revised Assessment becomes due.

7.5.2 Apportionment of Annual Assessments. Annual Assessments, Capital Improvement Assessments and Reconstruction Assessments shall be assessed against each Condominium in the Project based on the number of Assessment Units allocated to such Condominium pursuant to Exhibit A and A-1 hereto.

7.5.3 Payment of Annual Assessments. Each Owner shall pay Annual Assessments in installments at such frequency, in such amounts and by such methods as are established by the Board. If the Association incurs additional expenses because of a payment method selected by an Owner, the Association shall charge the additional expenses to the Owner.

ARTICLE 8. INSURANCE

8.1 **DUTY TO OBTAIN INSURANCE; TYPES.** The Association shall obtain and keep in effect at all times the following insurance coverages.

8.1.1 Commercial General Liability. A policy of commercial general liability insurance (including coverage for medical payments), insuring the Association and the Owners against liability for bodily injury, death and property damage arising from or relating to the ownership or use of the Association Property. Such policy shall specify amounts and include protection from liability and risks as are customarily covered in similar condominium developments in the area of the Project, and shall include a severability of interest endorsement or the equivalent which shall preclude the insurer from denying the claim of an Owner because of negligent acts or omissions of other Owners, or the Association or the Association's officers and directors acting in their capacity as officers and directors. The Association's policies shall at all times specify limits no less than the minimum amounts required by Civil Code §6840.

8.1.2 Fire and Casualty Insurance. A "master" or "blanket" policy of fire and casualty insurance with extended coverage, special form, in an amount as near as possible to the full replacement value of all insurable Improvements on the Association Property, Condominium Building service

equipment and supplies, and other personal property belonging to the Association without deduction for depreciation, and including costs attributable to changes in laws and costs of excavation, footings and foundations below the lowest floor. The casualty insurance shall not include earthquake coverage unless the Board is directed to obtain earthquake coverage by a majority of the Association's voting power.

8.1.3 Fidelity Insurance. Fidelity insurance coverage for any Person handling funds of the Association, whether or not such Persons are compensated for their services, in an amount not less than the estimated maximum of funds, including Reserve Funds, in the custody of the Person during the term of the insurance.

8.1.4 Other Insurance. Such other insurance insuring other risks customarily insured by associations managing condominium projects similar in construction, location, and use, including director's and officer's errors and omissions insurance in such amounts as may be deemed reasonable or appropriate by the Board.

8.1.5 Automobile. With respect to the parking areas only, the Association shall obtain Automobile Liability Insurance in such reasonable coverage amounts as are determined by the Board, covering legal liability for loss to automobiles or automobile equipment left in the care of the Association.

8.2 GENERAL PROVISIONS.

8.2.1 Beneficiaries. The Association's insurance shall be kept for the benefit of the Association, the Owners and the Mortgagees, as their interests may appear, subject to loss payment requirements established in this Declaration.

8.2.2 Periodic Review. The Board shall periodically review the Association's insurance policies to determine the adequacy of coverage and to adjust the policies accordingly.

8.2.3 Other Policy Requirements. The Board shall make every reasonable effort to secure insurance policies providing for the following:

(a) a waiver of subrogation by the insurer as to any claims against the Board, the Manager, the Owners and their respective Permittees;

(b) that the policy will be primary, even if an Owner has other insurance which covers the same loss, and waiving any defense based on co-insurance;

(c) an agreed amount endorsement, if the policy contains a co-insurance clause;

(d) guaranteed replacement cost or replacement cost endorsement; and

(e) an inflation guard endorsement.

8.2.4 Delivery of Policies. Duplicate originals or certificates of all policies of fire and casualty insurance kept by the Association and of all renewals thereof, together with proof of payment of premiums, shall be delivered by the Association to all Owners and Mortgagees who requested them in writing.

8.2.5 Notice of Expiration Requirements. If available, each of the Association's insurance policies must contain a provision that the policy may not be canceled, terminated, materially modified or allowed to expire by its terms, without at least ten (10) days' prior written notice to the Board and Declarant, and to each Owner, Mortgagee and other Person who has filed a written request with the carrier for such notice. In addition, fidelity insurance shall provide that it may not be canceled or substantially modified without at least ten (10) days' prior written notice to any insurance trustee named pursuant to Section 8.2.6.

8.2.6 Trustee for Policies. The Association is trustee of the interests of all named insureds under the Association's insurance policies and the Board has the exclusive authority to negotiate loss settlements with insurance carriers; provided that no Mortgagee having an interest in such loss may be prohibited from participating in settlement negotiations. A representative chosen by the Board may be named as an insured, including a trustee with whom the Association may enter into an insurance trust agreement and any successor to such trustee, who shall have exclusive authority to negotiate losses under any insurance policy and to perform such other functions necessary to accomplish this purpose.

8.3 **RIGHT AND DUTY OF OWNERS TO INSURE.** Each Owner is responsible for insuring his personal property and all other property and Improvements in his Unit for which the Association has not purchased insurance in accordance with this Declaration. Nothing in this Declaration precludes any Owner from carrying any additional insurance as such Owner considers desirable; however, Owners' policies may not adversely affect or diminish any coverage under any of the Association's insurance policies. Duplicate copies of Owners' insurance policies shall be deposited with the Association on request. If any loss intended to be covered by the Association's insurance occurs and the proceeds payable are reduced due to insurance carried by any Owner, such Owner shall assign the proceeds of the Owner's insurance to the Association, to the extent of such reduction, for application to the same purposes as the reduced proceeds are to be applied. Without limiting the foregoing, each Owner shall maintain the insurance required under the Bylaws.

8.4 **OWNER INDEMNITY.** In addition to any other indemnity obligations set forth elsewhere in this Declaration, each Owner (the "*Indemnifying Owner*") shall protect, indemnify, defend, and hold Declarant, each other Owner and the Association, and each of their respective members, managers, partners, directors, officers, employees, shareholder, agents, lenders, successors and assigns harmless from and against all claims, expenses, liabilities, loss, damage, and costs, including reasonable attorney fees, arising as a result (directly or indirectly) of or in connection with (a) any accident, injury, loss, or damage to any Person or loss or damage to the Project occurring on (or resulting from acts committed on) the Indemnifying Owner's Unit, (b) use of the Unit or the Project by the Indemnifying Owner or its Permittees, (c) the conduct of any business or work or things done, permitted or suffered in or about the Indemnifying Owner's Unit or the Project by Permittees of the Indemnifying Owner's Unit, and (d) the Indemnifying Owner's breach of this Declaration. Provided, however (i) no Person shall be entitled to indemnification for any damage arising from such Person's gross negligence or willful misconduct or the gross negligence or willful misconduct of such Person's Permittees, and (ii) the Association, Declarant and each Owner, for themselves and their respective Permittees, waive any right of recovery against the other Owners and their Permittees for any loss, damage, or injury to the extent the loss, damage or injury is actually covered by insurance.

ARTICLE 9. DESTRUCTION OF IMPROVEMENTS

9.1 **RESTORATION OF THE ASSOCIATION PROPERTY.** If all or any portion of the Association Property is damaged or destroyed, subject to receipt of insurance proceeds and the proportionate share for insurance expenses of any shortfall from the other Owners as provided below, the Association shall repair or reconstruct all of the Improvements within the Project so damaged or destroyed, excluding any interior Improvements within the Units not required to be maintained by the Association. The Association shall cause such Improvements to be repaired or reconstructed substantially in accordance with the original "as-built" plans and specifications, modified (a) as may be required by applicable building codes and regulations in effect at the time, and (b) subject to any alterations as may be approved by the Approving Authority and at least sixty-seven percent (67%) of the total voting power of the Association. The Board shall prepare or obtain the documents necessary for commencing such reconstruction as promptly as practical.

9.1.1 Insurance Shortfall. If insurance proceeds are not sufficient to fund *at least eighty-five percent (85%)* of the estimated cost of restoration and repair, and the Board is unable to supplement the

insurance proceeds by borrowing on behalf of the Association sufficient monies to enable the improvements to be substantially repaired or reconstructed within a reasonable time, the Board shall levy a Reconstruction Assessment to provide the additional funds necessary for such reconstruction; *provided, however, any Reconstruction Assessment exceeding two hundred percent (200%) of the budgeted or anticipated Common Expenses of the Association for the twelve (12)-month period immediately following the month in which the destruction occurred (not including any costs of restoration), must be approved by at least a majority of the total voting power of the Association.* The Board shall give written notice to each Owner stating the gross amount of such insurance shortfall and the amount thereof allocated to each Unit as a Reconstruction Assessment. Each Owner shall pay such Owner's Reconstruction Assessment within ninety (90) days after such notice is given. If repair costs increase or there is a reduction in the amount of insurance proceeds, then the Board shall levy an additional Reconstruction Assessment, which shall be payable within ninety (90) days after notice of such additional Reconstruction Assessment is given. The Board may elect to allow Reconstruction Assessments to be paid in installments over such period of time as the Board deems appropriate.

9.1.2 Noncovered Casualty. If the Association Property is damaged or destroyed by a casualty not required to be insured against under the Association's insurance policies as required in this Declaration, and such casualty is in fact not insured against under the Association's insurance, the Board shall diligently determine the estimated cost of repair to render the Improvements safe only and the estimated cost of full restoration. The Board shall give written notice to each Owner of such estimates, and stating each Owner's proportionate share of such respective costs. The Board shall cause full restoration of the Improvements unless the Owners of at least seventy-five percent (75%) of the total voting power of the Association elect to repair the damage only to the extent necessary to render the Improvements safe. The Association shall levy a Reconstruction Assessment against each Unit in the amount of such cost allocable to such Unit, and each Owner shall pay such Owner's Reconstruction Assessment within ninety (90) days after notice of the Reconstruction Assessment is given, unless other payment arrangements are approved by the Board.

9.2 SALE OF PROJECT AND RIGHT TO PARTITION. No Owner shall have the right to partition of the Owner's interest in his Condominium and there shall be no judicial partition of the Project, or any part thereof, except as provided in Civil Code §6656. For purposes of Civil Code §6656(b)(4), partition may occur only if all of the following conditions are satisfied: (a) within six (6) months after the date on which destruction occurred, the Reconstruction Assessment has not been approved by the members, as provided in Section 9.1 above, or (b) within twelve (12) months after the date on which destruction occurred, restoration or repair has not actually commenced for any reason other than causes beyond the reasonable control of the Association. In such event, the Association shall prepare, execute and Record, as promptly as practical, the certificate stating that a majority of the Board may properly exercise an irrevocable power of attorney to sell the Project for the benefit of the Owners and execute such other documents and instruments as may be necessary for the Association to consummate the sale of the Project at the highest and best price obtainable, either in its damaged condition, or after damaged structures have been razed. Such certificate shall be conclusive evidence of such authority for any Person relying thereon in good faith. The net proceeds of such sale and the proceeds of any insurance carried by the Association shall be divided proportionately among the Owners, such proportions to be determined in accordance with the number of Assessment Units allocated to such Condominium on Exhibits A and A-1 hereto/Percentage Share of the total Assessments allocated to such Condominium on Exhibits A and A-1 hereto. Provided, however, the balance then due on any valid Mortgage shall be first paid in order of priority before the distribution of any proceeds to an Owner whose Condominium is so encumbered. Nothing in this Declaration prevents partition of a co-tenancy in any Condominium. Except as provided above, each Owner and the successors of each Owner, whether by deed, gift, devise, or by operation of law, for their own benefit and for the Condominiums and for the benefit of all other Owners, specifically waive and abandon all rights, interests and causes of action for a judicial partition of the tenancy in

common ownership of the Project and do further covenant that no action for such judicial partition shall be instituted, prosecuted or reduced to judgment.

9.3 INTERIOR DAMAGE. Except for any casualty or damage covered by insurance maintained by the Association, restoration and repair of any damage to the interior of any Unit, including all fixtures and Improvements therein, together with restoration and repair of all interior paint, wall coverings and floor coverings, must be made by and at the individual expense of the Owner of the Unit. Such interior repair and restoration shall be completed as promptly as practical, in a lawful and workmanlike manner and otherwise as provided in this Declaration.

ARTICLE 10. EMINENT DOMAIN

The term "*taking*" as used in this Article means inverse condemnation by exercise of the power of eminent domain or by sale under threat of the exercise of the power of eminent domain. The Board shall represent the Owners in any proceedings, negotiations, settlements, or agreements regarding takings. All takings proceeds shall be payable to the Association for the benefit of the Owners and their Mortgagees.

10.1 RIGHTS OF MORTGAGEES. Nothing herein contained shall be deemed to prohibit any Mortgagee from participating in any eminent domain proceedings on behalf of or in conjunction with any Owner on whose Condominium it has a Mortgage, provided such participation does not reduce the award to any other Owners or the Association, or alter the application thereof as provided below.

10.2 RECONSTRUCTION ON CONDEMNATION. Subject to the provisions of this Article 10, and to the extent economically feasible based upon the extent of the condemnation, the Association and each Owner shall be obligated to reconstruct the Improvements in the event of a condemnation in the same manner and to the same extent and same standard as would be required pursuant to Article 9 if the condemnation were a casualty and the award were insurance proceeds. If the Association or an Owner is not required to reconstruct all or any portion of the Improvements for which the Association or such Owner is responsible, the Association or such Owner, as applicable, shall clear such Improvements or the affected portion thereof. Any award shall be applied to the restoration or razing required pursuant to this Section, and any excess shall be distributed to the Owners and Mortgagees as provided in their respective Mortgages.

ARTICLE 11. RIGHTS OF MORTGAGEES

11.1 GENERAL PROTECTIONS. No amendment or violation of this Declaration defeats or renders invalid the rights of the Mortgagee under any Mortgage encumbering a Condominium made in good faith and for value, provided that after the foreclosure of any such Mortgage, the foreclosed Condominium will remain subject to this Declaration. Any Mortgagee, upon filing a written request with the Association identifying the Condominium encumbered by the Mortgage, shall be entitled to receive written notification from the Association of (a) any condemnation or casualty loss that affects the encumbered Condominium or a material portion of the Project, (b) any lapse, cancellation or material modification of any policy of insurance maintained by the Association, or (c) any delinquency of sixty (60) days or more in the performance of any obligation under the Governing Documents by the Owner of the encumbered Condominium.

11.2 MORTGAGEE CURE RIGHTS. A Mortgagee may jointly or singly pay any Assessments or installments thereof which are in default and take any action reasonably necessary to cure any other default of its Mortgagor under the Governing Documents with the same effect as such cure by such Mortgagor itself. Any Mortgagee of a Mortgage having first priority over other Mortgages on a Condominium may, jointly or singly, pay taxes, assessments or other charges which are in default and which may or have become a charge against any Association Property and may pay any overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy,

for the Association Property, and first Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association.

11.3 UNPAID ASSESSMENTS. If the Mortgagee of a Condominium obtains fee title to the Condominium by foreclosure of the Mortgage, then the Mortgagee shall take title to the Condominium free and clear of any claims for unpaid Assessments levied or accrued against the Condominium before the date on which the Mortgagee recorded its Notice of Default and Election to Sell Under Deed of Trust, except for Assessment liens Recorded before the Mortgage.

11.4 PRIOR RECORDED DEED SUBORDINATE TO DECLARATION. Declarant hereby covenants and warrants that any deed of trust, encumbering any portion of the Project, recorded prior to the recordation of this Declaration shall be subordinated to this Declaration.

ARTICLE 12. ENFORCEMENT AND DISPUTE RESOLUTION

12.1 ENFORCEMENT OF GOVERNING DOCUMENTS. All violations of or disputes relating to the Governing Documents, except for those governed by Section 12.2 or subject to Civil Code §§6870-6876, shall be resolved as follows:

12.1.1 Violations Identified by the Association. If the Board or the Approving Authority determines that there is a violation of the Governing Documents, other than nonpayment of any Assessment, then the Board shall give written notice to the responsible Owner identifying (a) the condition or violation complained of, and (b) the length of time the Owner has to remedy the violation including, if appropriate, the length of time the Owner has to submit plans to the Approving Authority and the length of time the Owner has to complete the work proposed in such plans. This requirement shall apply notwithstanding the fact that this Declaration may duplicate City ordinances or regulations. If an Owner does not perform corrective action within the allotted time, the Board, after Notice and Hearing, may remedy such condition or violation complained of, and the cost thereof shall be charged to the Owner as a Compliance Assessment. If the violation involves nonpayment of any Assessment, then the Board may collect such delinquent Assessment pursuant to the procedures established in Section 12.2.

12.1.2 Violations Identified by an Owner. If an Owner alleges that another Person is violating the Governing Documents (other than nonpayment of any Assessment), the complaining Owner must first submit the matter to the Board for Notice and Hearing before the complaining Owner may resort to litigation for relief.

12.1.3 Remedies. Failure to comply with any of the terms of the Governing Documents by any Person is grounds for relief which may include an action to recover damages, injunctive relief, foreclosure of any lien, or any combination thereof; however, the procedures established in Sections 12.1.1 and 12.1.2 must first be followed, if they apply. The Board may adopt a schedule of reasonable fines or penalties which the Board may assess against a Person for the failure of such Person to comply with the Governing Documents. Such fines or penalties may only be assessed under Civil Code §6850. The Association may use any legal remedy necessary to enforce the CC&Rs, bylaws, or Rules and Regulations. The Association is entitled to collect from a noncomplying owner all legal costs, legal fees, and corrective costs incurred in bringing the owner or property into compliance with the CC&Rs, bylaws, and Rules and Regulations.

12.1.4 No Waiver. Failure by the Association or by any Owner to enforce any provision of the Governing Documents does not waive the right to enforce that provision, or any other provision of the Governing Documents.

12.1.5 Limit on Expenditures. The Association may not incur litigation expenses, including attorneys' fees, or borrow money to fund litigation, where the Association initiates legal proceedings or is joined as a plaintiff in legal proceedings, unless the Association first obtains the consent of a majority of

the total voting power of the Association (excluding the voting power of any Owner who would be a defendant in such proceedings) and, if applicable, complies with the requirements of Civil Code §§6870–6876. Such approval is not necessary if the legal proceedings are initiated (a) to enforce the use restrictions contained in Article 2 or in the Association’s Rules and Regulations, (b) to enforce the architectural provisions contained in Article 5, (c) to collect any unpaid Assessments levied pursuant to the Governing Documents, (d) for a claim the total value of which is less than *Five Hundred Thousand Dollars (\$500,000)*, or (e) as a cross-complaint in litigation to which the Association is already a party.

12.2 DELINQUENT ASSESSMENTS.

12.2.1 Delinquency. Assessments are delinquent if not paid within fifteen (15) days after the due date established by the Association. Commencing thirty (30) days after the due date, delinquent Assessments plus all reasonable costs of collection (including attorneys’ fees) and late charges bear interest until paid at the maximum rate permitted by law. The Association need not accept any tender of a partial payment of an Assessment and all costs and attorneys’ fees attributable thereto. Acceptance of any such tender does not waive the Association’s right to demand and receive full payment.

12.2.2 Lien Rights. The Association shall have the right to lien units of the owners who default in the payment of any assessment so provided. At least thirty (30) days before Recording a lien on an Owner’s Condominium to collect a past due Assessment, the Association shall send written notice to the Owner pursuant to Civil Code §6812. Monetary penalties described in Civil Code §6824(b) may not become a lien against an Owner’s Condominium enforceable by the sale of the Condominium under Civil Code §§2924, 2924b, and 2924c.

12.2.3 Priority of Taxes and Assessments. A lien recorded pursuant to this section 12.2 shall not be superior to property taxes, governmental assessments, and other levies which, by law, would be superior. The rights of first Mortgagees with respect to such liens are set forth in Article 11 above.

12.3 ASSOCIATION OWNERSHIP OF UNITS. The Association shall have the power to bid at a foreclosure sale for any Condominium in the Project, and to acquire and hold, lease, mortgage and convey the same. Where the purchase of a Condominium at a foreclosure sale will result in a ten percent (10%) or greater increase in Annual Assessments, the purchase shall require the vote or written consent of a majority of the total voting power of the Association and the consent of Declarant until the Declarant Rights Termination Date. During the period a Condominium is owned by the Association, (a) no right to vote shall be exercised on behalf of the Condominium, and (b) the Board may waive the levy of Assessments against the Condominium, and if so waived, each other Condominium shall be charged, in addition to its usual Assessment, its prorata share of the Assessment that would have been charged to such Condominium had it not been acquired by the Association as a result of foreclosure.

12.4 DISPUTES WITH DECLARANT PARTIES. The following dispute resolution procedure is implemented for the Project with the intent to avoid costly and potentially lengthy traditional court proceedings. Any dispute between the Association or any Owners, on the one hand, and the Declarant, or any director, officer, partner, shareholder, member, employee, representative, contractor, subcontractor, design professional or agent of the Declarant (each, a “*Declarant Party*,” and collectively the “*Declarant Parties*”), on the other hand, is a “*Dispute*” that shall be resolved in accordance with the alternative dispute resolution procedures set forth below.

12.4.1 Notice. Any Person with a Dispute shall give written notice of the Dispute by personal or mail service as authorized by Code of Civil Procedure §415.10, §415.20, §415.21, §415.30, or §415.40 to the party to whom the Dispute is directed (“*Respondent*”) describing the nature of the Dispute and any proposed remedy (the “*Dispute Notice*”).

12.4.2 Right to Inspect and Correct. Commencing on the date the Dispute Notice is delivered to the Respondent and continuing until the Dispute is resolved, the Respondent and its representatives have

the right to (a) meet with the party alleging the Dispute at a reasonable time and place to discuss the Dispute, (b) enter the Project to inspect any areas that are subject to the Dispute, and (c) conduct inspections and testing (including destructive or invasive testing) in a manner deemed appropriate by the Respondent. If Respondent elects to take any corrective action, Respondent and its representatives shall be provided full access to the Project to take and complete the corrective action. Respondent is not obligated to take any corrective action. Respondent, with the consent of Declarant, has the right to select the corrective action Respondent believes is appropriate. The right to inspect and correct granted in this Section is in addition to the rights granted in Civil Code §§6870–6876, the procedures of which may be implemented before, during or after the procedure in this Section is implemented.

12.4.3 Mediation. If the Dispute is not resolved within ninety (90) days after the Respondent receives the Dispute Notice, any party may submit the Dispute to mediation by delivering a request for mediation (a “*Mediation Notice*”) in the same manner as allowed for delivery of the Dispute Notice. The Dispute shall be mediated pursuant to (a) the Judicial Arbitration and Mediation Service (“*JAMS*”) mediation procedures in existence when the Dispute Notice is delivered, as modified by this Section, or (b) the mediation procedures of any successor to JAMS in existence when the Dispute Notice is delivered, as modified by this Section, or (c) mediation procedures approved by the parties of any entity offering mediation services that are acceptable to the parties to the Dispute (each, a “*Party*” and collectively, the “*Parties*”). Except as provided in Section 12.4.6, no Person shall begin litigation regarding a Dispute without complying with this Section 12.4.3.

(a) Selection of Mediator. The mediator shall be selected within sixty (60) days after delivery of the Mediation Notice. The mediator shall be selected by mutual agreement of the Parties. If the Parties cannot agree on a mediator, the mediator shall be selected by the entity providing the mediation service. No Person shall serve as a mediator in any Dispute in which the Person has any financial or personal interest in the result of the mediation, except by the written consent of all Parties. Before accepting any appointment, the prospective mediator shall disclose any circumstances likely to create a presumption of bias or to prevent a prompt commencement of the mediation process.

(b) Position Letter; Pre-Mediation Conference. No later than sixty (60) days after selection of the mediator, each Party shall submit a letter (a “*Position Statement*”) containing (1) a description of the Party’s position concerning the issues that need to be resolved, (2) a detailed description of the defects allegedly at issue, and (3) a suggested plan of repair, remediation or correction. The mediator may schedule a pre-mediation conference. All Parties shall attend unless otherwise mutually agreed. The mediation shall be commenced within twenty (20) days after submittal of all Position Statements and shall be concluded within fifteen (15) days after the mediation began unless either (A) the mediator extends the mediation period, or (B) the Parties mutually agree to extend the mediation period. The mediation shall be held in the County or another place mutually acceptable to the Parties.

(c) Conduct of Mediation. The mediator has discretion to conduct the mediation in the manner in which the mediator believes is most appropriate to achieve the goal of settling the Dispute. The mediator is authorized to conduct joint and separate meetings with the Parties and to make oral and written recommendations for settlement. The mediator may also obtain expert advice concerning technical aspects of the Dispute, provided the Parties agree to and do assume the expenses of obtaining such advice. The mediator shall not have the authority to impose a settlement on the Parties.

(d) Application of Evidence Code. The provisions of California Evidence Code §§1115–1128 shall be applicable to the mediation process. Use and disclosure of statements, evidence and communications offered or made in the course of the mediation shall be governed by these sections, including the sections which preclude use of material in future proceedings and the sections which provide for confidentiality of material.

(e) Parties Permitted at Mediation. Persons other than the Parties, their liability insurers, Declarant, attorneys for the Parties and the mediator may attend mediation sessions only with the permission of the Parties and the consent of the mediator. Declarant has the right to attend the mediation session even if Declarant is not one of the Parties.

(f) Record. There shall be no stenographic, video or audio record of the mediation process.

(g) Expenses. Each Party shall bear its own attorneys' fees and costs incurred in connection with the mediation. All other expenses of the mediation including the fees charged by the mediator and the cost of any proof or expert advice requested by the mediator shall be borne equally by each of Declarant and the Declarant Parties to whom the Dispute is directed, unless the Parties agree otherwise. This provision does not modify any provision of a contract between Declarant and any Declarant Party requiring indemnification or establishing a different allocation of costs between the Declarant and the Declarant Party.

12.4.4 Judicial Reference. If a Dispute remains unresolved after the mediation required by Section 12.4.3 is completed, any of the Parties may file a lawsuit, provided that the Association must obtain the vote or written consent of Owners other than Declarant who represent not less than sixty-seven percent (67%) of the Association's voting power (excluding the voting power of Declarant) before filing a lawsuit in a Dispute with Declarant or a Declarant Party. All lawsuits regarding Disputes must be resolved by general judicial reference pursuant to Code of Civil Procedure §§638 and 641-645.1, as modified by this Section 12.4.4. The Parties shall cooperate in good faith to ensure that all necessary and appropriate parties are included in the judicial reference proceeding. No Party shall be required to participate in the judicial reference proceeding if all Parties against whom such Party would have necessary or permissive cross-claims or counterclaims will not or cannot be joined in the judicial reference proceeding. The general referee shall have the authority to try all issues of fact and law and to report a statement of decision to the court. The referee shall be the only trier of fact and law in the reference proceeding, and shall have no authority to further refer any issues of fact or law to any other Person unless all parties to the judicial reference proceeding consent, or the referee determines that a conflict of interest or similar situation has arisen which would make it inappropriate for the referee to act as the trier of fact or law concerning an issue or matter. In the second alternative, an alternative judicial referee shall be selected in accordance with Section 12.4.4(b) solely for resolving or rendering a decision concerning the issue or matter involved in the conflict.

(a) Place. The proceedings shall be heard in the County.

(b) Referee. The referee shall be a retired judge who served on the California Superior Court in the County with substantial experience in the type of matter in dispute and without any relationship to the Parties or interest in the Project, unless the Parties agree otherwise. The parties to the judicial reference proceeding shall meet to select the referee no later than thirty (30) days after service of the initial complaint on all defendants named in the complaint. Any dispute regarding the selection of the referee shall be resolved by the court in which the complaint is filed.

(c) Beginning and Timing of Proceeding. The referee shall begin the proceeding at the earliest convenient date and shall conduct the proceeding without undue delay.

(d) Pre-hearing Conferences. The referee may require pre-hearing conferences.

(e) Discovery. The parties to the judicial reference proceeding shall be entitled only to limited discovery, consisting of the exchange of the following: (1) witness lists, (2) expert witness designations, (3) expert witness reports, (4) Exhibits, (5) reports of testing or inspections, and (6) briefs. Any other discovery authorized in the California Code of Civil Procedure shall be permitted by the

referee upon a showing of good cause or based on the consent of all parties to the judicial reference proceeding.

(f) Motions. The referee shall have the power to hear and dispose of motions, including motions relating to discovery, provisional remedies, demurrers, motions to dismiss, motions for judgment on the pleadings and summary judgment and/or adjudication motions, in the same manner as a trial court judge. The referee shall also have the power to adjudicate summarily issues of fact or law including the availability of remedies whether or not the issue adjudicated could dispose of an entire cause of action or defense.

(g) Record. A stenographic record of the hearing shall be made which shall remain confidential except as may be necessary for post-hearing motions and any appeals.

(h) Statement of Decision. The referee's statement of decision shall contain an explanation of the factual and legal basis for the decision pursuant to California Code of Civil Procedure §632. The decision of the referee shall stand as the decision of the court, and upon filing of the statement of decision with the clerk of the court, judgment may be entered thereon in the same manner as if the Dispute had been tried by the court.

(i) Remedies. The referee may grant all legal and equitable remedies and award damages in the judicial reference proceeding.

(j) Post-hearing Motions. The referee may rule on all post-hearing motions in the same manner as a trial judge.

(k) Appeals. The decision of the referee shall be subject to appeal in the same manner as if the Dispute had been tried by the court.

(l) Expenses. Each Party shall bear its own attorneys' fees and costs incurred in connection with the judicial reference proceeding. All other fees and costs incurred in connection with the judicial reference proceeding, including the cost of the stenographic record, shall be advanced equally by each of Declarant and the Declarant Parties to whom the Dispute is directed. However, the referee shall have the power to reallocate such fees and costs among the Parties in the referee's final ruling. This provision does not modify any provision of a contract between Declarant and any Declarant Party requiring indemnification or establishing a different allocation of costs between the Declarant and the Declarant Party.

12.4.5 Arbitration of Disputes. To the extent that the Dispute is not resolved during mediation and cannot be submitted to Judicial Reference as provided in Section 12.4.4, the entire matter shall proceed as one of binding arbitration governed by the Federal Arbitration Act (9 USC §§1-16) ("*Arbitration*"). To the extent the rules of procedure set forth herein do not conflict with the Federal Arbitration Act, such rules of procedure shall be the rules of procedure for the Arbitration. Judicial Arbitration and Mediation Services ("*JAMS*"), its successors, or any other entity offering arbitration services agreed to by the Parties shall hear, try and decide all issues of both fact and law and make any required findings of fact and, if applicable, conclusions of law. Notwithstanding the requirements to submit Disputes to Arbitration, if the Party seeking to submit a Dispute to Arbitration chooses, the Dispute may instead, as an alternative to Arbitration, be submitted to the California small claims court subject to the limitations on the jurisdiction of such court. The decision of the small claims court and any small claims appeals court will be final as to the Dispute.

(a) Interpretation. The procedures specified in this Section pertaining to Arbitration are to be interpreted and enforced as authorized by the Federal Arbitration Act (9 USC §§1-16), which is designed to encourage use of alternative methods of dispute resolution that avoid costly and potentially lengthy court proceedings. Interpretation and application of those procedures shall conform to Federal

court rules interpreting and applying the Federal Arbitration Act. The Project is constructed of or uses materials and products manufactured throughout the United States which are then shipped to the Project for installation in the Project. The shipment of these materials and products across state lines to the Project causes the products and materials to enter into the stream of interstate commerce and become subject to the Interstate Commerce Clause (Article I, Section VIII of the United States Constitution) and ensuing Federal laws. References to California procedural law shall not be construed as a waiver of any rights of the parties under the Federal Arbitration Act or the right of the parties to have the procedures set forth in this Section 12.4.5 interpreted and enforced under the Federal Arbitration Act.

(b) Amendment. The provisions of this Section 12.4.5 shall not be amended nor shall other provisions be adopted that purport to supersede it without Declarant's prior written consent. The parties shall cooperate in good faith and shall diligently perform such acts as may be necessary to carry out the purposes of this Section.

(c) Initiation of Claim. Any Party wishing to initiate Arbitration pursuant to this Section shall serve a demand for Arbitration upon the responding Parties and upon JAMS its successor, or to any other entity offering arbitration services agreed to by the parties. Except as otherwise set forth herein, the Arbitration shall be conducted by and in accordance with the rules of JAMS its successors, or to any other entity offering arbitration services agreed to by the Parties.

(d) Arbitrator. The arbitrator to be appointed shall be employed by JAMS, its successor, or to any other entity offering arbitration services agreed to by the Parties. Except as otherwise set forth herein, the arbitration proceedings shall be conducted by and in accordance with the rules of JAMS or any successor thereto. Except for procedural issues, the proceedings, the ultimate decisions of the arbitrator, and the arbitrator himself shall be subject to and bound by existing California case and statutory law. Should JAMS cease to exist, as such, then all references herein to JAMS shall be deemed to refer to its successor or, if none, to the American Arbitration Association (in which case its commercial arbitration rules shall be used). The Parties shall cooperate in good faith and shall diligently perform such acts as may be necessary to ensure that all necessary and appropriate Persons are included in the proceeding. Declarant shall not be required to participate in the proceeding if all Persons against whom Declarant would have necessary or permissive cross-claims or counterclaims will not or cannot be joined in the proceeding.

(e) Selection of Arbitrator. The proceeding shall be conducted by one (1) qualified arbitrator selected in accordance with the rules of JAMS. The term "*qualified*" shall mean a retired judge who has experience with the laws governing residential real estate development and construction or an attorney who has actively practiced law in California for at least fifteen (15) years and who has experience with the laws governing real estate development and construction.

(f) Motions and Remedies. The arbitrator shall have the power to hear and dispose of motions, including motions relating to provisional remedies, demurrers, motions to dismiss, motions for judgment on the pleadings and summary judgment and/or adjudication motions, in the same manner as a trial court judge. In addition, the arbitrator shall have the power to summarily adjudicate issues of fact or law, including but not limited to the availability of remedies, whether or not the issue adjudicated could dispose of an entire cause of action or defense. The arbitrator shall have the power to grant provisional remedies including preliminary injunctive relief. Before the selection of the arbitrator any Party shall have the right to petition the Superior Court of the County for any necessary provisional remedies.

(g) Discovery. Except as limited herein, the Parties shall be entitled to limited discovery consisting of: (i) witness lists; (ii) expert witness designations; (iii) expert witness reports; (iv) exhibits; (v) reports of testing or inspections, including but not limited to, destructive or invasive testing; (vi) arbitration briefs; and (vii) the deposition, under oath, of any designated experts and two other

depositions of their choosing without obtaining the consent of the arbitrator. All other discovery shall be permitted by the arbitrator at his discretion upon a showing of good cause or based on the agreement of the Parties. The arbitrator shall oversee discovery and may enforce all discovery orders in the same manner as any trial court judge.

(h) Full Disclosure. Each Party shall, in good faith, make a full disclosure of all issues and evidence to the other Parties before the hearing. Any evidence or information that the arbitrator determines was unreasonably withheld shall be inadmissible by the party that withheld it. The initiating Party shall be the first to disclose all of the following, in writing, to the other Party and to the arbitrator: (i) an outline of the issues and its position on each such issue; (ii) a list of all witnesses it intends to call; and (iii) copies of all written reports and other documentary evidence whether or not written or contributed to by its retained experts (collectively, the "*Outline*"). The initiating Party shall submit its Outline to the other Parties and to the arbitrator within thirty (30) days of the final selection of the arbitrator. Each responding Party shall submit its written response as directed by the arbitrator.

(i) Hearing. The hearing shall be held in the County. The arbitrator shall promptly commence the hearing giving due consideration to the complexity of the issues, the number of Parties and necessary discovery and other relevant matters. The hearing shall be conducted as informally as possible. Evidence Code §1152 shall be applicable for the purpose of excluding from evidence offers, compromises, and settlement proposals, unless the Parties thereto consent to their admission. Attorneys are not required and any Party may elect to be represented by someone other than a licensed attorney. Cost of an interpreter shall be born by the Party requiring the services of the interpreter in order to be understood by the arbitrator and the expenses of witnesses shall be born by the Party or Parties producing such witnesses.

(j) Decision. The decision of the arbitrator shall be binding on the Parties and if the award of the arbitrator is not paid within sixty (60) days of the award it shall be entered as a judgment in the Superior Court of the County. The arbitrator shall cause a complete record of all proceedings to be prepared similar to those kept in the Superior Court, shall try all issues of both fact and law, and shall issue a written statement of decision, such as that described in Code of Civil Procedure §643 (or its successor), which shall specify the facts and law relied upon in reaching his/her decision within twenty (20) days after the close of testimony.

(k) Fees and Costs. The total cost of the proceedings, including the initiation fees and other fees of JAMS and any related costs and fees incurred by JAMS (such as experts and consultants retained by it) shall be reallocated in accordance with the Federal Arbitration Act and supporting case law, as determined by the arbitrator. The arbitrator shall not award attorneys' fees to any Party, each Party to bear its own attorneys fees. The arbitrator may award recoverable costs pursuant to California law. This provision does not modify any provision of a contract between Declarant and any Declarant Party requiring indemnification or establishing a different allocation of costs between Declarant and a Declarant Party.

12.4.6 Statutes of Limitation. Nothing in Section 12.4 shall be considered to toll, stay, reduce or extend any applicable statute of limitations; provided, however, that Declarant, the Declarant Parties, the Association and any Owner may begin a legal action which in the good faith determination of that Person is necessary to preserve that Person's rights under any applicable statute of limitations as long as no further steps in processing the action are taken except those authorized in this Section 12.4.

12.4.7 Agreement to Dispute Resolution; Waivers of Jury Trial. DECLARANT, THE ASSOCIATION AND EACH OWNER AGREE TO USE THE PROCEDURES ESTABLISHED IN THIS SECTION 12.4 TO RESOLVE ALL DISPUTES AND WAIVE THEIR RIGHTS TO RESOLVE DISPUTES IN ANY OTHER MANNER. DECLARANT, THE ASSOCIATION AND EACH OWNER ACKNOWLEDGE THAT BY AGREEING TO RESOLVE ALL DISPUTES AS PROVIDED IN THIS

SECTION 12.4, THEY ARE GIVING UP THEIR RIGHT TO HAVE DISPUTES TRIED BEFORE A JURY. THIS SECTION 12.4 MAY NOT BE AMENDED WITHOUT DECLARANT'S PRIOR WRITTEN CONSENT.

12.4.8 Covenant Regarding Proceeds. If the Association or any Owner prevail in a Dispute, and the judgment thereon or settlement terms thereof includes a monetary award, then the proceeds of the award shall be first applied to the remediation of the condition that gave rise to the Dispute.

ARTICLE 13. DURATION AND AMENDMENT

13.1 DURATION. This Declaration shall continue in full force unless a declaration of termination satisfying the requirements of an amendment to this Declaration established in Section 13.2 is Recorded.

13.2 TERMINATION AND AMENDMENT.

13.2.1 Amendment Approval. Notice of the subject matter of a proposed amendment to this Declaration or a Supplemental Declaration in reasonably detailed form must be included in the notice of any Association meeting or election at which a proposed amendment is to be considered. To be effective, a proposed amendment other than amendment or termination by Declarant, as described in Section 13.2.2(a) or minor corrections by Declarant, as described in Section 13.2.2(b), must be adopted by the vote, in person, by proxy, or by written consent, of Owners representing not less than *fifty-one percent (51%)* of the total voting power of the Association. If, however, the provision being considered for amendment requires amendment approval by a higher percentage of the voting power than that specified in this Section, then the proposed amendment shall not be adopted unless approved by such higher percentage of the voting power.

13.2.2 Amendment or Termination by Declarant.

(a) Before First Closing. Notwithstanding any other provisions in this Article, (i) Declarant may unilaterally amend or terminate this Declaration for any purpose, until the first Close of Escrow in the Project, and (ii) Declarant may unilaterally amend or terminate a Supplemental Declaration for any purpose, until the first Close of Escrow in the real property affected by the Supplemental Declaration to be amended or terminated. Amendment or termination shall not be effective until Declarant has Recorded in the Official Records an instrument signed and acknowledged by Declarant.

(b) Minor Corrections. Notwithstanding any other provisions of this Article, Declarant (as long as Declarant owns any portion of the Project) may unilaterally amend this Declaration or a Supplemental Declaration by Recording a written instrument signed by Declarant to: (1) conform this Declaration or any Supplemental Declaration to the rules, regulations or requirements of institutional lenders, the County or City, (2) amend, replace or substitute any exhibit to correct typographical or engineering errors, (3) include any exhibit that was inadvertently omitted at the time of Recording, (4) comply with any City, County, State, or Federal laws or regulations, (5) correct typographical errors, or (6) change any exhibit or portion of an exhibit to conform to as-built conditions.

13.2.3 Certificate. Except for amendments by Declarant under Section 13.2.2, each amendment becomes effective when a Certificate of Amendment is Recorded. The certificate, signed and sworn to by two (2) Association officers, is conclusive evidence that the requisite number of Owners have approved the amendment. The Association shall keep the record of all such approvals in its files for at least four (4) years.

ARTICLE 14. GENERAL PROVISIONS

14.1 NO PUBLIC RIGHT OR DEDICATION. Nothing in this Declaration is a gift or dedication of all or any part of the Project to the public, or for any public use.

14.2 NOTICES. Except as otherwise provided in this Declaration, notice to be given to an Owner must be in writing and may be delivered to the Owner, or a designated representative of such Owner, personally or by any system or technology designed to record and communicate messages, facsimile, electronic mail, or other electronic means, at the address provided by such Owner to the Association. Delivery of such notice to one (1) or more Co-Owners of a Unit, to any general partner of a partnership owning the Unit, or to a manager or managing member of a limited liability company owning a Unit, constitutes delivery to all Co-Owners, the partnership or the limited liability company. Delivery of such notice to any officer or agent for the service of process on a corporation constitutes delivery to the corporation. Alternatively, notice may be delivered by regular United States mail, postage prepaid, addressed to the Owner at the most recent address furnished by such Owner to the Declarant or the Association, as applicable. Such notice is deemed delivered three (3) business days after the time of such mailing, except for notice of any meeting of Members or of the Board, in which case the notice provisions of the Bylaws control. Any notice to be given to the Association may be delivered personally to any member of the Board of Directors, or sent by United States mail, postage prepaid, addressed to the Association at such address as may be fixed from time to time and circulated to all Owners or sent by any system or technology designed to record and communicate messages, facsimile, electronic mail, or other electronic means to such address or telephone number as the Board may establish. All notices to Declarant shall be sent to:

TERRACE PARTNERS, LLC
ATTN: SCOTT R. WILSON
PO BOX 754
RANCHO MIRAGE CA 92270

MAGNESIA FALLS PLAZA, LLC
ATTN: MATTHEW V. JOHNSON
PO BOX 3
RANCHO MIRAGE CA 92270

Each Owner and Declarant may change its address by written notice to each other given in the manner hereinabove stated.

14.3 NOTICE OF EMERGENCY SITUATION. Each Owner shall be responsible for providing to the Association a telephone number or other means of immediate notification for purposes of contacting such Owner upon the occurrence of an emergency situation in such Owner's Unit. If the Unit is leased, the Owner may designate the tenant as such Owner's emergency notification contact, and notice of an emergency situation to such tenant shall be deemed notice to the Owner. Failure to provide valid contact information for emergency notification purposes shall be deemed a waiver of the right to prior notice of the exercise of any rights provided to the Association hereunder upon the occurrence of an emergency situation.

14.4 ESTOPPEL CERTIFICATE. Each Owner, Declarant and the Association shall, upon the written request of Declarant (for so long as Declarant is an Owner) or any other Owner, issue to the requesting party, or to any prospective Mortgagee or purchaser of such requesting party's Unit, an estoppel certificate stating (i) whether the party to whom the request has been directed knows of any default under this Declaration relating to or materially affecting the requesting Owner's Unit and, if there are known defaults, specifying the nature thereof, (ii) whether, to the best knowledge of the responding party, this Declaration has been modified or amended in any respect and, if there are known amendments, specifying the nature thereof, and (iii) whether, to the best knowledge of the responding party, this Declaration is, at that time, in full force and effect.

14.5 ATTORNEYS' FEES; COURT COSTS. Subject to compliance with the provisions of Article 12 of this Declaration, if any action or proceeding is instituted to enforce or interpret this Declaration or for damages on account of the breach of this Declaration, the prevailing party in any such action or proceeding shall be entitled to recover from the other party its reasonable attorneys fees and costs and expenses of litigation incurred in such action or proceeding.

14.6 SECURITY AND PRIVACY DISCLAIMER. Services provided by the Declarant or the Association may provide access control or other security benefits to the Project; however, these services do not provide security for Persons, personal property or Improvements in the Project. Neither Declarant nor the Association undertake any obligation to provide security for the Project nor do they make any representations or warranties whatsoever concerning the privacy, security or safety of the Project. Neither the Association nor Declarant shall be liable to any Person, and each Owner waives any claim against the Association and Declarant, for (i) any unauthorized or criminal entry of third parties into the Project or any Improvements in the Project, (ii) any damage, injury or death of any Person, or (iii) any loss of property in and about the Project or any Improvements in the Project, if any of such events listed in clauses (i), (ii) or (iii) are caused by any unauthorized or criminal acts of third parties, regardless of any action, inaction, failure, breakdown, malfunction or insufficiency of the security services provided by Declarant or the Association.

14.7 REAL ESTATE TAXES. Each Owner shall pay, or cause to be paid, when due, all real estate or personal property taxes and assessments which may be levied, assessed, or charged by any public authority against the Owner's Condominium or any personal property or Improvements in such Condominium. If real estate taxes on a Condominium are not separately assessed as of the Close of Escrow for the sale of the Condominium, the Owner shall take such action as may be reasonably necessary to obtain separate real estate tax assessment of the Condominium. If all Condominiums are taxed under a tax bill covering all of the Project, the Association shall allocate taxes among the Owners and their Condominiums based on the number of Assessment Units allocable to each such Condominium/percentage of the total Assessments allocated to such Condominium on Exhibits A and A-1 hereto. At least forty-five (45) days before the delinquency date of any tax installment, the Association shall deliver to each Owner a copy of the tax bill, along with a written notice setting forth the Owner's obligation to pay his share of the tax installment and the potential additional charges to the Owner for failure to comply. Each Owner shall pay his share of any installment due under the tax bill to the Association at least ten (10) days before the delinquency date. The Association shall transmit the taxes to the appropriate tax collection agency on or before the delinquency date. The Association shall pay the taxes on behalf of any Owner who does not pay his share, and shall impose a Compliance Assessment on the Condominium of any delinquent Owner in an amount equal to the sum advanced by the Association pursuant to this Section, plus interest at the rate of ten percent (10%) per annum and any amount necessary to reimburse the Association for any penalty or late charge actually assessed in connection with the tax bill resulting from the failure of the delinquent Owner to make timely payment of his share of the taxes.

ARTICLE 15. DECLARANT'S RIGHTS AND RESERVATIONS

If there is a conflict between any other portion of the Governing Documents and this Article, this Article shall control. Until the Declarant Rights Termination Date, Declarant shall have the rights set forth below.

15.1 CONSTRUCTION RIGHTS. Declarant has the right to (a) subdivide or resubdivide the Project, (b) complete or modify Improvements to and on the Association Property or any portion of the Project owned or leased solely or partially by Declarant, (c) alter Improvements and Declarant's construction plans and designs, (d) modify Declarant's development plan for the Project, including reshaping the Condominiums and Association Property, and constructing Units of larger or smaller sizes, values, and of different types, and (e) construct such additional Improvements as Declarant considers advisable in the course of development of the Project. Declarant may temporarily erect barriers, close off and restrict access to portions of the Association Property as reasonably necessary to allow Declarant to exercise the rights reserved in this Section so long as an Owner's access to that Owner's Condominium is not eliminated.

15.2 SALES AND MARKETING RIGHTS. Declarant has the right to install and maintain such structures, displays, signs, billboards, flags and sales and leasing offices in the Project as Declarant deems necessary or convenient to market the Project. Declarant and its prospective purchasers and lessees of Condominiums are entitled to the nonexclusive use of the Association Property without further cost for access, ingress, egress, use or enjoyment, to market the Project to prospective purchasers. Neither Declarant, nor its employees, agents nor prospective purchasers shall make any use of the Association Property that will unreasonably interfere with the use and enjoyment thereof by the Owners.

15.3 CREATING ADDITIONAL EASEMENTS. At any time before the Close of Escrow for a Condominium, Declarant has the right to establish on that Condominium additional licenses, easements, reservations and rights-of-way to itself, to utility companies, or to others as Declarant determines are reasonably necessary to the proper development and marketing of the Project.

15.4 USE RESTRICTION EXEMPTION. Declarant and any Person to whom Declarant may assign all or a portion of its exemption under this Declaration is exempt from the use restrictions established in this Declaration and any other Governing Documents.

15.5 POWER OF ATTORNEY. Each Owner of a Condominium in the Project, by accepting a deed to a Condominium, (a) constitutes and irrevocably appoints Declarant, as long as Declarant owns all or any portion of the Project, as his attorney-in-fact, for himself and each of his Mortgagees, optionees, grantees, licensees, trustees, receivers, lessees, tenants, judgment creditors, heirs, legatees, devisees, administrators, executors, legal representatives, successors and assigns, whether voluntary or involuntary, and (b) conveys a power of attorney coupled with an interest to Declarant as his attorney-in-fact to prepare, execute, acknowledge and Record any amendment to or restatement of the Condominium Plan, as Declarant deems to be reasonably necessary to correct errors, to conform to as-built conditions, or to bring the Condominium Plan into compliance with any applicable laws or regulations. The acceptance or creation of any Mortgage or other encumbrance, whether or not voluntary, created in good faith, or given for value, shall be accepted or created subject to the power of attorney provisions in this Section.

15.6 PARTICIPATION IN ASSOCIATION. At Declarant's request, the Association shall provide Declarant with written notice of the transfer of any Condominium. Commencing on the Declarant Rights Termination Date, the Association shall provide Declarant with written notice of all meetings of the Board that any Owner is entitled to attend (each, an "Open Meeting") as if Declarant were an Owner, and Declarant shall be entitled to have a representative ("Declarant's Representative") present at all Open Meetings. However, the Board has the power to withhold information from the Declarant's Representative and to exclude the Declarant's Representative from any Open Meeting or portion thereof if, in the good faith judgment of the Board, access to such information or attendance at the Open Meeting would adversely affect the attorney-client privilege between the Association and its counsel or would not be in the best interest of the Association or the Owners. The Declarant's Representative shall not be entitled to attend executive sessions of the Board. The Declarant's Representative will attend any Open Meeting it is permitted to attend in an observer capacity only, and it shall not have any right to vote on matters coming before the Board or Owners. Declarant's Representative shall be entitled to receive copies of the minutes of all Open Meetings. Declarant's rights to receive written notice of meetings and to have a Declarant's Representative present at such meeting shall continue until the expiration of the Defect Claims Period.

15.7 DECLARANT APPROVAL OF ACTIONS.

15.7.1 Before Declarant Rights Termination Date. The following actions may not be taken by the Association at any time before the Declarant Rights Termination Date without the prior written approval of Declarant:

- (a) The annexation to the Project of additional real property;

(b) The levy of a Capital Improvement Assessment for the construction of new Association Property facilities;

(c) Any change in the general, overall, architectural or landscape design of the Project; or

(d) Any reduction in the insurance coverage required under Article 9.

15.7.2 Before Expiration of Defect Claims Period. The following actions may not be taken by the Association at any time before expiration of the Defect Claims Period without the prior written approval of Declarant:

(a) Any significant reduction of Association maintenance or other services;

(b) The adoption of Rules and Regulations or Design Guidelines, and any modification or revocation of any previously adopted Rules and Regulations or Design Guidelines; or

(c) Any other modification, waiver or termination of any provision of the Governing Documents benefiting Declarant.

15.8 PRIORITY OF DECLARANT RIGHTS; ASSIGNMENT OF RIGHTS. Nothing in this Declaration limits, and no Owner or the Association will interfere with, Declarant's exercise of the rights established in this Declaration. Any of the rights of Declarant under this Declaration may be assigned by Declarant to any successor in interest to any portion of Declarant's interest in the Project by an express written assignment which specifies the rights of Declarant so assigned. Any approval right of Declarant may be assigned by Declarant to the Board at any time before the Declarant Rights Termination Date.

15.9 LOAN OF EXPENSES. As provided in Section 4.5, prior to tender of control and maintenance obligations of Association Property, Declarant shall pay expenses of control and maintenance of Association Property and the Association, the total of which shall be deemed a loan of Common Expense to the Association ("Declarant Loan"). The Declarant Loan shall accrue no interest and shall be repaid by the Association following commencement of the Association's control and maintenance obligations. The Association Budget shall include a line item for to repayment of the Declarant Loan, the amount of which shall be 10% of the Annual Assessment exclusive of Developer Loan payment obligations until the Declarant Loan is repaid.

[signature pages follow]

This Declaration is dated September 28, 2016, for identification purposes only and shall be effective upon Recordation in Official Records of the County.

DECLARANT:

Magnesia Falls Plaza, LLC, a California limited liability company

By: Matthew Johnson
Name: MATTHEW V. JOHNSON
Its: MANAGING MEMBER

Terrace Partners, LLC, a California limited liability company

By: Scott Wilson
Name: Scott Wilson
Its: Managing Member

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

STATE OF CALIFORNIA)
) ss.
COUNTY OF RIVERSIDE)

On September 28, 2016, before me, Carol L. Hickman, a notary public in and for said County and State, personally appeared Matthew V. Johnson, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s), acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature: Carol L. Hickman
Signature of Notary Public



(Notary Seal)

ACKNOWLEDGMENT

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

State of California)
)
County of Riverside)

On September 28, 2016 before me Carol L. Hickman

_____, Notary, personally appeared
Scott Wilson

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

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

WITNESS my hand and official seal.

Carol L. Hickman
(Signature of Notary)



(Seal of Notary)

OPTIONAL

Further Description of Any Attached Document

Title of Type of Document: Declaration of CC?R's of Easements for MFP

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

LENDER SUBORDINATION

Pacific Premier Bank, here undersigned, as successor in interest to Security Bank of California, a California Corporation, Beneficiary under Deed of Trust recorded March 20, 2015 as Doc. #2015-0113789, and also Beneficiary under Construction Deed of Trust recorded October 9, 2015 as Doc. #2015-0448245, both of Official Records of the County of Riverside, State of California (the "Deed(s) of Trust"), hereby subordinates the Deeds of Trust and its beneficial interest thereunder to the foregoing Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for Magnesia Falls Plaza, as amended or restated (the "Declaration"), to any Supplemental Declaration, as amended or restated, and to all easements to be conveyed to the Association in accordance with the Declaration and any Supplemental Declaration. By executing this Subordination, the undersigned agrees that if the undersigned acquires title to all or any portion of the Project by foreclosure (whether judicial or non-judicial), deed in lieu of foreclosure or any other remedy in or relating to the Deeds of Trust, the undersigned will acquire title subject to the provisions of the Declaration and any applicable Supplemental Declaration, which shall remain in full force and effect.

Pacific Premier Bank

By: [Signature]
BRUCE LARSON
Its: 1st vice president

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

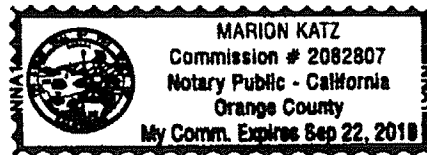
STATE OF CALIFORNIA)
) ss.
COUNTY OF RIVERSIDE)

On September 21, 2016, before me, MARION KATZ, a notary public in and for said County and State, personally appeared BRUCE LARSON, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that ~~he/she/they~~ executed the same in ~~his/her/their~~ authorized capacity(ies), and that by ~~his/her/their~~ signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature: [Signature]
Signature of Notary Public



(Notary Seal)

EXHIBIT A
ASSESSMENT UNIT FORMULA

Number of Assessment Units allocated to each Condominium are as set forth in Parcel Map No. 36913 for Condominium Purposes, to which this Exhibit A is attached, based on the following formula:

The number of Assessment Units assigned to a Condominium shall be determined based generally on one (1) Assessment Unit for each 100 square feet of gross floor area within such Condominium. If the total square footage of a Condominium exceeds increments of 100 by fifty percent (50%) or more, then for purposes of assigning Assessment Units to such Condominium, the square footage of that Condominium will be rounded up to the nearest increment of 100. If the total square footage of such Condominium exceeds increments of 100 by less than fifty percent (50%), then such square footage will be rounded down to the nearest increment of 100. Declarant shall use measurement standards similar to those developed by Building Owners and Managers Association ("BOMA") to determine the square footage of a Condominium for purposes of allocating Assessment Units. This measurement includes certain portions of perimeter walls and may include Exclusive Use Common Areas such as any balcony or patio appurtenant to the Condominium, regardless of the fact that the legal boundaries of the Condominium extend only to the interior surface of the perimeter walls. This method is commonly used to determine square footage floor areas for the purposes of sales and marketing. Upon the sale of any Condominium by Declarant, Declarant shall provide written notice to the Association confirming the number of Assessment Units allocated to such Condominium based on this formula. Such allocation shall be deemed conclusive unless the Owner of the Condominium or the Association can demonstrate that the square footage of the Condominium was misstated by more than fifty (50) square feet.

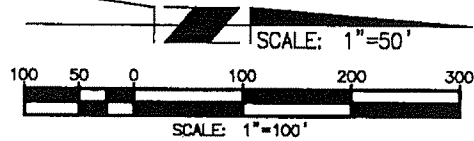
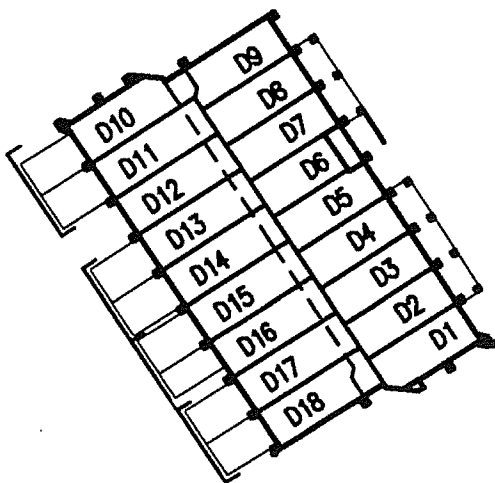
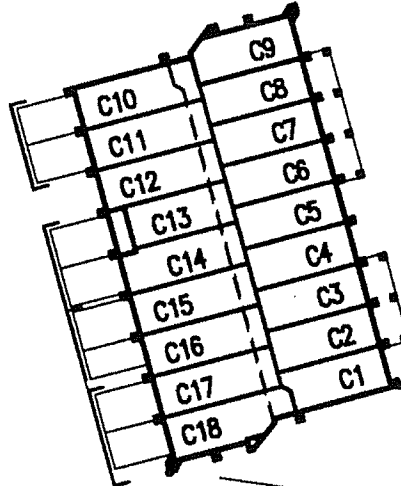
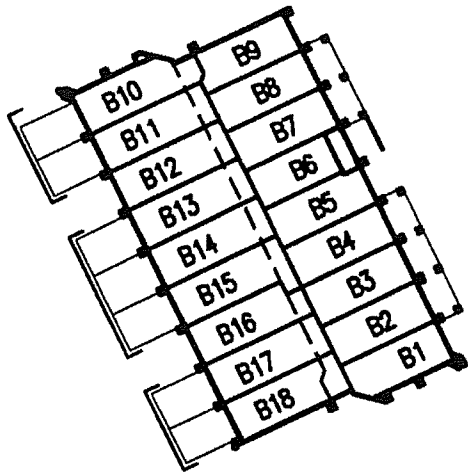
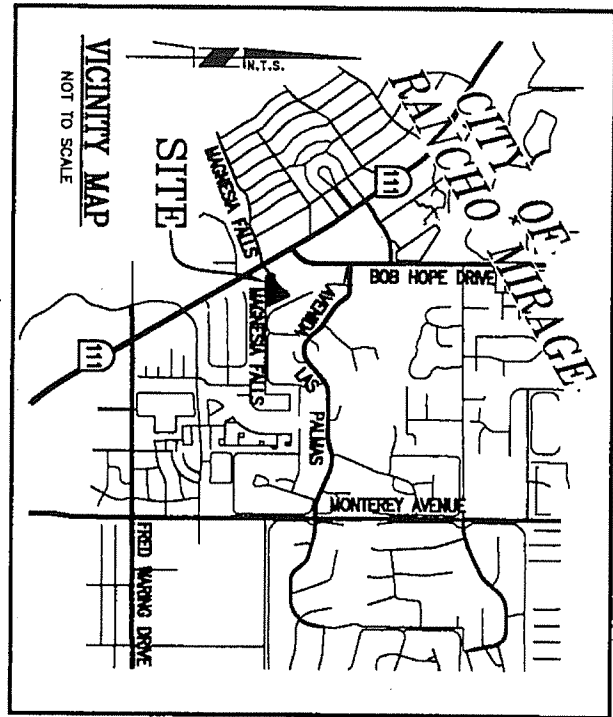
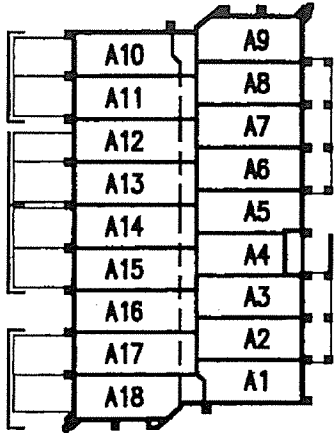
Separate but contiguous Condominiums conveyed concurrently to the same Owner shall be aggregated for purposes of determining the Assessment Units assigned thereto. Upon the separate sale of any Condominium which was formerly aggregated with other adjacent Condominiums for purposes of assigning Assessment Units, the transferor of such Condominium shall, not less than five (5) business days before the Close of Escrow for the sale of such Condominium, provide written notice to the Association of the transfer and the total square footage of the Condominium to be separately conveyed. On or before the Close of Escrow, the Association shall provide a written notice to the transferor of such Condominium and, if instructed by such transferor, the transferee and escrow agent for the transfer transaction, confirming the number of Assessment Units assigned to the Condominium being conveyed as well as the number of Assessments Units allocable to the Condominiums retained by the transferor. Such assignment and reallocation of Assessment Units will be reflected on the next invoice for Assessments tendered by the Association to the Owner of each affected Condominium. In no event shall such reallocation of Assessment Units result in any reduction or increase in the number of Assessment Units assigned to the affected Condominiums in the aggregate.

EXHIBIT A-1
BOMA EXHIBIT AND ASSESSMENT UNITS

[ATTACHED HERETO]

NOTICE: The Assessment Unit Allocations / BOMA Calculations set forth in the attached:

- (1) are based generally on the approximate square footage of the separate interests (rounded to nearest increment of 100 square feet or such other greater increment as may be appropriate to unit sizes); and
- (2) will not be subject to challenge unless the allocation differs from actual square footage of the separate interest by a specified percentage (again, as appropriate on the basis of unit sizes; at a minimum, 10 percent or more).



"EXHIBIT A-1"
MAGNESIA FALLS PLAZA
CONDOMINIUM PROJECT
BOMA EXHIBIT AND ASSESSMENT UNITS

NOTE: SEE SHEET 2 FOR AREA TABULATION.

"EXHIBIT A-1"
MAGNESIA FALLS PLAZA
CONDOMINIUM PROJECT
BOMA EXHIBIT AND ASSESSMENT UNITS

SHEET 2 OF 2

Building A - 72000 Magnesia Falls Drive				Building B - 72100 Magnesia Falls Drive			
Unit	BOMA Area	% Share	Assessment Units	Unit	BOMA Area	% Share	Assessment Units
A1	521.55	5.13%	5	B1	555.32	5.48%	6
A2	521.64	5.13%	5	B2	531.86	5.25%	5
A3	521.45	5.13%	5	B3	531.92	5.25%	5
A4	427.6	4.21%	5	B4	518.13	5.12%	5
A5	513.23	5.05%	5	B5	511.18	5.05%	5
A6	522.14	5.14%	5	B6	424.68	4.19%	5
A7	521.14	5.13%	5	B7	524.3	5.18%	5
A8	521.22	5.13%	5	B8	520.09	5.14%	5
A9	576.87	5.68%	6	B9	517.6	5.11%	5
A10	626.71	6.17%	6	B10	643.59	6.36%	6
A11	605.42	5.96%	6	B11	602.43	5.95%	6
A12	603.7	5.94%	6	B12	600.52	5.93%	6
A13	603.91	5.94%	6	B13	604.47	5.97%	6
A14	605.52	5.96%	6	B14	602.19	5.95%	6
A15	603.34	5.94%	6	B15	629.44	6.22%	6
A16	604.21	5.95%	6	B16	576.11	5.69%	6
A17	604.98	5.95%	6	B17	605.15	5.98%	6
A18	657.98	6.47%	6	B18	626.27	6.19%	6
Sub Total	10162.61		100	Sub Total	10125.25		100
Electrical	103			Electrical	104		
Fire	17			Fire	16		
Total	10282.61			Total	10245.25		
Building C - 72120 Magnesia Falls Drive				Building D - 72140 Magnesia Falls Drive			
Unit	BOMA Area	% Share	Assessment Units	Unit	BOMA Area	% Share	Assessment Units
C1	521.23	5.13%	5	D1	576.33	5.67%	6
C2	521.58	5.14%	5	D2	521.35	5.13%	5
C3	521.49	5.14%	5	D3	521.43	5.13%	5
C4	523.54	5.16%	5	D4	522.58	5.14%	5
C5	523.93	5.16%	5	D5	513.19	5.05%	5
C6	521.86	5.14%	5	D6	427.45	4.21%	4
C7	522.58	5.15%	5	D7	523.53	5.15%	5
C8	523.04	5.15%	5	D8	522.64	5.14%	5
C9	572.24	5.64%	6	D9	522.89	5.15%	5
C10	631.29	6.22%	6	D10	654.6	6.44%	7
C11	602.93	5.94%	6	D11	603.87	5.94%	6
C12	596.7	5.88%	6	D12	603.34	5.94%	6
C13	514.34	5.07%	5	D13	602.53	5.93%	6
C14	593.89	5.85%	6	D14	604.98	5.95%	6
C15	603.79	5.95%	6	D15	604.57	5.95%	6
C16	601.77	5.93%	6	D16	602.24	5.93%	6
C17	602.13	5.93%	6	D17	603.53	5.94%	6
C18	653.52	6.44%	7	D18	629.08	6.19%	6
Sub Total	10151.85		100	Sub Total	10160.13		100
Electrical	105			Electrical	104		
Fire	15			Fire	16		
Total	10271.85			Total	10280.13		

**EXHIBIT B
SPECIFIC MAINTENANCE OBLIGATIONS**

MAINTENANCE ITEM	RESPONSIBILITIES
Unit	The Owner maintains all interior doors and their hardware, interior wall surfaces, drywall for any interior walls, to the centerline of the Demising Walls, cabinets, floor coverings, ceilings, permanent fixtures, appliances, electrical outlets and switches, toilets, and smoke detectors (including periodic testing and replacement of batteries).
Entry Door (Unit)	The Owner maintains the interior surfaces, the handle, locking mechanism and kick plates and performs any touchup painting on the exterior surface if necessary before Association's periodic painting.
Windows in the Unit	The Owner maintains all portions of the windows including the frame, any screens, weather-stripping, caulking, panes and sheathing.
Light Fixtures and Fans	The Owner maintains the light fixtures and fans actuated from switches controlled from, or separately metered to, the Owner's Unit.
Water Pressure Regulator, Hot Water Heater, Plumbing Outlets and Fixtures, Furnaces, and HVAC Systems (including ducts and control systems)	The Owner maintains the portions within such Owner's Unit. The Association maintains the portions located within the Association Property including those exclusively serving the Unit. Notwithstanding the foregoing, unless the Association determines hereafter to maintain and/or repair HVAC Systems serving individual Units, such HVAC Systems are to be maintained by the respective Unit Owner at such Owner's expense. Owner to contract for maintenance and repair of HVAC Systems with Association-approved contractors, or pay a \$100 inspection fee upon completion of any HVAC work.
Exclusive Use Common Area patios	The Owner sweeps the floor regularly and keeps it free of trash, dirt, or standing water. The Association otherwise maintains.

MAINTENANCE ITEM	RESPONSIBILITIES
Telephone & Communications Wiring exclusively serving a Unit	The Owner maintains.
Condominium Building	The Association maintains the structural components, exterior finished surfaces, exterior stucco walls, roofs, front doors of Units (except interior finished surface), and fire and life safety systems, including risers, sprinkler heads, and monitoring equipment.
Parking Area & all Landscaping located in the Association Property	The Association maintains.
Utilities	<p>The Association maintains the utilities serving the Association Property.</p> <p>The Owners maintain utilities serving the Units that are separately metered. This includes all gas lines serving the Units that are not serviced by the gas company, all water lines beginning at (and including) the water shutoff valve and running into the Unit, all individual Unit interior wastewater drain lines that connect to the Association Property drain lines serving multiple Units, cable television lines and other communication systems serving an individual Unit, electricity wiring and facilities from (but excluding) the submeter to the Unit.</p>
Stormwater Drainage	The Association maintains the stormwater drainage system, including but limited to all drainlines, grates and catch-basins.
Signs	The Association shall control and maintain the Condominium Building directory signage and monument signage. Owners pay for the installation, replacement, repair and maintenance of the signs identifying the Owners' Units and the business conducted in an Owner's Unit.