

**Recording Requested By:
When Recorded Return To:**

**Steven K. McGuire, Esq.
PRICE, POSTEL & PARMA LLP
200 East Carrillo Street, Suite 400
Santa Barbara, California 93101
(805) 962-0011**

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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF
121 CONDOMINIUMS OWNERS' ASSOCIATION**

IF THIS DOCUMENT CONTAINS ANY RESTRICTION BASED ON RACE, COLOR, RELIGION, SEX, FAMILIAL STATUS, MARITAL STATUS, DISABILITY, NATIONAL ORIGIN OR ANCESTRY, THAT RESTRICTION VIOLATES STATE AND FEDERAL HOUSING LAWS AND IS VOID, AND MAY BE REMOVED PURSUANT TO SECTION 12956.1 OF THE GOVERNMENT CODE. LAWFUL RESTRICTIONS UNDER STATE AND FEDERAL LAW ON THE AGE OF OCCUPANTS IN SENIOR HOUSING AND HOUSING FOR OLDER PERSONS SHALL NOT BE CONSTRUED AS RESTRICTIONS BASED ON FAMILIAL STATUS.

THE ASSOCIATION, THE BOARD, ALL OWNERS AND DECLARANT SHALL BE BOUND BY THE PRE-ARBITRATION DISPUTE RESOLUTION PROCEDURES AND THE BINDING ARBITRATION AND JUDICIAL REFERENCE PROVISIONS DESCRIBED IN ARTICLE X, HEREIN.

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THIS DECLARATION is made this _____ day of _____, 20__, by 121 DLG, LLC, a California limited liability company, herein referred to as “Declarant” with reference to the following facts:

(1) Declarant is the owner of certain real property commonly described as 121 Condominiums in the City and County of Santa Barbara, California, and more particularly described in attached Exhibit “A” (the “Real Property”).

(2) The Real Property is a “Condominium Project” within the meaning of Section 1351(f) of the California Civil Code, subject to the provisions of the Davis-Stirling Common Interest Development Act (Title VI, Part 4, Division Second of the Civil Code), and it is the intention and desire of Declarant to divide the project into Condominiums by grant deed substantially in the form of that attached as Exhibit “B.” This is a mixed-use project; that is, there will be residential condominiums, commercial condominiums and parking condominiums located in and existing together in the Condominium Project.

(3) Declarant intends to impose on the Real Property mutually beneficial restrictions under a general plan of improvement for the benefit of all of the Condominiums and the Owners.

NOW, THEREFORE, Declarant hereby declares that the Real Property is held and shall be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved subject to the following covenants, conditions and restrictions, all of which are declared and agreed to be in furtherance of a plan for the improvement of the Real Property and the division thereof into Condominiums and are established and agreed upon for the purpose of enhancing and perfecting the value, desirability and attractiveness of the Real Property and every part thereof. All of the covenants, conditions and restrictions shall:

(1) Run with the Real Property;

(2) Be binding upon all parties having or acquiring any right, title or interest therein or any part thereof;

(3) Be for the benefit of each Owner of any portion of the Real Property or any interest therein; and

(4) Inure to the benefit of and be binding upon each successor in interest of the Owners thereof.

This Declaration is made by Declarant pursuant to Sections 1353 and 1354 of the California Civil Code.

ARTICLE I

Definition of Terms

Unless expressly provided otherwise, the following terms as used herein shall have the following meaning:

1.01 Articles. The Articles of Incorporation of the Association filed with the California Secretary of State.

1.02 Association. 121 Condominiums Owners' Association, a California nonprofit mutual benefit corporation.

1.03 Board of Directors. The governing body of the Association.

1.04 Bylaws. The duly adopted Bylaws of the Association as amended.

1.05 Commercial Unit. A condominium estate, exclusive of any undivided interest or easements in the Common Area, consisting of the commercial unit airspace elements and Exclusive Use Common Areas, as shown on the Condominium Plan and described in Section 2.02 below.

1.06 Common Area. Pursuant to California Civil Code Section 1351(b), "Common Area" shall mean the entire project excepting all Residential, Commercial and Parking Units, together with all easements and rights of way in favor of or appurtenant to the Real Property.

1.07 Common Facilities. Any improvements constructed in the Common Area, including but not limited to, structural improvements bounding and underlying the Units, Garages, Parking Spaces and other Exclusive Use Common Areas described in Article II below.

1.08 Condominium. The estate in property conveyed by the grant deed to the Grantee as defined by Section 783 of the Civil Code, consisting of any undivided interest or easements in the Common Area more particularly described in Section 2.05 below, and a Unit.

1.09 Condominium Plan. The Condominium Plan on file for the Development, which is recorded in Book _____, Pages _____ through _____, inclusive, of Condominium Maps, in the office of the Recorder of Santa Barbara County. All those notes and definitions set forth in the Condominium Plan are hereby incorporated by reference.

1.10 Declarant. 121 DLG, LLC, a California limited liability company, its successors and assigns, but not including persons acquiring four (4) or fewer Condominiums.

1.11 Declaration. This Declaration, as it may be amended from time to time.

1.12 Development. The Real Property including all structures and improvements thereon.

1.13 Director. A duly elected or appointed member of the Board of Directors of the Association.

1.14 Member or Owner. The record Owner, whether one or more persons or entities, of the fee simple title to any Condominium, but excluding those having such interest merely as security for performance of an obligation, together with contract purchasers in possession.

1.15 Mortgage. A deed of trust as well as a Mortgage, both of which are security for the performance of an obligation.

1.16 Mortgagee. A beneficiary under or holder of a deed of trust as well as a Mortgage.

1.17 Officer. A duly elected or appointed officer of the Association. Mortgage.

1.18 Parking Unit. A Condominium estate, exclusive of any undivided interest or easements in the Common Area, consisting of the parking unit airspace elements described in Section 2.03 below.

1.19 Public Report. The Final Subdivision Public Report for the Development issued by the California Department of Real Estate.

1.20 Residential Unit. A Condominium estate, exclusive of any undivided interest or easements in the Common Area, consisting of the residential unit airspace elements and Exclusive Use Common Areas described in Section 2.04 below.

1.21 Unit. A Commercial Unit, a Parking Unit or a Residential Unit may each be referred to as a “Unit” or collectively as “Units.”

1.22 Voting Rights; Memberships; Classes. There shall be one (1) membership for each Condominium within the Development, excluding any Condominiums owned by the Association. Each Membership shall be appurtenant to a Condominium in the Development. The Association shall have two (2) classes of voting membership:

Class B: The Class B Members shall be the owners of the Parking Units and shall be entitled to one (1) vote for each membership appurtenant to their respective Parking Units.

Class A: The Class A Members shall be the owners of the Residential Units and the owners of the Commercial Units, whose voting rights shall be the same as the Class B Members, except that the Class A Members shall be entitled to three (3) votes for each membership appurtenant to their respective Residential Unit or Commercial Unit.

The total Class A and Class B memberships shall be considered the “Voting Power of the Association”.

ARTICLE II

Description of Land and Improvements

2.01 Configuration. The land within the Development consists of a rectangular parcel improved by one (1) building. There is a total of two (2) Commercial Units, fourteen (14) Residential Units and twenty-five (25) Parking Units in said building.

2.02 Commercial Unit. A Commercial Unit may have the following airspace elements as designated on the Condominium Plan as Commercial Condominium Space "CCS (Unit __)". Pursuant to Section 4.12, a Commercial Unit may also include: (A) those parking spaces serving the Commercial Units (and not otherwise located in the Units) designated as "EUCA Commercial Parking Space (CPS #2, 3, 4 and 5)"; and (B) an elevator area serving the Commercial Unit (and not otherwise located in the Unit) designated as "EUCA Elevator Area (EA #1)" on the Condominium Plan.

2.03 Parking Unit. A Parking Unit may have the following airspace element as designated on the Condominium Plan: Parking Unit Area: "PUA (Unit #__)"

2.04 Residential Unit. A Residential Unit may have the following airspace elements as designated on the Condominium Plan: Living Area: "LA"; Balcony Area: "B"; Deck Area: "D" and Garage Area: "G". Pursuant to Section 4.12, a Residential Unit may also include: (A) a parking space serving the Residential Unit (and not otherwise located in the Unit) designated as "EUCA Residential Parking Space (RPS Unit #__)" on the Condominium Plan; (B) elevator area(s) serving the Residential Unit (and not otherwise located in the Unit) designated as "EUCA Elevator Area (EA #__)" on the Condominium Plan; and/or (C) a storage area serving the Residential Unit (and not otherwise located in the Unit) designated as "EUCA Residential Storage Area (RSA Unit #__)" on the Condominium Plan.

2.05 Common Area. The Common Area consists of the Development excepting the Units. Each purchaser of a Condominium shall receive fee title to a Commercial Unit, a Parking Unit or a Residential Unit, as the case may be, together with an undivided fee interest as a tenant-in-common in the Common Area and Common Facilities which shall be allocated to each Unit by a fraction, the numerator of which is the Floor Area of the Commercial Unit, Parking Unit or Residential Unit and the denominator of which is 28,398, which is the total Floor Area of all the Units as more particularly described in Section 2.06. The boundaries of the Units shall be as set forth on the Condominium Plan.

2.06 Floor Area. The Floor Area of a Residential Unit shall include all of the square footage of that airspace element designated Living Area: "LA" on the Condominium Plan. The Floor Area of a Commercial Unit shall include all of the square footage of that airspace element designated Commercial Condominium Space: "CCS (Unit #__)" on the Condominium Plan. The Floor Area of a Parking Unit shall include all of the square footage of that airspace element designated Parking Unit Area: "PUA (Unit #__)" on the Condominium Plan.

The Owners acknowledge and accept that the determination of Floor Area as set forth herein is for purposes of this Declaration only and may be inconsistent with other calculations

of floor area that may appear on other documents such as grading planes or site plans. For purposes hereof, the Floor Area of each Unit shall be as follows:

<u>Residential Unit</u>	<u>Floor Area/Square Feet</u>
1	850
2	598
3	1115
4	1085
5	1884
6	758
7	1448
8	1360
9	1711
10	2067
11	1860
12	1938
13	1714
14	1971
<hr/>	
	20359

<u>Commercial Unit</u>	<u>Floor Area/Square Feet</u>
1 (1 st Floor)	1673
2 (2 nd Floor)	1942
<hr/>	
	3615

<u>Parking Unit</u>	<u>Floor Area/Square Feet</u>
1	185
2	185
3	185
4	185
5	185
6	185
7	185
8	184
9	180
10	162
11	180
12	152
13	185
14	185
15	185
16	185
17	185
18	185

19	168
20	163
21	168
22	163
23	168
24	163
25	168
<hr/>	
	4424

Total Floor Area **28,398**

ARTICLE III

The Owners' Association

3.01 Management and Operations. The Development, to be known as 121 Condominiums, shall be organized and operated as a Condominium Project. The grant deeds conveying interests to individual purchasers shall expressly refer to and incorporate by reference this Declaration. All Owners of Condominiums in the Development shall be Members of 121 Condominiums Owners' Association, a nonprofit mutual benefit corporation which will exercise the powers as granted to the Association. Such powers are for the purpose of owning, operating, maintaining and managing the Common Area, Exclusive Use Common Areas and Common Facilities for the benefit of the Owners of Condominiums and for providing such service for and conducting such common business affairs of its Members as is specified in the Articles of Incorporation, the Bylaws, this Declaration and applicable rules and regulations of the Association (the "Governing Documents").

3.02 Consent to Becoming Member of Association. The purchaser of any Condominium in the Development shall, by the acceptance of a deed therefor whether from Declarant or from subsequent Owners of that Condominium, or by the signing of an installment land sale contract or agreement to purchase the Condominium, consent to becoming a Member of the Association, to abide by the Governing Documents of the Association, and to accept all of the benefits and obligations of the Members.

3.03 Powers of the Association. The powers of the Association, its membership and their voting rights and the authority of its Officers and Directors shall be set forth in its Governing Documents.

3.04 Vesting of Voting Power. The voting power shall vest when the power of assessment has passed to the Association, as set forth in Section 6.01 below.

ARTICLE IV

Property Rights of Owners and Members; Easements; Partition

4.01 Exclusive Ownership and Possession by Owner; Incidents of Ownership. Each Owner shall be entitled to exclusive ownership and possession of his/her Unit and ingress and egress thereto. An Owner of a Unit also shall have the exclusive right to paint, repaint, tile, wax, paper or otherwise refinish and decorate the inner surfaces of the walls, floors, ceilings, windows and doors bounding the Unit. An Owner shall not be deemed to own the perimeter walls, floors, ceilings, windows, and doors bounding his/her Unit or any other Common Facilities.

Each Owner shall own the fractional interest in the Common Area and Common Facilities, as set forth in Section 2.05 above, and such percentage shall have a permanent character and shall not be altered without the consent of all Members expressed in an amendment to this Declaration duly recorded, except as expressly provided otherwise herein. The percentage of the undivided interest in the Common Area and Common Facilities (and the right of ingress and egress to and from the Unit) shall not be separated from the Unit to which it pertains and shall be deemed to be conveyed or encumbered or released from liens on the Unit, even though such interest is not expressly mentioned or described in the conveyance or other instrument. Each Owner may use the Common Area and Common Facilities subject to rights conveyed pursuant to Section 4.05, 4.06 and 4.07 below, and in accordance with the purpose for which it is intended, as long as such use does not hinder or encroach upon the lawful rights of the other Owners.

The foregoing notwithstanding, in the event Declarant has established a sales office and model homes in the Development pursuant to Section 5.01 below, Declarant, its sales agents and employees shall have the right to the nonexclusive use of the Common Area and Common Facilities for the purpose of maintaining the sales office and model homes and signs reasonably necessary to market the Condominiums. This right shall terminate three (3) years after the original issuance of the Public Report or upon sale of the last Condominium in the Development, whichever shall first occur. Use of the Common Area and Common Facilities by Declarant and its agents and employees shall not unreasonably interfere with the use thereof by any Owner or lawful occupants of any other Unit.

4.02 Conveyance Carries Entire Interest of Owner. Any conveyance of a Condominium shall be presumed to convey the entire interest of an Owner, including membership in the Association; however, any Owner may create a co-tenancy in his/her ownership of a Condominium with any other person or persons, or convey an undivided fractional interest in the Condominium.

4.03 Easement of Enjoyment. Every Owner of a Residential Unit or a Commercial Unit shall have the right and easement of enjoyment and use of the Common Area and Common Facilities. Every Owner of a Parking Unit shall have the right and easement of enjoyment and use of the Common Area and Common Facilities located in the Garage Floor of the Development as shown on the Condominium Plan. Such easements shall be appurtenant to, and shall pass with, the title to every Condominium, as applicable, subject to the following provisions:

(A) The right of the Association, by appropriate rules, to limit the number of guests of Owners; and

(B) The right of the Association, in accordance with its Bylaws, to borrow money for the purpose of improving the Common Area or Common Facilities;

Unless otherwise permitted under Civil Code Section 1361.5, the Association shall not deny any Owner or lawful occupant of any Unit physical access to the Unit.

4.04 Delegation of Use. Any Owner of a Residential Unit may delegate his/her right of enjoyment to the Common Area, Exclusive Use Common Areas and Common Facilities appurtenant to his/her Residential Unit to persons who are actually residing in his/her Residential Unit and who are members of his/her family, his/her guests, tenants or contract purchasers. Similarly, any Owner of a Commercial Unit may delegate his/her right of enjoyment to the Common Area, Exclusive Use Common Area and Common Facilities appurtenant to his/her Commercial Unit to his/her tenants, employees, customers, guests or contract purchasers. Any Owner of a Parking Unit may delegate his/her right of enjoyment to the Common Area and Common Facilities appurtenant to his/her Parking Unit located on the Garage Floor of the Development to his/her tenants, employees, customers, guests or contract purchasers. Such family members, guests, employees, customers, tenants, contract purchasers or lessees of an Owner, and/or family members, guests, employees and/or customers of a lessee of a Unit, shall only be entitled to use the Common Area, Exclusive Use Common Areas and Common Facilities, in accordance with the Governing Documents.

4.05 Encroachments. Each Unit is hereby declared to have an easement over the Common Area, Common Facilities and other Units for the purpose of accommodating any encroachment due to engineering or surveying errors, errors in original construction, settlement or shifting of any building, overhangs and projections in original construction, or for any other cause not due to willful misconduct of any Owner. There shall be, in addition, valid and appropriate easements for the maintenance of such encroachments. If any portion of the Common Area or Common Facilities encroaches upon any Unit or any Unit encroaches upon the Common Area, Common Facilities or other Unit as a result of the construction, reconstruction, repair, shifting, settlement, or movement of any portion of the Development, a valid easement for the encroachment and for the maintenance thereof shall exist so long as the encroachment exists.

4.06 Easements for Benefit of Association and Declarant; Grants of Easements. The Association shall have an easement over, under, across and through the Common Area, Exclusive Use Common Area, Common Facilities and each Unit where necessary for any construction, maintenance, repair or other functions required of the Association by this Declaration. Declarant shall have an easement over, under, across and through the Common Area, Exclusive Use Common Area, Common Facilities and each Unit where necessary for any construction, maintenance and repair or other functions required of Declarant by this Declaration. Declarant shall have the right to grant nonexclusive specific and blanket easements in, on, over, under and through the Common Area, Exclusive Use Common Area and Common Facilities for all utility services and purposes and for such other uses as Declarant may deem appropriate. Declarant's right to grant such easements hereunder shall cease after the sale of the first (1st) Condominium. Notwithstanding Section 4.07 below, the Board shall have the right to

grant nonexclusive and specific as well as blanket easements in, on, over, under and through the Common Area, Exclusive Use Common Area and Common Facilities for all utility services and purposes as the Board deems appropriate.

4.07 *Transfer or Dedication of Common Area or Common Facilities.* Except as otherwise provided in this Declaration and/or in the Bylaws or as specifically provided pursuant to Civil Code Section 1363.07(a)(1) through (3), any transfer or dedication by the Board of all or any part of the Common Area and Common Facilities to any public agency or authority, or to other persons or entities, for any purpose, must be approved in writing by sixty-seven percent (67%) of the Voting Power of the Association pursuant to Civil Code Section 1363.07. Written notice of any such transfer or dedication shall be sent to every Member not less than seven (7) days, nor more than thirty (30) days, in advance of the execution of such instrument by the Board. Pursuant to Civil Code Section 1363.07(b), any measure placed before the Members requesting that the Board grant exclusive use of any portion of the Common Area or Common Facilities shall specify whether the Association will receive any monetary consideration for the grant and whether the Association or the transferee will be responsible for providing any insurance coverage for exclusive use of the Common Area or Common Facilities.

4.08 *Partition.* Except as provided by Section 1359 of the California Civil Code or as otherwise may be required under Section 7.07(E) or Article IX below hereof, there shall be no judicial partition of all or any part of the Development, and Declarant and any person acquiring an interest in all or any part of the Development absolutely waive the right to partition the Real Property in kind and waive the right to seek partition for the purpose of a sale of the Real Property or any portion thereof. However, if any Condominium is owned by two (2) or more Owners as tenants in common, or as joint tenants, nothing herein contained shall be deemed to prevent a judicial partition as between such Owners.

4.09 *Prohibition Against Severability of Component Interests in Condominium.* No Owner shall be entitled to sever his/her Unit from his/her fractional interest in the Common Area or Common Facilities for any purpose. No such interest may be severally sold, conveyed, encumbered, hypothecated or otherwise affected, and any act in violation of this provision shall be void and of no effect. The suspension of this right of severability in no event will last beyond the period set forth in Article XI below, including any extensions thereunder.

4.10 *Utilities.*

(A) The Association shall maintain any and all utility lines and facilities located in, on, and under the Common Area, Exclusive Use Common Areas and Common Facilities (the “Common Lines”), except for those lines and facilities maintained by utility companies (public, private or municipal) and those required to be maintained by the Owners, as described below. The Association shall pay all charges for utilities supplied to the Development, except those metered or charged separately to the Condominiums.

The Members acknowledge, and accept that certain Common Lines and other utility lines and improvements are attached to the ceiling slab of the Garage Floor of the Development. Such utility improvements are located in the Common Area but may overhang, as the case may be, certain Parking Units, “EUCA Residential Parking Spaces (RPS Unit #___)”,

“EUCA Commercial Parking Spaces (Unit #___)”, “EUCA Residential Storage Areas (RSA Unit #___)”, and the “G” airspace element (Garage Area) of Residential Units 9-14, inclusive.

If any Common Line becomes clogged, stopped-up, damaged, destroyed or otherwise requires repair, the Association shall furnish such maintenance, replacement or repair, including repair of any collateral damage or loss in the Common Area, Exclusive Use Common Areas, Common Facilities or Units and shall have an easement over such common areas, Exclusive Use Common Areas, Common Facilities and each Unit for such purposes. However, if it can be determined that the cause of such clogging, stoppage, damage, destruction or repair originated in the Unit of any particular Owner (or was caused by the actions of any Owner), or of any agent, employee, guest or family member of any Owner, whether or not such act was negligent or culpable, the Association may charge such Owner the cost of the repair, replacement or maintenance. If any Owner fails to pay such costs, the Association may collect them by levying a special assessment upon the Unit of the Owner responsible therefor under the provisions of this subsection (A). Except as otherwise provided in subsection 8.01(A) below, the Association shall not be responsible for damage to any Unit, or to any personal or structural property located therein, caused by a damaged or defective Common Line.

In the event of a failure or inability of the Board to take timely action to maintain, replace or repair any Common Line (including repair of any collateral damage or loss in the Common Area, Exclusive Use Common Areas or Common Facilities), the Owner of any Unit served by such Common Line shall have the right, and is hereby granted an easement to the full extent necessary therefor, to enter upon such Unit, Common Area or Common Facilities in, under, or upon which such Common Line (or any portion thereof) may be located, as is reasonably necessary to repair, replace or maintain such Common Line (including collateral damage as provided above). The Association shall reimburse the Owner the costs incurred by the Owner in making such Common Line maintenance, repair or replacement; provided that if a dispute arises between any Owner and the Board as to: (1) the persons or entities responsible for maintaining, repairing or replacing such Common Line; (2) the existence and amount of any collateral damage; or (3) the necessity and scope of the work, the matter shall be resolved in the manner set forth in Section 5.16 of the Association’s Bylaws. If entry onto the Common Area, Common Facilities or any Unit is required hereunder, the party making such entry must give reasonable notice to the Association and to the Owner of such Unit, as applicable.

(B) Except as provided in Section 5.02(R), each Owner shall be deemed to own the utility lines and facilities and outlets of all utility lines and facilities located within and serving only such Owner’s Unit, and shall be responsible for the maintenance of such utility lines, facilities and outlets.

(C) To the extent any Unit includes a fire sprinkler system serving the Unit, the water or other utility lines constituting the system that are located in the Common Area and Common Facilities of the Development shall be maintained by the Association as above set forth. The sprinkler heads located in each individual Unit, including any sprinkler heads located in any Exclusive Use Common Area appurtenant thereto, shall be owned and maintained by the Owner thereof.

(D) Whenever any Common Line serves more than one Unit, each Owner of a Unit served by such Common Line shall be entitled to the full use and enjoyment of the portions of such Common Line that service such Owner's Unit.

4.11 Marketing of Units. Pursuant to Civil Code Section 1368.1, the Association may not, among other things:

(A) Establish an exclusive relationship with any broker through which the sale or marketing of any Unit is required to occur; or

(B) Adopt any rule or regulation that arbitrarily or unreasonably restrict the ability of any Owner to market such Owner's Unit. Any such rule or regulation shall be deemed void.

4.12 Exclusive Use Common Areas.

(A) Those Parking Spaces located in the Common Area designated as "EUCA Residential Parking Space (RPS Unit #___)" or "EUCA Commercial Parking Space (CPS #___)" on the Condominium Plan pursuant to Article II, which provide parking spaces for the Residential Units and the Commercial Units, respectively, are easements appurtenant to each such Unit for the exclusive use and enjoyment of the Owners and occupants of such Units.

(B) Those Storage Areas located in the Common Area designated as "EUCA Residential Storage Area (RSA Unit #___)" on the Condominium Plan pursuant to Article II, which provide storage space for certain Residential Units, are easements appurtenant to such Units for the exclusive use and enjoyment of the Owners and occupants of such Units.

(C) There are three (3) elevators located in the Common Area designated as Exclusive Use Common Area Elevator Areas (EUCA EA). The first "EUCA Elevator Area (EA-1)" serves all of the Residential and Commercial Units, the second "EUCA Elevator Area (EA-2)" serves only Residential Units 9 and 11, and the third "EUCA Elevator Area (EA-3)" serves only Residential Units 10 and 12 as shown on the Condominium Plan. Pursuant to Article II and this Section 4.12(C), the respective "EUCA Elevator Areas" referred to above provide access to and from Residential and Commercial Units as the case may be and are easements appurtenant to such Units for the Exclusive use and enjoyment of the Owners and occupants of such Units.

(D) The Owners shall be responsible for keeping their respective Exclusive Use Common Areas in a neat, clean and sanitary condition. The Association shall be responsible for servicing, repairing and maintaining the elevators, and the Common Facilities bounding or underlying all such Exclusive Use Common Areas in the manner provided in Sections 8.01 and 8.03 below.

(E) No use may be made of any Exclusive Use Common Area other than those described herein.

4.13 Drainage System; Maintenance. The storm drain system located in the Common Area of the Development shall be maintained by the Association and the costs thereof shall be included in the Association's budget for assessment against the Condominiums as provided in Article VI. Included in the foregoing is the requirement that storm drain water interceptors and

other storm water pollution devices be maintained and replaced in accordance with the schedules and provisions of the operations and maintenance procedure plan approved by the City of Santa Barbara's Land Development Engineer. Further, the Association shall regularly clean all catch basins.

4.14 Affordable Housing Requirements. As part of the conditions imposed by the City of Santa Barbara in approving the tentative subdivision map of Tract 20,715, the City required Declarant to make available for purchase by middle income households a total of three (3) Residential Units in the Development. Accordingly, Declarant and the City of Santa Barbara entered into that Affordability Control Covenant ("Covenant"), recorded on August 3, 2006 as Instrument Number 2006-0061456 in the office of the Recorder of Santa Barbara County, California.

To assure that each of the three (3) Residential Units remains affordable and available for purchase by middle income households, the City requires, upon the first sale of each affordable Residential Unit, that Declarant, the City and the "Qualified Purchaser" (as defined in the Covenant) sign and cause to be recorded a Grant of Preemptive Right; Resale Restriction Covenant and Option to Purchase ("Replacement Covenant") obligating the Owner(s) of such Residential Unit to comply with the resale control provisions set forth therein. The term of the Covenant and the Replacement Covenant shall be for a period of at least forty-five (45) years commencing on the date of the initial sale of such Condominium(s) if a Qualified Purchaser occupies such Residential Unit for the full forty-five (45) year term. However, if the Qualified Purchaser sells the Residential Unit before the end of such forty-five (45) year term of the Replacement Covenant, the new Qualified Purchaser will be required to sign and record a new Replacement Covenant that will begin a new forty-five (45) year term. This requirement will continue for each new Qualified Purchaser, but in no event shall the total term of all such Replacement Covenants exceed ninety (90) years.

The terms and conditions of the Replacement Covenant are subject and subordinate to the right under any first deed of trust or mortgage from an institutional lender in the manner provided in Section III of the Replacement Covenant.

4.15 Parking. In addition to the twenty-five (25) Parking Units described in Section 2.01 above, there is a total of twenty (20) parking spaces in the Development, including:

(A) Two (2) open parking spaces designated as "HDCP-PS" on the Condominium Plan. Such parking spaces shall be for use by handicap persons visiting the Residential Units or Commercial Units in the Development and shall not be for use by the Owners or occupants of any Unit.

(B) Six (6) enclosed parking spaces included in the "G" airspace element (Garage Area) of Residential Units 9, 10, 11, 12, 13, and 14, respectively.

(C) Eight (8) open parking spaces that comprise the EUCA Residential Parking Spaces ("RPS") of Residential Units 1, 2, 3, 4, 5, 6, 7 and 8, respectively, pursuant to Section 4.12(A) above.

(D) Four (4) open parking spaces that comprise the EUCA Commercial Parking Spaces (“CPS”) of the two (2) Commercial Units, pursuant to Section 4.12(A) above.

4.16 Reciprocal Driveway Access Easements. Declarant’s predecessor in interest granted an easement for ingress and egress and incidental purposes over the southwesterly ten (10) feet of the northwesterly fifty (50) feet of the Real Property in favor of that real property commonly known as 133 West De La Guerra (the “Adjacent Parcel”). The grant of easement was recorded on May 29, 1964 as Instrument No. 22537 in Book 2052, Page 200 of Official Records, in the office of the County Recorder, County of Santa Barbara, State of California. In return, the owners of the Adjacent Parcel granted a non-exclusive easement for surface ingress and egress over the northeasterly ten (10) feet of the Adjacent Parcel in favor of the Real Property, recorded on May 2, 2002 as Instrument No. 2002-0043422 of Official Records, in the office of the County Recorder, County of Santa Barbara, State of California. The above reciprocal easement areas constitute a portion of the driveway providing access to the Real Property and shall be included in the Common Area. The use, maintenance and repair of such easements and improvement thereon by the Association and/or by the Owners shall be governed pursuant to this Declaration.

4.17 Completion of Common Area Improvements; Enforcement of Bonded Obligations. The Members acknowledge that Declarant is not obligated to complete construction of Common Area improvements or Common Facilities in the Development prior to issuance of a Public Report, provided that in such event, Declarant shall have posted a bond, letter of credit or other arrangement (“Bond”) to secure performance by Declarant to complete the improvements. If the Common Area improvements or Common Facilities to be constructed in the Development by Declarant have not been completed prior to the issuance of a Public Report, and in the event the Association is obligee under a Bond to secure performance by Declarant to complete such improvements, the Association may enforce the obligations of Declarant and the surety under the Bond, as follows:

(A) The Board shall consider and vote on the question of action by the Association to enforce the obligations under the Bond with respect to any improvements for which a Notice of Completion has not been filed within sixty (60) days after the completion date specified for that improvement in the Planned Construction Statement appended to the Bond. If the Association has given an extension in writing for the completion of any such improvement, the Board shall be directed to consider and vote on the aforesaid question if a Notice of Completion has not been filed within thirty (30) days after the expiration of the extension.

(B) A special meeting of Members may be called for the purpose of voting to override a decision by the Board not to initiate action to enforce the obligations under the Bond or on the failure of the Board to consider and vote on the question. The meeting shall be held not less than thirty-five (35) days nor more than forty-five (45) days after receipt by the Board of a petition for such a meeting signed by Members representing five percent (5%) or more of the total Voting Power of the Association.

(C) Any such vote shall be by Members of the Association other than Declarant at a special meeting called for the purpose set forth in subsection (B) above.

(D) A vote of a majority of the Voting Power of the Association residing in Members other than Declarant to take action to enforce the obligations under the Bond shall be deemed to be the decision of the Association, and the Board shall thereafter implement this decision by initiating and pursuing appropriate action in the name of the Association.

4.18 Mixed-Use Project. EACH OWNER, BY ACCEPTANCE OF A DEED TO HIS OR HER UNIT, ACKNOWLEDGES THAT THE PROJECT IS A “MIXED-USE” PROJECT, INCLUDING RESIDENTIAL, COMMERCIAL AND PARKING CONDOMINIUMS. EACH OWNER RECOGNIZES AND ACCEPTS THAT COMBINING COMMERCIAL, RESIDENTIAL AND PARKING USES MAY PRESENT A NUMBER OF ISSUES AND CONCERNS WHICH MAY NOT OTHERWISE BE PRESENT IN A STRICTLY RESIDENTIAL PROJECT, INCLUDING, WITHOUT LIMITATION, ADDITIONAL NOISE, ODORS, FUMES, VEHICULAR TRAFFIC, PEDESTRIAN TRAFFIC, DIMINISHED SECURITY, AND OTHER SIMILAR ISSUES AND/OR DISTURBANCES ASSOCIATED WITH ANY AREA WHERE COMMERCIAL OR PARKING ACTIVITY IS PRESENT OR PREVALENT. EACH OWNER OF A RESIDENTIAL OR PARKING UNIT AGREES TO ABIDE BY ANY PROVISIONS HEREIN WHICH ARE FOR THE BENEFIT OF THE COMMERCIAL UNITS OR DELEGATE TO THE OWNERS OF THE COMMERCIAL UNITS CERTAIN RIGHTS TO REGULATE AND/OR OPERATE THE COMMERCIAL UNITS WITHOUT INTERFERENCE BY THE OWNERS OF RESIDENTIAL OR PARKING UNITS. EACH OWNER OF A RESIDENTIAL OR COMMERCIAL UNIT AGREES TO ABIDE BY ANY PROVISIONS HEREIN WHICH ARE FOR THE BENEFIT OF THE PARKING UNITS OR DELEGATE TO THE OWNERS OF THE PARKING UNITS CERTAIN RIGHTS TO REGULATE AND/OR OPERATE THE PARKING UNITS WITHOUT INTERFERENCE BY THE OWNERS OF RESIDENTIAL OR COMMERCIAL UNITS. EACH OWNER OF A COMMERCIAL OR PARKING UNIT AGREES TO ABIDE BY ANY PROVISIONS HEREIN WHICH ARE FOR THE BENEFIT OF THE RESIDENTIAL UNITS OR DELEGATE TO THE OWNERS OF THE RESIDENTIAL UNITS CERTAIN RIGHTS TO REGULATE AND/OR OPERATE THE RESIDENTIAL UNITS WITHOUT INTERFERENCE BY THE OWNERS COMMERCIAL OR PARKING UNITS.

4.19 Redevelopment Plan for the Santa Barbara Central City Redevelopment Project. The Members acknowledge and agree that the Development is located within the boundaries of the Redevelopment Plan for the Santa Barbara Central City Redevelopment Project as disclosed by Notice recorded December 14, 1972 as Instrument No. 48982 in Book 2435, Page 331 of the Official Records of Santa Barbara County (“Redevelopment Plan”) as amended by (a) the First Amended Redevelopment Plan for the Santa Barbara Central City Redevelopment Project recorded September 1, 1977 as Instrument No. 77-44507 of the Official Records of Santa Barbara County (“First Amended Redevelopment Plan”), and (b) that Description of the Land Within the Proposed Amendment to the Central City Redevelopment Project and Statement That a Redevelopment Plan Has Been Amended recorded August 27, 2007, as Instrument No. 2007-0062211 Official Records of Santa Barbara County (“Statement”). Members are advised to refer to the Redevelopment Plan, First Amended Redevelopment Plan and Statement for further details regarding the Santa Barbara Central City Redevelopment Project Plan.

ARTICLE V
Uses of the Property

5.01 Residential, Commercial and Parking Use; Obligation to Rebuild. The Real Property included within the Development is hereby restricted to use in accordance with the provisions of Section 5.02 below. No building or structure shall be erected or placed, temporarily or permanently, upon the Real Property other than buildings and structures bounding the Units that are substantially the same as those originally erected by Declarant, and the Common Facilities used in connection therewith. If any building or structure bounding one or more Units or any Common Facility is damaged or destroyed by fire or other casualty, unless prohibited by law, the Association shall reconstruct the same in accordance with the provisions of Article VII below and substantially in accordance with the original plans and specifications, so that the exterior appearance resembles that existing prior to the damage or destruction.

Declarant shall have the right to designate, from time to time, and use, one or more Units owned or leased by Declarant for model homes and sales offices in the Development. This right shall terminate three (3) years after issuance of the Public Report for the Development, or upon sale of the last Condominium in the Development by Declarant, whichever shall first occur.

5.02 Restriction on Use. The Real Property shall be subject to the following restrictions:

(A) Each *Residential Unit* shall be used as a residence for a single family in compliance with applicable zoning regulations. The number of persons residing in a Residential Unit shall not exceed two (2) persons per bedroom, plus one (1) extra occupant. Guests may visit the Residential Units, but shall not reside in the Residential Units. For purposes hereof, a visit shall be considered a period not to exceed forty-five (45) days in any calendar year.

(B) *Residential Units* shall not be used, either directly or indirectly, for any business, commercial, manufacturing, mercantile or other non-residential purpose by any Owner or occupant of any Residential Unit, or by any family member, guest, employee, agent or invitee of any Owner or occupant of any Residential Unit, unless such use is specifically authorized by applicable law, or:

(1) Does not involve any visible signs of commercial use apparent from outside the "LA" airspace element (Living Area) of such Residential Unit;

(2) Does not involve any regular conspicuous business activity;

(3) Does not involve regular deliveries or pick-ups to or from the Residential Unit or any part of the Development,

(4) Is conducted solely within the confines of the "LA" airspace element (Living Area) of such Residential Unit;

(5) Does not normally involve customers, clients or patients visiting the Residential Unit or any part of the Development;

(6) Does not otherwise interfere with the residential nature or character of the Development or the quiet enjoyment of any Owner or occupant of any other Residential Unit; and

(7) Is in compliance with all zoning, labor, business and other applicable local, county, state and federal ordinances, codes, statutes and regulations.

If and when any non-residential use of a Residential Unit is declared, by the Board, to be in violation of this subsection (B), such non-residential use shall be discontinued immediately, or as otherwise determined by the Board, and shall not be resumed without prior written authorization from the Board.

(C) Except as provided herein, each of the *Commercial Units* shall be used for general administrative, business and professional purposes permitted under the applicable zoning regulations. Although the Property is currently zoned "C-2" under the Zoning Ordinances of the City of Santa Barbara, only those commercial uses set forth in Exhibit "C" attached hereto may be used in the Commercial Units. Despite the foregoing, additional commercial uses may be permitted in the Commercial Units in compliance with the City's Zoning Ordinances, upon written consent of fifty-one percent (51%) of the Voting Power of the Association. In such event, the Owners shall cause this Declaration to be amended so as to incorporate such additional permitted commercial uses in Exhibit "C".

(D) As to the *Commercial Units*, the Association shall maintain one or more signs, attached to the Commercial Units, at the entrance of the Commercial Units identifying the persons and/or entities occupying the Commercial Units. The size, design, content and placement of such signage shall continue to be consistent in all respects with the signage for the Commercial Units as initially constructed by Declarant as of the date of this Declaration and with any sign program approved by the City for the Development or as otherwise set forth in the sign ordinance of the City of Santa Barbara.

(E) Each *Parking Unit* shall be used for the purpose of parking not more than one (1) automobile or other motorized vehicle as described in subsection (L) below.

(F) No animals, livestock or poultry of any kind shall be raised, bred or kept on any portion of the Development, except that aquatic animals kept within an aquarium (an "Aquarium") and/or domesticated dogs, cats, birds or other animals, as agreed to by the Board (collectively referred to hereinafter, together with Aquariums, as "Pets"), may be kept in a Residential Unit if they are not kept, bred or maintained for any commercial purposes and if they do not become a nuisance to other Owners or occupants of the Development. If and when any Pet is declared to be a nuisance by the Board, it shall be removed from the Development immediately or as otherwise determined by the Board. The owners of Pets shall be responsible for the cleanup of any litter left by such Pets in the Common Area. Dogs shall be kept on a leash when in the Common Area. The foregoing notwithstanding, no more than one (1) such Pet may be kept in any Residential Unit.

(G) Except as provided in sub-section (D) above, no commercial advertising signs, billboards or unsightly objects shall be erected on the Development, except that a sign of customary and reasonable dimensions may be used for the sole purpose of advertising for sale or lease any Condominium. This provision shall not be applicable to Declarant.

One (1) flag of the United States, made of fabric, cloth or paper may be displayed from a staff or pole within a Unit or in the window of a Unit. Other noncommercial signs, posters, flags or banners may be displayed as permitted under Section 1353.6 of the Civil Code.

(H) No obnoxious or offensive activity, including but not limited to repair and restoration of automobiles or other motorized vehicles, shall be carried on upon any portion of the Development, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood or which shall increase the rate of insurance on any adjacent Unit, Common Area or Common Facility.

(I) No clothesline, storage pile or other unsightly object shall be maintained on the Development, except by or with the written consent of the Board, and there shall be no exterior drying or laundering of clothes or other materials on the Balcony Area or Deck Area of any Residential Unit or the common walkways in the Development. All rubbish, trash or refuse shall be deposited at a location provided for at each Unit, or at such other location as may be designated from time to time by the Board. Woodpiles may be maintained by Owners or occupants on the rear Balcony Area or rear Deck Area of a Residential Unit, provided they are clean and attractive in appearance as determined by the Board.

(J) All streets, driveways, sidewalks, entries and passages outside of the Units shall remain unobstructed and shall not be used for purposes other than ingress and egress to and from the Units, except that garages and other parking spaces designated on the Condominium Plan may be used for parking vehicles.

(K) No combustible material or any other material which would increase the risk of fire shall be stored on the Development.

(L) No boat, trailer, mobile home, recreational vehicle, truck having a carrying capacity of greater than one-half (1/2) ton, van having a seating capacity in excess of eight (8) persons, or similar equipment shall be parked or kept within the Development.

The occupants of each Residential Unit or Parking Unit shall have not more than a total of one (1) automobile or other motorized vehicle customarily used for general transportation within the Development at any one time. The occupants of each Commercial Unit shall have not more than a total of two (2) such automobiles or other motorized vehicles with the Development at any one time. All such vehicles shall be maintained in running order. No noisy or smoky vehicles shall be kept or operated in the Development. No unlicensed motor vehicles shall be kept or operated in the Development. The Association may establish rules and regulations from time to time for the parking of such vehicles in the Development.

(M) Garage doors shall remain closed except when occupants are entering, leaving or working in or around their garages. All Parking Units, Residential Garage Areas and EUCA Residential and Commercial Parking Spaces must be kept clear and available for parking

in the manner for which the Parking Units, garages and/or parking spaces were designed and permitted. Accordingly, no use shall be made of such Parking Unit, garage or parking space that would prohibit an Owner or occupant from parking or keeping at least one (1) automobile or other motorized vehicle(s) as described in subsection (L) above, therein.

(N) Pursuant to Vehicle Code § 22658, as amended from time to time, the Association may cause the removal of any vehicle wrongfully parked in the Development (including a vehicle owned by an occupant) to a storage facility, that meets the requirements of Vehicle Code § 22658 subdivision (n), under any of the following circumstances::

(1) The Association has installed, and there is displayed, in plain view at all entrances to the property, a sign not less than 17 inches by 22 inches in size, with lettering not less than one inch in height, prohibiting public parking and indicating that vehicles will be removed at the owner's expense, and containing the telephone number of the local traffic law enforcement agency and the name and telephone number of each towing company that is a party to a written general towing authorization agreement with the Association. The sign may also indicate that a citation may also be issued for the violation.

(2) The vehicle has been issued a notice of parking violation, and 96 hours have elapsed since the issuance of that notice.

(3) The vehicle is in the Development and lacks an engine, transmission, wheels, tires, doors, windshield, or any other major part or equipment necessary to operate safely on the highways, the Association has notified the local traffic law enforcement agency, and 24 hours have elapsed since that notification.

(4) The lot or parcel upon which the vehicle is parked is improved with a single-family dwelling.

Pursuant to Vehicle Code § 22658, subsection (e)(1), the Association, in causing the removal of a vehicle parked on the Development, is liable for double the storage or towing charges whenever there has been a failure to comply with paragraph (1), (2), or (3) of subdivision (a) of Vehicle Code § 22658 or to state the grounds for the removal of the vehicle if requested by the legal or registered owner of the vehicle as required by subdivision (f) of Vehicle Code § 22658.

Pursuant to Vehicle Code § 22658, subsection (f) the Association, in causing the removal of a vehicle parked on the Development, shall notify by telephone or, if impractical, by the most expeditious means available, the local traffic law enforcement agency within one hour after authorizing the tow. The Association shall state the grounds for the removal of the vehicle if requested by the legal or registered owner of that vehicle.

The Members are advised (i) that the provisions of Vehicle Code § 22658 regarding the removal of a vehicle from private property are extensive, (ii) that failure to comply with such provisions may result in significant penalties, and (iii) to refer to Vehicle Code § 22658 for a fuller understanding of such provisions.

(O) No awnings, sunshades or screen doors, other than those originally installed, shall be installed without the prior written approval of the Board. All window coverings visible from the exterior of the buildings shall be of a neutral tone and of material approved by the Board.

(P) No fence, statuary or structure of any kind shall be installed or erected in or upon any Common Area or any Common Facility without the prior written approval of the Board.

(Q) No exterior radio antenna shall be used or installed in the Development. No exterior video or television antenna (including a satellite dish) that has a diameter or diagonal measurement of more than thirty-six (36) inches shall be used or installed in the Development. A video or television antenna (including a satellite dish) that has a diameter or diagonal measurement of thirty-six (36) inches or less may be used and installed by an Owner in his/her Unit, provided that the antenna or satellite dish is not attached to, or located in or upon, the Common Area, Exclusive Use Common Areas or Common Facilities. The antenna or satellite dish shall be screened from view from the other Units, Common Area, Exclusive Use Common Areas or Common Facilities, provided that such screening does not unreasonably interfere with signal strength or cost an unreasonable amount of money. The Board may establish reasonable restrictions on the installation of video and television antennae (including satellite dishes) that have a diameter of thirty-six (36) inches or less consistent with the foregoing.

(R) A landscaping plan for the Development (the "Landscape Plan") has been submitted to and approved by the Architectural Board of Review of the City of Santa Barbara (the "ABR"). The Association shall landscape and maintain the Common Area and Common Facilities in accordance with the approved Landscape Plan. Included in the foregoing is the requirement that the existing Norfolk Island Pine tree, located within the Development, shall be preserved, protected and maintained. Each Owner shall landscape and maintain the "D" airspace element ("Deck Area") of his/her Unit in accordance with the approved Landscape Plan. Water service to the Deck Areas of each Unit shall be provided by the Association for such purpose. Neither the Association nor the Owners shall modify or alter the Plan without the prior written approval of the ABR.

(S) Bicycles shall be parked and stored within the Units and not in the Common Area or Common Facilities of the Development.

(T) No plants or similar vegetation shall be located on any Balcony Area or Deck Area in the Development, unless placed in pots or other containers that allow sufficient airflow between the bottom of the pot and the surface of the Balcony Area or Deck Area, so as to prevent water damage or dry rot from occurring on the Balcony Area or Deck Area, Balcony Area or Deck Area structure, or improvements adjacent to the Balcony Area or Deck Area.

(U) Exterior lighting for the Development shall be Consistent with the City of Santa Barbara's Lighting Ordinance. No floodlights shall be allowed and lighting, where provided, shall be directed toward the ground.

(V) Development of the Real Property that is the subject of this Declaration is limited to two (2) Commercial Condominium Units, fourteen (14) Residential Condominium Units, twenty-five (25) Parking Condominium Units and the improvements shown on the tentative subdivision map, which was signed by the Chairman of the Planning Commission of the City of Santa Barbara on July 14, 2005 (as modified by that Substantial Conformance Determination MST 2004-00774), and on file at the City of Santa Barbara.

(W) No Hazardous Materials and no combustible material or any other material which would increase the risk of fire shall be stored in, on or around the Development. For purposes of this Declaration, "Hazardous Materials" shall include substances defined as "hazardous substances" or "toxic substances" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq.; Hazardous Materials Transportation Act, 49 U.S.C. Section 1801; and Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq.; as well as other substances defined as hazardous waste and hazardous substances in §25117 of the California Health and Safety Code.

5.03 Leases. No Owner is permitted to lease all or any portion of any Condominium for transient or hotel purposes. No Owner may lease less than an entire Condominium, without the prior written consent of the Board. Any lease of any Condominium shall provide that, in all respects, such lease is subject to the provisions of the Governing Documents. Such lease shall further provide that any failure by the lessee to comply with the terms of the Governing Documents shall be a default under the lease. All leases and rental agreements of Condominiums shall be in writing and shall be for a term of thirty (30) days or more. Any Owner leasing or renting any Condominium shall notify the Board in writing of: (i) the names of all persons occupying such Condominium; and (ii) the address where such Owner resides, if not within the Development. Notwithstanding any agreement between any Owner and any prospective tenant to the contrary, the leasing or rental of any Condominium shall not operate to relieve the Owner thereof of the primary responsibility for compliance with all provisions of the Governing Documents, including the payment of all charges and assessments.

ARTICLE VI

Assessments and Liens

6.01 Assessment Power. Each Condominium within the Development and the improvements thereon, except such improvements as are owned by the Association, shall be subject to general and special assessments and Liens to secure their payment. The Association, by the Board, shall have the sole authority to fix and establish the amounts of the general assessments provided for in this Declaration and the amounts of such interest, costs and late charges for the late payment or nonpayment thereof. The power of assessment shall vest on the first (1st) day of the month following the first (1st) conveyance of a Condominium under authority of a Public Report. The Association shall not impose or collect an assessment or fee that exceeds the amount necessary to defray the costs for which it is levied.

6.02 General Assessments. General assessments shall be fixed and established annually or more often by the Board and shall be collected monthly by the Association, as follows:

(A) **Budget; General.** By resolution duly adopted, the Board shall have in effect at all times an operating budget. In accordance with the provisions of this Declaration and the Bylaws, such budget shall be divided into three (3) components setting forth the cash requirements and reserves for future maintenance or contingencies reasonably necessary and proper for the management, operation, maintenance, care and improvement of: (1) the Exclusive Use Common Area elevators serving Units 9, 10, 11 and 12 described in Section 4.12(C) (which shall also include applicable charges for the service, maintenance and repair of the EUCA elevator serving Residential Units 9 & 11, and the EUCA elevator serving Residential Units 10 & 12, - hereinafter, the "Elevator Budget"; (2) the garage and parking area located on the Garage Floor of the Development as shown in the Condominium Plan (hereinafter the "Parking Budget"); and (3) all other Common Areas, Exclusive Use Common Areas and Common Facilities (hereinafter, the "General Budget").

(B) **Annual Budget.** The Board shall, at a regular or special meeting held during the month of October of each year or at such other time as may be designated by the Board, make its estimate of cash requirements for the ensuing calendar year. Following the estimation of cash requirements, the Board shall prepare an annual budget for the ensuing calendar year based thereon and shall distribute the budget not less than forty-five (45) days and not more than sixty (60) days prior to the beginning of the calendar year as provided in Section 7.04 of the Bylaws. If the Board elects a fiscal year other than the calendar year, such estimate shall be made at least two (2) months prior to the beginning of that fiscal year, and the annual budget for the ensuing fiscal year shall be prepared and distributed to the Owners as set forth above.

(C) **General Assessments.** Subject to the terms of subsection (D) below, the Board may from time to time, by resolution, set general assessments based upon duly adopted budgets as provided above or modify any budget previously made and raise or lower the amount previously estimated as the cash requirements of the Association for all or part of a year. The Board may raise or lower the amount of the general assessment to correspond to such revised budget, provided that no such determination by the Board shall have any retroactive effect on the amount of assessment payable by any Owner for any period elapsed prior to the date of such determination. Such estimate of cash requirements and reserves shall be apportioned among all the Condominiums as provided herein, and the sum allocable to each Condominium shall be the general assessment against such Condominium for the ensuing calendar year or other period.

(D) **Limit on Increased Assessments.**

(1) The Board may not impose a general assessment hereunder applicable to the Elevator Budget or the General Budget which is more than twenty percent (20%) greater than the general assessment applicable to either or both such budgets as the case may be for the immediately preceding fiscal year without the occurrence of one of the following:

(a) The vote or written consent of the Class A Memberships constituting a quorum casting a majority of the Class A votes. For purposes hereof, a quorum

shall mean Members entitled to cast more than fifty percent (50%) of the votes of the Class A Memberships.

(b) By written consent of all Class A votes pursuant to Corporations Code Section 7516.

(c) Any vote of the Members as set forth above shall be conducted in accordance with the procedures set forth in Civil Code Section 1363.03.

(2) The Board may not impose a general assessment hereunder applicable to the Parking Budget which is more than twenty percent (20%) greater than the general assessment applicable to the Parking Budget for the immediately preceding fiscal year without the occurrence of one of the following:

(a) The vote of written consent of (a) the Class A and Class B Members constituting a quorum of the Voting Power of the Association casting a majority of the votes. For purposes, hereof, a quorum shall mean more than fifty percent (50%) of the Voting Power of the Association; and (b) the vote or written consent of the Class B Memberships constituting a quorum casting a majority of the Class B votes. For purposes hereof, a quorum shall mean Members entitled to cast more than fifty percent (50%) of the votes of the Class B Memberships.

(b) By written consent of all Class A or Class B votes pursuant to corporations code section 7516.

(3) Any vote of the members as set forth above shall be conducted in accordance with the provisions set forth in Civil Code Section 1363.03.

(E) **Apportionment of Assessment.** The general assessments shall be apportioned among the Condominiums as follows:

(1) Those allocations set forth in that part of the Association's budget described as "Elevator Budget" pursuant to subsection (A) above shall consist of two sub-components: (i) the cash requirements necessary to maintain, operate, repair and care for the elevator serving Residential Units 9 & 11; and (ii) the cash requirements necessary to maintain, operate, repair and care for the elevator serving Residential Units 10 & 12. Each sub-component shall be apportioned equally among Residential Units 9 & 11 and Residential Units 10 & 12, respectively.

(2) Those allocations set forth in that part of the Association's budget described as "Parking Budget" pursuant to subsection (A) above shall consist of two sub-components: (i) that portion of the cash requirements (including but not limited to liability insurance, all risk hazard insurance, re-sealing of paving surface, interior lighting, interior paint, entry gate, and ventilation system) necessary to maintain, operate, repair and care for the physical improvements located on the Garage Floor that are attributable to the Parking Units; and (ii) that portion of the foregoing cash requirements necessary to maintain, operate, repair and care for the physical improvements located on the Garage Floor that are attributable to the

Residential and Commercial Units. The sub-component applicable to the Parking Units shall be apportioned equally among the Parking Units. The sub-component applicable to the Residential and Commercial Units shall be included in the General Budget to be apportioned in the manner set forth therein.

(3) Those allocations set forth in that part of the Association's budget described as "General Budget" pursuant to subsection (A) above shall be apportioned among the Residential Units and Commercial Units upon the basis of the ratio of the Floor Area of the Unit to be assessed to the total Floor Area of all of the Residential Units and Commercial Units. For purposes of this sub-section, the floor area of each such unit is more particularly described in Section 2.06.

(F) **Payment.** The general assessments shall be collected on a monthly basis, due on the first (1st) of the month to which such assessment pertains.

(G) **First Assessments.** The notice provisions of Section 6.05(A) below notwithstanding, assessments on all Condominiums shall commence on the first (1st) day of the month following the first (1st) conveyance of a Condominium under authority of the Public Report in an amount per month equal to that set forth in the Public Report until the Board, at any meeting thereafter legally held, shall determine, by resolution, a change in the amount of the assessment and the first date for payment of such changed assessment

(H) **Obligations of Declarant and Owners.** Declarant, for each Condominium, hereby covenants, and each Owner, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, covenants and agrees: (1) to pay to the Association general assessments and charges and special assessments for purposes permitted herein; and (2) to allow the Association to enforce any Lien established hereunder by nonjudicial proceedings under a power of sale or by any other means authorized by law. Neither Declarant nor any Owner may exempt himself/herself from liability for his/her contributions towards the common expenses of the Association by waiver of the use or enjoyment of any Common Area or Common Facilities, or by the abandonment of his/her Condominium.

6.03 Special Assessments. A special assessment is an assessment to reimburse the Association for expenses incurred, or to be incurred, which are not ordinarily included in the annual estimate of expenses referred to in Section 6.02 above. They may be levied as follows:

(A) **Purpose.** The Association shall have the right to impose special assessments for the following purposes:

(1) To collect such sums due from Owners under Sections 4.10 (Utilities), 6.11 (Taxes), 7.07(B) (Insufficient Insurance), 7.07(G) (Damage to Common Facilities Other Than Structures Bounding Units) and 8.05 (Common Area Damage, Unit Damage, and Unit Maintenance) herein;

(2) To defray the cost of any construction or reconstruction project, unexpected repair or replacement of any Common Facilities or any other capital improvement in the Common Area, not covered by the provisions of Article VII below;

(3) To collect a monetary penalty imposed by the Board in accordance with the Bylaws or to otherwise reimburse the Association for costs incurred in bringing any Owner or such Owner's interest in his/her Condominium into compliance with the Governing Documents;

(4) To defray the cost of any additional improvement in the Common Area or Common Facilities, not in existence on the date of this Declaration, and which Declarant is not otherwise obligated to complete; or

(5) To restore funds to the Association's reserve account pursuant to Section 7.05 of the Bylaws.

(B) **Limit.** The Board may not levy special assessments under subsections (A)(2), (A)(4) and (A)(5) above, which in the aggregate, exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year, without the occurrence of one of the following:

(1) The vote or written consent of the Class A and Class B Members constituting a quorum of the Voting Power of the Association casting a majority of the votes. For purposes hereof, a quorum shall mean more than fifty percent (50%) of the Voting Power of the Association.

(2) By written consent of all Members pursuant to Corporation Code Section 7516.

(3) Any vote of the Members as set forth above shall be conducted in accordance with the provisions set forth in Civil Code Section 1363.03.

(C) **Apportionment.** Any special assessment levied pursuant to the provisions of Section 7.07(B) below, shall be levied upon the basis of the ratio of the square footage of the floor area of the Unit to be assessed to the total square footage of floor area of all such Units to be assessed. Any special assessment which is levied for purposes of managing, operating, maintaining or caring for those improvements included in or to be included in the Elevator Budget, the Parking Budget or the General Budget shall be apportioned among the Condominiums as provided in Section 6.02(E) above.

6.04 Emergency Situations. Despite the provisions of Sections 6.02(D) and 6.03(B) above, the Board may increase or levy general and/or special assessments necessary for emergency situations. For the purposes of this Section 6.04, an emergency situation is any one of the following:

(A) An extraordinary expense required by court order;

(B) An extraordinary expense necessary to repair or maintain the Development, or any part of it for which the Association is responsible, where a threat to safety of persons is discovered; or

(C) Repairs to, or maintenance of, the Development that could not have been reasonably foreseen in preparing the budget. Prior to imposition of the assessment, the Board shall make written findings, distributed to the Owners, as to the necessity of the expense and why it could not have been foreseen.

6.05 Notice of Assessments.

(A) Notice of the amount of any general or special assessment imposed by the Association shall be mailed to each Owner not less than thirty (30) days prior to the date the assessment or charge becomes due and payable.

(B) The Association shall provide notice by first class mail to each Owner of any increase in the general or special assessments of the Association, not less than thirty (30) nor more than sixty (60) days prior to the increased assessment becoming due.

6.06 Default; Late Charge; Interest. Fifteen (15) days after any general or special assessment is due and payable, but remains unpaid or not otherwise satisfied, it shall be and become delinquent and shall so continue until the amount of the assessment, together with all costs, late charges and interest as herein provided, have been fully paid or otherwise satisfied. The Board may establish a reasonable charge for late payment of any assessment to defray the additional administration costs a late payment may cause, subject to the limitations as set forth in Civil Code Section 1366(e)(2), which currently provides that a late charge shall not exceed ten percent (10%) of the delinquent assessment or Ten Dollars (\$10.00), whichever is greater. Such late charges may be imposed at any time after any assessment has become delinquent. Interest shall accrue at the rate of twelve percent (12%) per annum upon all unpaid assessments commencing thirty (30) days after the assessment becomes due.

6.07 Notice of Delinquency. At any time after any general or special assessment against a Condominium has become delinquent, the Association may record a lien for delinquent assessments (a "Lien") as to such Condominium; provided, however, that at least thirty (30) days before recording the Lien, the Association shall have provided the Owner of such Condominium, in writing, by certified mail, with all of the information required pursuant to California Civil Code Section 1367.1(a) (a "Notice of Delinquency")

6.08 Lien for Delinquent Assessments. On or after thirty (30) days from the delivery of a Notice of Delinquency, as described in Section 6.07 above, the Association may record a Lien as to such Condominium.

(A) Immediately upon the recording of a Lien, the amount of the delinquent assessments, plus any costs of collection, late charges, and interest assessed in accordance with California Civil Code Section 1366, shall become a Lien on the Owner's Condominium, which Lien shall continue until the amount of such delinquency and the interest, costs and late charges accrued thereon have been fully paid or otherwise satisfied or the Lien foreclosed as provided therein.. The recorded Lien shall include all information required pursuant to California Civil Code Section 1367.1(d)

(B) Such Lien shall be signed by an Officer and a copy thereof shall be mailed, by certified mail, to every Owner no later than ten (10) calendar days after recordation. The decision to record a Lien shall be made only by the Board and may not be delegated to any agent of the Association. The Board shall approve the decision by a majority vote of the Directors in an open meeting of the Board. The Board shall record the vote in the minutes of that meeting.

(C) In addition to the requirements of this Section 6.08, notice of a recorded Lien shall be served by the Association on the Owner's legal representative in accordance with the manner of service of summons described in Article 3 (commencing with Section 415.10) of Chapter 4 of Title 5 of Part 2 of the California Code of Civil Procedure.

(D) Upon receipt of a written request by an Owner identifying a secondary address for purposes of collection notices, the Association shall send additional copies of any notices required by this Section 6.08 to the secondary address provided. The Association shall notify Owners of their right to submit secondary addresses to the association, at the time the association issues the pro forma operating budget pursuant to California Civil Code Section 1365. An Owner's request identifying a secondary address for purposes of collection notices shall be in writing and shall be mailed to the Association in a manner provided in Section 10.12 below. The Owner may identify or change a secondary address at any time, provided that, if a secondary address is identified or changed during the collection process, the Association shall only be required to send notices to the indicated secondary address from the point the Association receives the request.

(E) An Owner may submit a written request to meet with the Board to discuss a payment plan for the delinquency. The Association shall provide Owners with the standards for payment plans, if any exist. The Board shall meet with the Owner in executive session within forty-five (45) days of the date of the postmark of the Owner's notice. If there is no regularly scheduled Board meeting within that period, the Board may designate a committee of one or more members to meet with the Owner.

(F) Any payments received shall first be applied to the assessments owing, and then to the fees and costs of collection, attorneys' fees, late charges and interest. When an Owner makes a payment, he/she may request a receipt and the Association shall provide it. The receipt shall indicate the date of payment and the person who received it.

(G) Within twenty-one (21) days of the payment of the sums specified in a recorded Lien, or upon other satisfaction thereof, the Association shall record, or cause to be recorded, a Lien release or notice of rescission and provide the Owner with a copy of the Lien release or notice that the delinquent assessment has been satisfied. The foregoing procedures and the provisions of the remainder of this Article VI, insofar as they relate to creation of a Lien against a Condominium and the enforcement thereof by the sale of the Condominium in accordance with the provisions of Sections 2924, 2924(b), 2924(c) and 2934(a) of the California Civil Code, are inapplicable in the instance of any enforcement of special assessments made pursuant to the provisions of Section 6.03(A)(3) above.

6.09 Enforcement of Lien; Attorneys' Fees. Except as otherwise provided in Section 5.16(B) of the Bylaws or Civil Code Sections 1367.1(g), each Lien created pursuant to the provisions of this Declaration may be enforced in any manner permitted by law, including sale by the court, the Association, the trustee or other person authorized to make the sale after the expiration of thirty (30) days following recording of the Lien; provided, however, that, pursuant to Civil Code Section 1367.4(b)(1), a Lien in an amount less than One Thousand, Eight Hundred Dollars (\$1,800.00), not including any accelerated assessments, late charges, fees and costs of collection, attorneys' fees, or interest, may not be enforced through judicial or nonjudicial foreclosure until: (i) the amount of the delinquent assessments secured by the Lien, exclusive of any accelerated assessments, late charges, fees and costs of collection, attorneys' fees, or interest, equals or exceeds One Thousand, Eight Hundred Dollars (\$1,800.00); or (ii) the assessments secured by the Lien are more than twelve (12) months delinquent.

(A) The decision to initiate foreclosure of a Lien for delinquent assessments that has been validly recorded shall be made only by the Board and may not be delegated to any agent of the Association. The Board shall approve the decision by a majority vote of the Directors in an executive session. The Board shall record the vote in the minutes of the next meeting of the Board open to all Owners. The Board shall maintain the confidentiality of the Owner of the Condominium subject to foreclosure by identifying the matter in the minutes by the parcel number of the property, rather than the name of the Owner. A Board vote to approve foreclosure of a Lien shall take place at least thirty (30) days prior to any public sale.

(B) Prior to initiating foreclosure of a Lien the Association shall offer the Owner and, if so requested by the Owner, participate in dispute resolution procedures as described in Section 5.16 of the Bylaws and Section 1367.1 of the Civil Code.

(C) The sale of a Condominium pursuant to this Section 6.09 may be conducted in accordance with the provisions of Sections 2924, 2924(b), 2924(c) and 2934(a) of the California Civil Code, or in any other manner permitted by law. The Association may bring separate legal action to collect delinquent assessments without foreclosing such Lien and before the Association has recorded a Lien. In any action to collect delinquent assessments or to foreclose any Lien, the Association shall be entitled to costs, including reasonable attorneys' fees as determined by a court of competent jurisdiction, interest, and such late charges for delinquent assessments as shall have been established by the Board. The personal obligation for delinquent assessments shall not pass to an Owner's successor in title unless expressly assumed by him.

(D) A nonjudicial foreclosure by the Association to collect upon a debt for delinquent assessments shall be subject to a right of redemption pursuant to California Civil Code Section 1367.4(c)(4). The redemption period within which a Condominium may be redeemed from a foreclosure sale by the Owner will end ninety (90) days after the sale.

(E) To facilitate collection of such delinquent assessments, fees and charges, the Association may record a statement of relevant information pursuant to Civil Code Section 1366.2.

6.10 Assessments and Liens Subordinated. Each and every Lien and assessment, together with any costs, late charges or interest established, reserved or imposed under this

Declaration, shall be subordinated to any valid bona fide first Mortgage or first trust deed (and the Lien or title thereto) which has been or may hereafter be given in good faith and for value on any Condominium or property covered by this Declaration; provided, however, that any subsequent owner of any such Condominium shall be bound by the restrictions, conditions, covenants, reservations, Liens and charges set out in this Declaration or any modification thereof, whether obtained by foreclosure or trust deed sale or otherwise, not including, however, any Lien or assessment arising prior to any sale under any such Mortgage or trust deed.

6.11 Payment of Taxes. The Association shall have the right, to the extent not paid by the Owners, to pay all real property taxes and assessments levied upon any part or portion of the Development by a duly authorized governmental or quasi-governmental authority. The Association shall have the right to impose a special assessment and Lien against such portion of the Development for the amount paid by the Association pursuant to the right given by this Section 6.11. Such assessment and Lien imposed by the Association shall be enforced as provided in this Article VI.

6.12 Statutory Compliance. It is the intent of Declarant that the above provisions relating to prior notice, recordation and foreclosure of Liens against Condominiums in the Development be in compliance with applicable provisions and requirements of the Davis-Stirling Common Interest Development Act and other applicable statutes and regulations of the State of California. However, such statutory requirements are subject to change and the Board and Owners should regularly refer to such authorities (in particular Sections 1367.1-5 of the California Civil Code, as amended) when providing Notices of Delinquency, and when recording or foreclosing Liens on any Condominium in connection with such delinquent assessments, in order to ensure that all such notices, recorded Liens and procedures relating to such Liens are in full compliance with applicable law.

6.13 Alternate Legal Action; Settlement. Nothing in this Article VI shall prohibit actions by the Association against any Owner to recover sums specified in a Notice of Delinquency or sums for which a Lien is created, or from taking a deed in lieu of foreclosure.

ARTICLE VII

Insurance; Destruction of Improvements

7.01 Liability Insurance. Comprehensive general liability and property damage insurance shall be purchased by the Board as promptly as possible following its election and shall be maintained in force at all times, and the Board shall pay the premiums out of the general assessment fund. Until the beginning of assessments pursuant to Section 6.02 above, such insurance shall be procured by Declarant. The Board shall continue the Declarant's policy and pay the premiums accruing thereon after the date of the beginning of assessments until such new policy as selected by the Board is in force. The insurance shall be carried with reputable companies authorized to do business in the State of California in such amounts as the Board may determine. The policy or policies shall name the Association as the insured. Declarant shall be named as an additional insured on such policy or policies until such time as Declarant conveys all of the Condominiums in the Development. The policy or policies shall: (A) insure against any

liability incidental to the ownership and use of the Common Area, Exclusive Use Common Areas and Common Facilities; (B) include contractual exposures of the Association and the Board; and (C) include “severability of interest” in its terms (or a specific endorsement to preclude the insurer’s denial of the claim of any Owner because of negligent acts of the Association or of any other Owner). The limits of comprehensive general liability and property damage insurance required by this Section 7.01 shall be as determined by the Board, but shall be not less than Two Million Dollars (\$2,000,000.00) covering all claims for death, personal injury and property damage arising out of a single occurrence, or such higher amount as may be required under Civil Code §1365.9 to protect the Owners against certain claims of civil liability.

7.02 All Risk Hazard Insurance. Fire, extended coverage, vandalism, malicious mischief and other hazard insurance, with demolition and contingent liability from operation of building ordinance or law endorsements, (and inflation guard endorsement when it can be obtained at commercially reasonable rates) shall be purchased by the Board as promptly as possible following its election and shall be maintained in force at all times, and the Board shall pay the premiums out of the general assessment fund. Until the beginning of assessments pursuant to Section 6.02 above, such insurance shall be procured by Declarant. The Board shall continue the Declarant’s policy and pay the premiums accruing thereon after the date of the beginning of assessments until such new policy as selected by the Board is in force. The insurance shall be carried with generally acceptable and reputable companies authorized to do business in the State of California. The policy shall provide for the issuance of certificates or such endorsements evidencing the insurance as may be required by the respective Mortgagees. The policies shall insure against loss from perils therein covered as to the Common Facilities and all other insurable improvements in the Common Area and Exclusive Use Common Areas, except such as may be separately insured by the Association.

The amount of insurance under this Section 7.02 shall be an amount equal to one hundred percent (100%) of the full replacement cost of the Common Facilities and other insurable improvements in the Common Area and Exclusive Use Common Areas. The policy or policies shall name as insured the Association and Declarant so long as Declarant is the owner of any of the Condominiums. The policy or policies shall also cover personal property owned in common and shall further contain waiver of subrogation rights by the carrier as to negligent Owners.

7.03 No Separate Hazard Insurance on Structures. Except as expressly provided in this Article VII, no Owner shall separately insure the Common Area, Exclusive Use Common Areas or Common Facilities or any part thereof against loss by fire or other casualty covered by the insurance carried under Section 7.02 above. Should any Owner violate this provision, any diminution in insurance proceeds resulting from the existence of such other insurance or failure to have the proceeds resulting from the existence of such other insurance payable pursuant to the provisions of Section 7.07 below shall be chargeable to the Owner who acquired such other insurance, and who shall be liable to the Association to the extent of any such diminution or loss of such proceeds.

7.04 Owner’s Liability and Contents Insurance. In addition to the Common Area liability insurance covered under Section 7.01 above, an Owner may carry such personal liability insurance as he/she may desire. Further, any improvements made by an Owner within, a Unit, as well as the personal property of an Owner, may be separately insured by such Owner. Such

insurance would be limited to the type and nature of coverage often referred to as a “Condominium Unit Owner’s Package.” All such insurance separately carried shall contain waiver of subrogation rights by the carrier as to negligent Owners.

The Association shall have no responsibility whatsoever to secure any insurance for any improvements made by any Owner within any Unit, or for any personal property of any Owner, wherever located.

7.05 *Officers and Directors Liability Insurance; Other Insurance Coverage.*

(A) **Officers and Directors Liability Insurance.** The Board shall purchase, as promptly as possible following its election, and maintain in force at the expense of the general assessment fund, officers and directors liability insurance in an amount not less than Five Hundred Thousand Dollars (\$500,000.00).

(B) **Other Insurance Coverage.** The Board may purchase and maintain in force, at the expense of the general assessment, fund debris removal insurance, assessment loss insurance, fidelity bonds, earthquake insurance and other insurance and bonds that are necessary or appropriate in the discretion of the Board. The Board shall purchase and maintain workers’ compensation insurance to the extent required by law respecting employees of the Association. Any and all policies purchased by the Association may be combined into one or more blanket or consolidated policies at the Board’s discretion.

7.06 *Board Appointed Attorney-in-Fact.* The Board is hereby appointed attorney-in-fact for all Owners to negotiate loss adjustments on the policies carried under Sections 7.01, 7.02 and 7.05 above.

7.07 *Damage or Destruction.*

(A) **Segregation of Funds; Obligation to Rebuild.** If any structure comprising any Common Facility (“Common Facility Structure”) bounding or underlying any Unit and/or Exclusive Use Common Area is damaged or destroyed by fire or other casualty, all insurance proceeds paid in satisfaction of claims for such losses shall be segregated according to losses suffered by each Unit and shall be paid to the Association as trustee for the Owners and for the encumbrancers as their interests may appear. The insurance proceeds and the proceeds of any special assessments as hereinafter provided, whether or not subject to liens of Mortgages or deeds of trust, shall be collected and disbursed by the Association through a separate trust account pursuant to the provisions hereof. Subject to the provisions of subsections (D) and (E) below, the Board shall contract immediately to repair or rebuild the damaged portion of such structure substantially in accordance with its original plans and specifications.

(B) **Special Assessments.** If any Common Facility Structure bounding or underlying a Unit and/or Exclusive Use Common Area is repaired or reconstructed pursuant to the provisions of this Section 7.07 and there is any deficiency between the insurance proceeds paid for the damage to such Common Facility Structure and the contract price for repairing or rebuilding such Common Facility Structure, the Board shall levy a special assessment against all Owners apportioned as provided in Section 6.03(C) above. If any Owner fails to pay said special

assessment within thirty (30) days after the levy thereof, the Board shall make up the deficiency by payment from the general assessment fund, and the Association shall have the same remedies as those provided in Article VI above covering a default of any Owner in the payment of assessments.

(C) **Disbursement Procedure.** If the estimated cost of repair or reconstruction of any Common Facility Structure bounding or underlying any Unit and/or Exclusive Use Common Area, including any associated parking space or garage, exceeds the sum of Ten Thousand Dollars (\$10,000.00), whether or not all or any part of the cost is covered by the insurance proceeds, the monies deposited in the special trust account referred to above shall be disbursed for the purpose of the repair or reconstruction on the following terms and conditions:

(1) The Board shall obtain the consent and agreement of a majority of the affected first Mortgagees and holders of first deeds of trust of record to supervise the progress of repair or reconstruction work and the disbursement of funds in connection therewith.

(2) The trust funds shall be deposited in an account mutually agreed upon by the Board and the institutional encumbrancers.

(3) No disbursement for the work shall be made without the prior approval of said institutional encumbrancers, unless pursuant to a plan previously approved by them.

(D) **Election Not to Rebuild.** It is the general intent of subsections (A), (B) and (C) above to assure the repair or reconstruction of any Common Facility Structure bounding or underlying a Unit and/or Exclusive Use Common Area irrespective of the cause of the damage or destruction, or of the adequacy of any insurance proceeds; the Board may, however, with the vote or written consent of two-thirds (2/3) or more of the Voting Power of the Association, elect not to repair or rebuild such Common Facility Structure, provided that, in such event, the Board shall have prepared and filed, as promptly as practicable, a map reverting the Real Property to acreage (converting the Development into an unimproved parcel of land), and the entire Development shall be offered for sale forthwith at the highest and best price obtainable, either in its damaged condition, or after all structures have been razed. The net proceeds of such sale, and the proceeds, if any, of insurance, shall be distributed among the Owners and their respective Mortgagees as their interests appear according to the proportionate fair market value of the respective Condominiums at the time of the destruction, as determined by independent appraisal. Such independent appraisal shall be made by a licensed MAI appraiser as chosen by a majority of the Board, and lacking such a majority, as chosen by a majority of the Owners present and voting, in person or by proxy, at a regular or special meeting of the Members duly called.

(E) **Inability to Rebuild.** If the damage or destruction occurs to all or a portion of any of the Units, and there exists an impossibility or inability to repair or reconstruct all of the damaged Units for reasons beyond the control of the Owners, including, but not limited to, zoning restrictions which have been enacted, or geological hazards which have developed, or discovered, since the date of this Declaration, and the Owners do not make the election under subsection (D) above, the following shall occur:

(1) The insurance proceeds payable on account of such damage or destruction shall be disbursed by the Board, first to pay the cost of removing any remaining or destroyed portions of the improvements and complying with all other applicable requirements of governmental agencies, and then to or for the benefit of the Owners of damaged or destroyed Condominiums in proportion to the respective fair market values of their Condominiums immediately preceding the destruction as determined by independent appraisal. Any other funds received by the Association with respect to the damage or destruction, such as condemnation proceeds, shall also be disbursed to or for the benefit of the Owners in proportion to the respective fair market values of their Condominiums immediately preceding the destruction. All payments to be made hereunder, to or for the benefit of an Owner of a damaged or destroyed Condominium, shall be paid first to reduce or eliminate the lien of any mortgage, deed of trust or other encumbrance on such Condominium, and only the balance after satisfaction of such lien, shall be paid directly to each Owner.

(2) The “Net Compensation Amount” applicable to each damaged or destroyed Condominium shall be equal to the appraised value of the Condominium immediately prior to such damage or destruction, less all payments made to or for the benefit of the Owner of such Condominium pursuant to subsection (1) above.

(3) In the event the payments made to or for the benefit of the Owners of the damaged or destroyed Condominiums pursuant to subsection (1) above are not sufficient to return to such Owners the Net Compensation Amount allocable to their respective Condominiums, funds to pay the unpaid portion of the Net Compensation Amount shall be provided as follows:

(a) The obligation to pay the unpaid portion of the Net Compensation Amount for all damaged or destroyed Condominiums shall be allocated among the Owners of all Condominiums (including the Owners of the damaged or destroyed Condominiums) in accordance with the relative market values of their Condominiums, as determined by independent appraisal. The unpaid portion of the Net Compensation Amount of an Owner of a damaged or destroyed Condominium shall be reduced by the amount of the foregoing obligation allocated to such Owner, but shall not result in an amount less than zero Dollars. If an Owner’s unpaid Net Compensation Amount is less than such Owner’s obligation to contribute to payment of the total unpaid portion of the Net Compensation Amount for all damaged or destroyed Condominiums (excluding his/her own damaged or destroyed Condominium), such Owner shall pay the amount by which his/her obligation exceeds his/her unpaid Net Compensation Amount to the Association immediately upon determination thereof (and the provisions of subsection (b) below shall not apply to such Owner).

(b) Subject to the provisions of subsection (a) above, the Association shall issue a promissory note to each Owner of a damaged or destroyed Condominium, to whom any Net Compensation Amount funds are due, for the unpaid portion of the Net Compensation Amount allocable to such Owner’s damaged or destroyed Condominium. Such promissory note shall bear interest at the rate of eight percent (8%) per annum and be fully amortized for a term not to exceed three (3) years.

(c) The Board shall collect the funds to repay such promissory notes through one or more special assessments against the Owners of all of the undamaged Condominiums.

(d) Payments received by the Association or the Owner of any damaged or destroyed Condominium, subsequent to the payment of the principal balance due under a promissory note issued to such Owner, or any portion thereof (e.g., condemnation awards), shall be disbursed pro rata to the Owners having paid the special assessment described in subsection (c) above, to the extent of each Owner's pro rata share of the special assessment. If such payment is received directly by the Owner of any damaged or destroyed Condominium, such Owner shall immediately forward the full amount of such funds to the Board to be disbursed as provided above.

(4) Upon receipt of their respective share of insurance proceeds, as provided in subsection (1) above, each of the Owners of a damaged or destroyed Condominium shall convey his/her undivided interest in the Common Area, Exclusive Use Common Areas and Common Facilities to the Association as trustee for the Owners of the remaining Condominiums and execute such other documents necessary to terminate his/her interest in the Development, including any right he/she may have had to rebuild after damage or destruction.

(5) When all such deeds conveying undivided interests in the Common Area have been recorded, the Board shall convey the totality of such interests, in equal shares, to the remaining Owners, to achieve the ultimate result that one hundred percent (100%) of the Common Area will be equally divided among the remaining Owners in the Development. The Board shall also execute and record all documents and maps, including an amendment to the Condominium Plan, necessary to eliminate the airspace formerly occupied by the damaged or destroyed Units.

(F) **Amendment.** Subsections (A), (B), (C), (D) and (E) above may be amended only by an instrument in writing, executed and acknowledged by not less than two-thirds (2/3) of the Voting Power of the Association (and a majority of the Voting Power of the Association other than Declarant) and recorded in the Office of the County Recorder. Such percentages shall include the Owners whose Units have suffered damage or destruction, and which have not, at the time of such amendment, been fully repaired or reconstructed.

(G) **Damage to Common Facilities Other Than Structures Bounding or Underlying Units.** Upon damage to, or destruction by fire or other casualty, of, all or any portion of a Common Facility other than a structure bounding or underlying a Unit and/or Exclusive Use Common Area, all insurance proceeds paid in satisfaction for claims of said loss and the proceeds of any special assessment as hereinafter provided shall be used by the Board to repair or rebuild the damaged portion of such Common Facility substantially in accordance with the original plans and specifications thereof, unless within ninety (90) days from the date of such destruction, not less than two-thirds (2/3) of the Voting Power of the Association determine that such reconstruction shall not take place or that such Common Facility be reconstructed in a manner differing from the original plans and specifications. If there is any deficiency between the insurance proceeds paid for the damage to the Common Facility and the contract price for repairing or rebuilding such Common Facility, the Board shall levy a special assessment against

each Owner as provided in Section 6.03(A) above. If all or any portion of the insurance proceeds are not devoted to the repair or rebuilding of the Common Facility (other than a structure bounding or underlying a Unit and/or Exclusive Use Common Area), the unspent balance shall be distributed among the Owners and their respective Mortgagees as their interests appear according to the proportionate fair market value of the respective Condominiums at the time of the destruction as determined by independent appraisal.

(H) **Appraisal.** Wherever the fair market value of all or any part of the Development is to be independently appraised under this Section 7.07, such appraisal shall be made by a licensed MAI appraiser, as chosen by a majority of the Board, or, lacking such a majority, as chosen by a majority of the Voting Power of the Association.

(I) **Arbitration.** If a dispute arises among any Owners or Mortgagees respecting the provisions of this Article VII, any such party may cause it to be referred to arbitration in accordance with the then prevailing rules of the American Arbitration Association. The party requesting arbitration will give immediate notice thereof to the Board, which shall notify all other Owners and Mortgagees as promptly as possible after the reference to arbitration is made, giving all such parties an opportunity to appear at such arbitration proceedings. The decision of the arbitrator in this matter shall be final and conclusive upon all of the parties. The arbitrator may include in his/her determination an award for costs and attorneys' fees against any one or more parties to the arbitration.

7.08 Review of Insurance Coverage. The Board periodically (and not less than once every three (3) years) shall review the Association's insurance policies and make such adjustments to such policies, and the terms and conditions thereof, as the Board considers, in its discretion, to be in the best interests of the Association. Such periodic review of the Association's insurance policies shall include an appraisal, by a qualified appraiser, of the current replacement costs of all insured property, unless the Board, in its discretion, is satisfied that the current dollar limit of the policies, coupled with the amount of actual reserves on hand, is equal to or greater than the current replacement costs of the insured property.

ARTICLE VIII

Maintenance, Replacement and Improvement

8.01 Common Area; Common Facilities.

(A) The Common Area, Exclusive Use Common Areas and Common Facilities shall be conveyed by Declarant in undivided interests to each Owner, as applicable. Except as provide in Section 4.12 above, all such Common Area, Exclusive Use Common Areas and Common Facilities shall be maintained, cared for and managed exclusively by the Association, for the benefit and use of the Owners, as provided herein. In addition, the Association may maintain and improve any adjacent public areas, including street rights-of-way not otherwise maintained by a public agency, to the extent it deems the same reasonably necessary for the maintenance of the appearance of the property or any part thereof.

The Association shall not be liable for damage to any Unit (nor any personal or structural property located therein) caused by any damaged or defective Common Facility or any damaged or defective Common Line, referred to in Section 4.10 above, unless such damage is caused by the gross negligence of the Association or the Board, Officers, employees or agents of the Association. To illustrate the foregoing, the Association shall not be liable for damage to any Unit (nor any personal or structural property located therein) resulting from water which may leak or flow from outside the Unit or from any pipes, drains, conduits, appliances or equipment, or from any other place or cause, unless caused by the gross negligence of the Association, the Board, officers, employees or agents of the Association.

(B) The Association shall maintain all landscaping improvements installed in the Common Area by Declarant in accordance with the Landscape Plan referred to in Section 5.02(R) above, upon and after acceptance of such improvements by City of Santa Barbara, and shall indemnify and hold Declarant harmless from any and all losses and claims for replacing such landscape materials, which were inspected and accepted by the City on the inspection date.

(C) The Association shall pay the cost for the repair and maintenance of any Common Facilities damaged by the presence of wood-destroying pests or organisms and may cause the temporary removal of any Owner or occupant from the Development for such periods and at such times necessary for the prompt, effective treatment of wood-destroying pests or organisms. If the Association deems it necessary to temporarily remove any Owner or occupant from the Development, the Association shall give written notice to such Owner or occupant not less than fifteen (15) days, nor more than thirty (30) days, prior to the date of removal in the manner prescribed in Section 1364 of the California Civil Code, as amended. The cost of temporary relocation shall be borne by such Owner or occupant, and not by the Association.

(D) The Association shall provide for the interrupted flow of water through the Common Area and Exclusive Use Common Areas, including but not limited to, swales, natural watercourses, conduits and any access roads, as appropriate. The Association shall be responsible for the adequacy of any such drainage course or facility, and for the continued maintenance thereof in a manner which will preclude any hazard to life, health, or damage to any adjoining property.

8.02 Damage to Common Area or Common Facility. If any Common Area, Exclusive Use Common Area or Common Facility is damaged or destroyed through the act or omission of any Owner or his/her guests, members of his/her family, agents, or employees, whether or not such act or omission is negligent or otherwise culpable, such Owner shall forthwith proceed to rebuild, repair, or replace it to as good a condition as formerly existed, without cost to the Association. If such responsible Owner fails to rebuild, repair, or replace such damaged or destroyed Common Area or Common Facility in a timely manner, the Association shall have the right to do so.

8.03 Exterior Maintenance of Common Facilities. As part of the Association's responsibility for the maintenance of the Common Area, and Common Facilities and for all other Common Area improvements (including the Common Facilities bounding and/or underlying the Exclusive Use Common Areas as provided in Section 4.12 above) the Association also shall

provide exterior maintenance of such Common Facilities as follows: paint, repair, replace and care for roofs, gutters, down spouts, exterior building surfaces, trees, shrubs, grass, fences, walls, walks, private drives and other exterior improvements. The Association also shall service, maintain and repair all the elevators serving the project including the EUCA elevators serving Residential Units 9, 10, 11 and 12. The Association shall cause the structural components comprising all Balcony Areas and Deck Areas in the Development to be inspected every five (5) years for water damage, dry rot and structural integrity. Such exterior maintenance shall not include the maintenance repair, replacement or cleaning of glass surfaces or the maintenance of any floor covering within the interior of any deck or balcony, the foregoing being the responsibility of the Owner. Such exterior maintenance also shall not impose any obligation on the Association to rebuild or replace any damaged or destroyed Unit, irrespective of the cause thereof, such restoration being provided for in Section 7.07 above. The Association shall have the exclusive right to plant and maintain plantings and other improvements on the Common Area (exclusive of portions within private Balcony Areas and Deck Areas). If the need for exterior maintenance or repair is caused by an act of any Owner, or by any guest, family member, agent or employee of any Owner, whether or not such act is negligent or culpable, such Owner shall pay the cost of such maintenance or repair. If such responsible Owner fails to timely maintain or repair the Common Area or Common Facility, as required in this Section 8.03, the Association shall have the right to do so.

8.04 Owner's Maintenance; Alterations. Except for the maintenance of the exterior, as provided in Section 8.03 above, each Owner shall maintain, at his/her own cost and expense, his/her Unit, including the repair, replacement and cleaning of glass surfaces, provided that unless otherwise permitted under California Civil Code Section 1360, no Owner shall make any alteration, repair or addition to his/her Unit which would affect its exterior appearance or its structure. If any Owner fails to timely maintain or repair his/her Unit, the Association shall have the right to do so.

8.05 Special Assessment. If the Association undertakes: (A) the rebuilding, repair or replacement of any Common Area or Common Facility for which an Owner is liable pursuant to Section 8.02; (B) the exterior maintenance of the Common Facilities and/or other Common Area improvements, for which an Owner is liable pursuant to Section 8.03; or (C) the repair, maintenance, rehabilitation and/or restoration of a Unit for which an Owner is liable pursuant to Section 8.04, the Association may recover the cost thereof through a special assessment against the responsible Owner pursuant to Section 6.03(A)(1).

8.06 Maintenance Manual.

(A) Declarant shall furnish the Association with a maintenance manual that shall include a schedule of the reasonable works of maintenance that must be performed by the Association in connection with the maintenance of the Common Area, Exclusive Use Common Areas and Common Facilities. The failure of the Association to follow the maintenance schedule in the manual, as well as commonly accepted maintenance obligations, may be a defense to any allegation of potential liability on the part of Declarant for alleged defects in the construction or design of any Common Area and Common Facilities.

(B) Declarant shall furnish each initial Owner with an Owner's maintenance manual that shall include a schedule of the reasonable works of maintenance that must be performed by the Owner in connection with the maintenance of his/her Unit. Declarant shall also give the Association a copy of this maintenance manual, and, upon request, the Association shall provide any Owner a copy of the same. The failure of any Owner to follow the maintenance schedule in the manual, as well as commonly accepted maintenance obligations, may be a defense to any allegation of potential liability on the part of Declarant for alleged defects in the construction or design of such Owner's Unit. Each initial Owner has agreed to deliver the maintenance manual to the subsequent purchaser of his/her respective Unit, and subsequent Owners agree to deliver the manual to their purchasers.

ARTICLE IX

Condemnation

If an action for condemnation is proposed or commenced by a governmental body having the right of eminent domain, the following provisions shall apply:

9.01 *Written Consent Provision.* Upon the vote or written consent of two-thirds (2/3) of the Voting Power of the Association, the Development may be sold to such government body prior to judgment, and the proceeds of such sale shall be divided among the Owners by agreement or as set forth in Section 9.02 below.

9.02 *Provision Lacking Consent.* Lacking the consent required by Section 9.01 above, the proceeds shall be apportioned by one of the following means in the following order of priority:

(A) As set forth by decree of a court of competent jurisdiction; or,

(B) According to the relative values of the Condominiums affected by the condemnation, as determined by independent appraisal. Such independent appraisal shall be made by a licensed MAI appraiser, as chosen by a majority of the Board, or, lacking such a majority, as chosen by a majority of the Members present and voting, in person or by proxy, at a regular or special meeting of the Members duly called.

ARTICLE X

General Provisions

10.01 *Interpretation: Inconsistency.* The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the operation of the Development for the mutual benefit of all Owners. If the provisions of this Declaration conflict with any of the provisions of the other Governing Documents or the Condominium Plan, the provisions of this Declaration shall control.

10.02 Severability. The provisions herein shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any of these provisions shall not affect the validity of the remaining provisions.

10.03 Enforcement; Waiver; Actions, Disputes Involving Repair Issues.

(A) **Declarant, Construction Participant Defined.** For the purposes of Sections 10.03 through 10.07 below, the following parties shall be defined as specified below:

(1) **Declarant.** “Declarant” shall be defined to include Declarant (as defined in Section 1.10 above), as well as Declarant’s officers, directors, shareholders, principals, managers, members, partners, agents, employees, trustees, successors and assigns, as the case may be.

(2) **Construction Participant.** “Construction Participant” shall be defined to include any and all contractors, subcontractors, consultants, suppliers, manufacturers, engineers, architects, analysts, designers or other professionals alleged or believed to have been involved, in any way, with the Development, the Real Property or construction or manufacture of any of the improvements located thereon.

(B) **Enforcement; Waiver.** Except as otherwise provided herein or in Section 5.16 of the Bylaws, the Association or any Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants and reservations imposed by this Declaration. Failure by the Association, or by any Owner, to enforce any covenant or restriction herein contained shall not be deemed a waiver of the right to do so thereafter.

(C) **Amendment of Section.** This Section 10.03 shall not be amended without the prior written consent of Declarant.

(D) **Actions, Disputes Involving Repair Issues.** It is the intent of Declarant that the Common Area, Exclusive Use Common Areas, Common Facilities, Units and any other improvements constructed on the Development, or related thereto, be built in a manner consistent with the standards for residential construction described in California Civil Code Sections 896-897, if applicable, and in compliance with all applicable building codes and ordinances in effect at the time the building permits for each of the Units in the Development were obtained. Nevertheless, due to the complex nature of construction and the subjectivity involved in evaluating such consistency and compliance, disputes may arise as to whether a defect exists and the party or parties responsible therefor. It is Declarant’s intent to resolve all disputes and claims regarding “Repair Issues” (as defined below) amicably and without the necessity of time-consuming and costly litigation. Accordingly, the Association, Board and all Owners shall be bound by the pre-arbitration dispute resolution procedures described below.

(E) **Election to Engage in Alternative Pre-Arbitration Dispute Resolution Procedures.** As permitted by Civil Code Section 914, Declarant has elected not to engage in, follow, nor be bound by, California Civil Code Sections 910-938. Instead, the pre-arbitration dispute resolution procedures set forth below shall apply to all actions, claims

and disputes involving Repair Issues brought against Declarant or one or more of the Construction Participants.

(F) **Pre-Arbitration Dispute Resolution Procedures.** The following pre-arbitration dispute resolution procedures shall apply to all disputes and claims regarding Repair Issues (as defined below):

(1) **Repair Issue Defined.** For the purposes of this Declaration, “Repair Issue” shall be defined as any deficiency in the construction, design, specifications, surveying, planning, supervision, testing or observation of construction of any portion of the Development, any other improvements related thereto, or any damage to any personal property or structural property of any Claimant resulting therefrom.

(2) **Right to Cure.** In the event that the Association, Board or any Owner (collectively “Claimant”) claim, contend or allege that Declarant or any Construction Participant is responsible for any Repair Issue, Declarant or such Construction Participant hereby reserve the right to address such Repair Issue as set forth herein.

(3) **Repair Issue in Common Area.** If the Repair Issue pertains to the Common Area, Exclusive Use Common Areas or any Common Facilities, or if the Repair Issue pertains to any portion of the exterior of a Unit which is the responsibility of the Association to maintain under Section 8.03 above, the Association shall have the right to bring a claim for such Repair Issue.

(4) **Decisions to Initiate Claims.** Notwithstanding any other provision in the Declaration to the contrary (including, without limitation, any provision which expressly or implicitly provides Declarant with control over Association decisions for any period of time), Declarant hereby relinquishes control over the Association’s ability to decide whether to initiate any claim against Declarant or any Construction Participant with respect to any Repair Issue in the Common Area, Exclusive Use Common Areas or concerning any Common Facilities or any portion of the exterior of a Unit which is the responsibility of the Association to maintain under Section 8.03 above. The decision to initiate any such claims for Repair Issues shall, instead, rest with the majority of the Voting Power of the Association other than Declarant.

(5) **Notice.** In the event Claimant discovers any condition which Claimant believes to be a Repair Issue, Claimant shall notify Declarant and any Construction Participant (as applicable) in writing within a reasonable time not to exceed thirty (30) days of the discovery of such condition. The notice shall describe the specific nature of such Repair Issue and such other matters as are or may be required by applicable law (“Notice of Repair Issue”).

(6) **Notice of Water Intrusion.** Notwithstanding any other provision herein, in the event there is intrusion of water into any Unit or in any Common Area, Exclusive Use Common Areas or Common Facilities (including, without limitation, as a result of any roof, window, siding or other leaks, including plumbing leaks), and whether or not the cause of such water intrusion constitutes a Repair Issue, the Owner of the affected Unit, or the Association in the case of water intrusion in the Common Area: , Exclusive Use Common Areas or Common Facilities, shall be obligated to immediately notify Declarant and any Construction Participant (as applicable) of such event. In addition, the Owner or Association, as the case may be, shall

take all necessary and appropriate action to stop any such water intrusion. Declarant and any Construction Participant (as applicable) shall thereafter have all of the rights specified in this subsection (F) to inspect the condition, including the right to assess the likelihood of mold or mildew, and to offer recommendations for mitigation of mold or mildew. Each Owner and the Association shall be obligated to take all reasonable steps to mitigate any possible spread or accumulation of mold or mildew. Nothing herein shall obligate Declarant or any Construction Participant to take any action, nor shall any rights of Declarant or any Construction Participant under this subsection (6) constitute an admission or acknowledgment that any causes of water intrusion are the result of defective construction or design. The failure of any Owner or the Association, as the case may be, to timely notify Declarant and any Construction Participant (as applicable) of any such water intrusion shall be cause to deny future claims against Declarant or any Construction Participant relating thereto, which claims could have been mitigated had earlier action been taken.

(7) ***Right to Enter, Inspect, Repair and Replace.*** Within a reasonable time after the receipt by Declarant or any Construction Participant of a Notice of Repair Issue or the independent discovery of any Repair Issue by Declarant or any Construction Participant, as part of their reservation of right to address any Repair Issue, Declarant and Construction Participants (as applicable) shall have the right, upon reasonable notice to Claimant and during normal business hours, to enter onto or into the Common Area, Exclusive Use Common Areas, Common Facilities, any Unit and any improvement constructed on the Development for the purposes of inspecting and conducting testing and, if deemed necessary by Declarant or any Construction Participant, repairing or replacing any defective condition discovered by Declarant or any Construction Participant. In conducting such inspection, testing, repairs or replacement, Declarant or such Construction Participant shall be entitled to take any action as they shall deem reasonable and necessary under the circumstances. Declarant or such Construction Participant shall restore the area inspected and tested to its pre-testing condition unless Declarant or any Construction Participant will be repairing or replacing a deficiency constituting a Repair Issue in such area.

(8) ***Meeting of Parties.*** Within a reasonable period following the inspection and testing of any area to address a Repair Issue as provided in subsection (7) above, upon their mutual agreement, the parties or authorized representatives of the parties may meet at a mutually acceptable place in the City of Santa Barbara to discuss the dispute or claim. The parties or their representatives shall negotiate in good faith in an attempt to resolve the dispute or claim. At such meeting, or at another mutually agreeable time, the parties and their representatives shall have full access to the Development's Common Area, Exclusive Use Common Areas, Common Facilities, any Unit within the Development, and any other improvement for the purposes of inspecting such property to assist in the resolution of the dispute or claim. If Declarant or any Construction Participant elects to take any corrective action to address a Repair Issue, such party and its representatives and agents shall be provided full access to the Development's Common Area, Exclusive Use Common Areas, Common Facilities, any Units and any other improvement within the Development, to take and complete such corrective action.

(9) ***No Additional Obligations, Irrevocability and Waiver of Right.*** Nothing set forth in this subsection (F) is intended, nor shall be construed as, extending any

applicable statute of limitations, or imposing any obligation on Declarant or any Construction Participant to inspect, test, repair or replace any item or address any Repair Issue for which Declarant or such Construction Participant is not otherwise obligated. The right of Declarant and Construction Participant to enter, inspect, test, repair or replace reserved hereby shall be irrevocable and may not be waived or otherwise terminated except by a writing executed and recorded by Declarant in the Official Records of the County.

10.04 Association as Claimant.

(A) **Notice to Owners.** If the Association is a Claimant, it must provide written notice to all Owners prior to initiation of arbitration against Declarant or any Construction Participant, which notice shall include all of the following:

(1) **Description.** A description of the Repair Issue.

(2) **Attempts to Address.** A description of the attempts of Declarant or Construction Participant to address such Repair Issue and the opportunities provided to Declarant or such Construction Participant to address such Repair Issue.

(3) **Scope of Work.** A description of the scope of work necessary to address such Repair Issue to the extent known, or an explanation as to why such a description is not obtainable or appropriate.

(4) **Estimated Cost.** The estimated cost to satisfactorily address the Repair Issue to the extent known.

(5) **Board Statement.** An affirmative statement from the Board that the action is in the best interests of the Association and its Members.

(6) **Notice of Meeting.** That a meeting will take place to discuss the matter, and the time and place of such meeting.

(7) **Options to Address.** The options available to address the problems.

(8) **Proposed Contract.** A description of the proposed contract or arrangement between the Association and the attorney retained by the Association to pursue the claim against Declarant or Construction Participant.

(9) **Estimated Legal Expenses.** The estimated attorneys' fees and expert fees and costs necessary to pursue the claim and the source of the funds which will be used to pay such fees and expenses.

(B) **Incurring Legal Expenses by Association.** The Association shall not incur legal expenses, including attorneys' fees, where the Association initiates arbitration or is joined as a plaintiff in legal proceedings, without the affirmative vote or written consent of the majority of the Voting Power of the Association, excluding the voting power of any Member who would be a defendant in such arbitration or proceedings against Declarant or Construction Participants for a Repair Issue. Except as provided in Section 7.05(B) of the Bylaws, the

Association must finance any such legal proceeding with monies that are specifically collected for same and may not use reserve funds or other monies collected for specific Association obligations other than legal fees. In the event that the Association commences any arbitration described above, an Owner must give notice to prospective purchasers of his/her interest in the Development of such arbitration and must provide such prospective purchasers with a copy of the notice received from the Association in accordance with this subsection (B).

(C) **Amendment of Section.** This Section 10.04 shall not be amended without the prior written consent of Declarant.

10.05 ARBITRATION.

(A) **SUBMITTAL TO BINDING ARBITRATION. IF THE CLAIMANT AND DECLARANT AND CONSTRUCTION PARTICIPANT ARE UNABLE TO RESOLVE THE REPAIR ISSUE PURSUANT TO THE PRE-ARBITRATION DISPUTE RESOLUTION PROCEDURES SPECIFIED ABOVE, THE RESOLUTION OF THE REPAIR ISSUE, INCLUDING DISPUTES CONCERNING PROPERTY DAMAGE ALLEGEDLY RESULTING FROM OR ASSOCIATED WITH ANY REPAIR ISSUE, SHALL BE DETERMINED BY BINDING ARBITRATION IN ACCORDANCE WITH THIS SECTION 10.05.**

(B) **JAMS. ALL DISPUTES SUBMITTED TO BINDING ARBITRATION PURSUANT TO THIS DECLARATION SHALL BE DETERMINED BY AND PURSUANT TO THE ARBITRATION RULES AND PROCEDURES OF JUDICIAL ARBITRATION AND MEDIATION SERVICES, INC. ("JAMS") IN EFFECT AT THE TIME OF THE INITIATION OF THE ARBITRATION. IN THE EVENT JAMS IS FOR ANY REASON UNWILLING OR UNABLE TO SERVE AS THE ARBITRATION SERVICE, THE PARTIES SHALL SELECT ANOTHER REPUTABLE ARBITRATION SERVICE. IF THE PARTIES ARE UNABLE TO AGREE ON AN ALTERNATE SERVICE, THEN EITHER PARTY MAY PETITION THE SUPERIOR COURT IN SANTA BARBARA COUNTY, CALIFORNIA TO APPOINT EITHER AN ALTERNATE SERVICE OR AN ARBITRATOR, AND SUCH APPOINTMENT BY THE COURT SHALL BE BINDING ON THE PARTIES. THE RULES AND PROCEDURES OF THE ALTERNATIVE ARBITRATION SERVICE IN EFFECT AT THE TIME THE REQUEST FOR ARBITRATION IS SUBMITTED SHALL BE FOLLOWED. IF THE COURT APPOINTS AN ARBITRATOR INSTEAD OF AN ALTERNATE SERVICE, THE ARBITRATION SHALL BE CONDUCTED UNDER AND PURSUANT TO CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 1282-1284.2, BUT NOT INCLUDING SECTION 1283.05 AND EXCEPT AS THOSE RULES MAY BE MODIFIED HEREBY.**

(C) **TIMELINESS. THE ARBITRATION SHALL BE CONDUCTED IN A TIMELY MANNER. THE ARBITRATOR SHALL BE APPOINTED WITHIN SIXTY (60) DAYS FROM THE SUBMITTAL OF THE DISPUTE TO BINDING ARBITRATION. THE ARBITRATION SHALL COMMENCE AS SOON AS POSSIBLE**

THEREAFTER AND BE CONCLUDED IN A TIMELY MANNER, INCLUDING THE ISSUANCE OF THE ARBITRATOR'S DECISION.

(D) FEDERAL ARBITRATION ACT. EACH OWNER, BY ACCEPTANCE OF A DEED TO A CONDOMINIUM, EXPRESSLY AGREES AND ACKNOWLEDGES THAT THIS DECLARATION INVOLVES AND CONCERNS INTERSTATE COMMERCE AND IS GOVERNED BY THE PROVISIONS OF THE FEDERAL ARBITRATION ACT (9 U.S.C. §1, et seq.) NOW IN EFFECT AND AS THE SAME MAY FROM TIME TO TIME BE AMENDED, TO THE EXCLUSION OF ANY DIFFERENT OR INCONSISTENT STATE OR LOCAL LAW, ORDINANCE, REGULATION, OR JUDICIAL RULE. ACCORDINGLY, ANY AND ALL DISPUTES SHALL BE ARBITRATED – WHICH ARBITRATION SHALL BE MANDATORY AND BINDING – PURSUANT TO THE FEDERAL ARBITRATION ACT AND THE CALIFORNIA ARBITRATION ACT (CALIFORNIA CODE OF CIVIL PROCEDURE §§1280 et seq.) TO THE EXTENT THE CALIFORNIA ARBITRATION ACT IS NOT INCONSISTENT WITH THE FEDERAL ARBITRATION ACT. TO THE EXTENT THAT ANY STATE OR LOCAL LAW, ORDINANCE, REGULATION, OR JUDICIAL RULE SHALL BE INCONSISTENT WITH THIS ARBITRATION AGREEMENT AND ANY PROVISION OF THE RULES OF THE ARBITRATION SERVICE UNDER WHICH THE ARBITRATION PROCEEDING SHALL BE CONDUCTED, THIS ARBITRATION AGREEMENT AND SUCH RULES SHALL GOVERN THE CONDUCT OF THE PROCEEDING.

(E) SELF-EXECUTING ARBITRATION AGREEMENT. THIS ARBITRATION AGREEMENT SHALL BE DEEMED TO BE A SELF-EXECUTING ARBITRATION AGREEMENT. ANY DISPUTE CONCERNING THE INTERPRETATION OR THE ENFORCEABILITY OF THIS ARBITRATION AGREEMENT, INCLUDING, WITHOUT LIMITATION, ITS REVOCABILITY OR VOIDABILITY FOR ANY CAUSE, ANY CHALLENGES TO THE ENFORCEMENT OR THE VALIDITY OF THIS DECLARATION, OR THIS ARBITRATION AGREEMENT, OR THE SCOPE OF ARBITRATABLE ISSUES UNDER THIS ARBITRATION AGREEMENT, AND ANY DEFENSE RELATING TO THE ENFORCEMENT OF THIS ARBITRATION AGREEMENT, INCLUDING, WITHOUT LIMITATION, WAIVER, ESTOPPEL, OR LACHES, SHALL BE DECIDED BY AN ARBITRATOR IN ACCORDANCE WITH THIS ARBITRATION AGREEMENT AND NOT BY A COURT OF LAW.

(F) PARTIES. THIS ARBITRATION AGREEMENT SHALL INURE TO THE BENEFIT OF, BIND AND BE ENFORCEABLE BY AND AGAINST EACH OWNER, THE ASSOCIATION, DECLARANT AND CONSTRUCTION PARTICIPANTS.

(G) ATTORNEYS' FEES. EACH PARTY SHALL BEAR ITS OWN ATTORNEYS' FEES AND COSTS (INCLUDING EXPERT COSTS) FOR THE ARBITRATION.

(H) AUTHORITY OF ARBITRATOR. THE ARBITRATOR SHALL BE AUTHORIZED TO PROVIDE FOR ALL RECOGNIZED REMEDIES AVAILABLE IN LAW OR IN EQUITY FOR ANY CAUSE OF ACTION THAT IS THE BASIS OF THE ARBITRATION, INCLUDING COMPENSATORY DAMAGES. THE AWARD OF THE ARBITRATOR SHALL BE FINAL, CONCLUSIVE AND BINDING, AND SHALL NOT BE SUBJECT TO ANY JUDICIAL OR OTHER REVIEW OR APPEAL. AN APPLICATION TO CONFIRM, VACATE, MODIFY OR CORRECT ANY AWARD RENDERED BY THE ARBITRATOR SHALL BE FILED IN THE SUPERIOR COURT IN SANTA BARBARA COUNTY, CALIFORNIA.

(I) PARTICIPATION IN JUDICIAL PROCEEDING. THE PARTICIPATION BY ANY PARTY IN ANY JUDICIAL PROCEEDING CONCERNING THIS ARBITRATION AGREEMENT OR ANY MATTER ARBITRATABLE HEREUNDER SHALL NOT BE ASSERTED OR ACCEPTED AS A REASON TO DELAY, TO REFUSE TO PARTICIPATE IN, OR TO REFUSE TO ENFORCE ANY ARBITRATION UNDER THIS SECTION 10.05.

(J) FEES AND COSTS OF ARBITRATION. THE FEES AND COSTS TO INITIATE THE ARBITRATION SHALL BE PAID BY DECLARANT OR CONSTRUCTION PARTICIPANT. THE REMAINING FEES AND COSTS SHALL BE PAID AS AGREED BY THE PARTIES. IF THE PARTIES CANNOT REACH AN AGREEMENT, THE FEES AND COSTS OF THE ARBITRATION AND THE ARBITRATOR SHALL ULTIMATELY BE BORNE AS DETERMINED BY THE ARBITRATOR IN HIS/HER AWARD.

(K) NEUTRAL ARBITRATOR. THE ARBITRATOR APPOINTED TO SERVE SHALL BE A NEUTRAL AND IMPARTIAL INDIVIDUAL. ANY PARTY MAY CHALLENGE THE ARBITRATOR APPOINTED ON THE GROUNDS OF BIAS.

(L) VENUE. THE VENUE OF THE ARBITRATION SHALL BE IN SANTA BARBARA COUNTY, UNLESS THE PARTIES AGREE IN WRITING TO ANOTHER LOCATION.

(M) UNENFORCEABILITY OF ANY PROVISION. IF ANY PROVISION OF THIS ARBITRATION AGREEMENT SHALL BE DETERMINED TO BE UNENFORCEABLE OR TO HAVE BEEN WAIVED, THE REMAINING PROVISIONS SHALL BE DEEMED TO BE SEVERABLE THEREFROM AND ENFORCEABLE ACCORDING TO THEIR TERMS.

(N) NOTICE. EACH OWNER, BY ACCEPTANCE OF A DEED TO A CONDOMINIUM, AGREES TO HAVE ANY DISPUTE DESCRIBED IN SECTION 10.03 ABOVE DECIDED BY NEUTRAL, BINDING ARBITRATION IN ACCORDANCE WITH THE FEDERAL ARBITRATION ACT AND THE CALIFORNIA ARBITRATION ACT, TO THE EXTENT THE CALIFORNIA ARBITRATION ACT IS NOT INCONSISTENT WITH THE FEDERAL ARBITRATION ACT, AND SUCH OWNER ACKNOWLEDGES THAT HE/SHE IS VOLUNTARILY AND KNOWINGLY GIVING UP ANY RIGHT HE/SHE MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN

A COURT OR JURY TRIAL OR OTHER PROCEEDING. EACH OWNER, BY ACCEPTANCE OF A DEED TO A CONDOMINIUM, IS GIVING UP HIS/HER JUDICIAL AND STATUTORY RIGHTS TO DISCOVERY, TRIAL AND APPEAL, EXCEPT TO WHATEVER EXTENT ANY RIGHTS ARE SPECIFICALLY INCLUDED IN THIS ARBITRATION AGREEMENT. IF AN OWNER OR THE ASSOCIATION REFUSES TO SUBMIT TO ARBITRATION: (i) SUCH PARTY MAY BE COMPELLED TO ARBITRATE UNDER THE FEDERAL ARBITRATION ACT AND THE CALIFORNIA ARBITRATION ACT, TO THE EXTENT THE CALIFORNIA ARBITRATION ACT IS NOT INCONSISTENT WITH THE FEDERAL ARBITRATION ACT; OR (ii) ARBITRATION MAY GO FORWARD IN THE ABSENCE OF THE REFUSING PARTY.

(O) ACTIONS COMBINING COVERED AND NON-COVERED CLAIMS. IF ANY DISPUTE, ACTION OR CLAIM, INVOLVING ONE OR MORE REPAIR ISSUES, COMBINES CAUSES OF ACTION OR DAMAGES NOT COVERED BY THIS SECTION 10.05, INCLUDING, WITHOUT LIMITATION, PERSONAL INJURIES, CLASS ACTIONS, OTHER STATUTORY REMEDIES, AND FRAUD-BASED CLAIMS, THEN ANY AND ALL DISTINCT CLAIMS INVOLVING ONE OR MORE REPAIR ISSUES SHALL BE ADMINISTERED ACCORDING TO THIS SECTION 10.05. CLAIMS NOT COVERED BY THE ARBITRATION PROVISIONS OF THIS ARTICLE X SHALL BE RESOLVED, SEPARATE FROM ANY COVERED CLAIMS, PURSUANT TO SUBSECTION (P) BELOW. AS TO ANY NON-COVERED CLAIM, IF THE FACT THAT THE REPAIR ISSUE HAS BEEN REPAIRED UNDER SECTION 10.03 ABOVE IS DEEMED ADMISSIBLE IN ANY PROCEEDING, THE TRIER OF FACT SHALL BE INFORMED THAT THE REPAIR WAS NOT VOLUNTARILY ACCEPTED BY THE CLAIMANT.

(P) CLAIMS NOT COVERED BY THE ARBITRATION PROVISIONS OF THIS ARTICLE X. SOLELY IN THE EVENT THAT THE FOREGOING BINDING ARBITRATION PROVISIONS SHOULD BE CHALLENGED AND HELD NOT TO APPLY OR HELD INVALID, VOID OR UNENFORCEABLE FOR ANY REASON, DECLARANT AND EACH OWNER AGREE THAT:

(1) ANY CLAIM INVOLVING A REPAIR ISSUE, AS SET FORTH ABOVE, SHALL THEREAFTER BE HEARD BY A REFEREE IN A JUDICIAL REFERENCE PROCEEDING PURSUANT TO CALIFORNIA CODE OF CIVIL PROCEDURE, SECTIONS 638 THROUGH 645.1, AND/OR ANY SUCCESSOR AND/OR COMPANION STATUTE(S), AND THIS GENERAL REFERENCE AGREEMENT IS INTENDED TO BE SPECIFICALLY ENFORCEABLE IN ACCORDANCE WITH SAID SECTION 638.

(2) UPON THE FILING OF A COMPLAINT GIVING RISE TO SUCH A REFERENCE PROCEEDING, THE PARTIES SHALL ENDEAVOR TO AGREE UPON A RETIRED SUPERIOR COURT JUDGE OR COURT OF APPEALS JUSTICE FROM THE THEN CURRENT PANEL OF RETIRED JUDGES ASSOCIATED WITH JAMS, OR SUCH OTHER COMPARABLE JUDICIAL DISPUTE

RESOLUTION SERVICE AS APPROVED BY THE PARTIES, WHICH RETIRED JUDGES ARE AVAILABLE TO SERVE AS REFEREES IN THE COUNTY OF VENUE (VENUE SHALL BE IN SANTA BARBARA COUNTY, CALIFORNIA, UNLESS THE PARTIES AGREE TO SOME OTHER LOCATION). IF THE PARTIES ARE UNABLE TO AGREE UPON A PERSON TO SERVE AS REFEREE WITHIN THIRTY (30) DAYS AFTER THE SERVICE OF SUCH COMPLAINT, OR IF THE PERSON SELECTED BY THE PARTIES AS REFEREE IS NOT AVAILABLE OR WILLING TO SERVE AND THE PARTIES CANNOT AGREE ON AN ALTERNATE WITHIN FIFTEEN (15) DAYS AFTER BEING NOTIFIED OF SUCH REFEREE'S UNAVAILABILITY OR UNWILLINGNESS TO SERVE, THEN EITHER PARTY MAY MAKE AN PETITION TO THE COURT TO HAVE A REFEREE APPOINTED PURSUANT TO CALIFORNIA CODE OF CIVIL PROCEDURE, SECTIONS 638 AND 640.

(3) THE PARTIES SHALL ADVANCE, IN EQUAL SHARES, THE FEES AND EXPENSES OF THE REFEREE SELECTED PURSUANT TO THIS SECTION; PROVIDED, HOWEVER, THAT THE LOSING PARTY IN ANY SUCH REFERENCE PROCEEDING MAY, IN ADDITION TO PAYING ANY JUDGMENT AWARDED BY THE REFEREE, BE ORDERED TO REIMBURSE THE PREVAILING PARTY OR PARTIES FOR ANY AND ALL FEES AND EXPENSES INCURRED IN CONNECTION WITH THE REFERENCE PROCEEDING. JUDGMENT UPON THE AWARD RENDERED BY THE REFEREE MAY BE ENTERED IN ANY COURT HAVING JURISDICTION THEREOF, AND SHALL BE BINDING UPON ALL PARTIES, THEIR SUCCESSORS AND ASSIGNS.

(4) THE PARTIES SHALL PROMPTLY AND DILIGENTLY COOPERATE WITH ONE ANOTHER AND THE REFEREE, IN GOOD FAITH, TO ENSURE THAT ALL NECESSARY AND APPROPRIATE PARTIES ARE INCLUDED IN THE REFERENCE PROCEEDING, AND THE PARTIES SHALL PERFORM, IN GOOD FAITH, SUCH ACTS AS MAY BE REASONABLY NECESSARY TO PROMPTLY COMMENCE THE REFERENCE PROCEEDING BEFORE THE REFEREE AND OBTAIN A PROMPT AND EXPEDITIOUS RESOLUTION OF THE DISPUTE OR CONTROVERSY IN ACCORDANCE WITH THE TERMS HEREOF. THE REFERENCE PROCEEDING SHALL COMMENCE ON A DATE AGREED TO BY THE PARTIES, AND IF THE PARTIES CANNOT AGREE, THEN ON A DATE DETERMINED BY THE REFEREE.

(5) THE PARTIES SHALL BE ENTITLED TO DISCOVERY AND THE REFEREE SHALL OVERSEE DISCOVERY AND MAY MAKE AND ENFORCE ALL DISCOVERY ORDERS IN THE SAME MANNER AS A TRIAL JUDGE IN THE SUPERIOR COURTS OF THE STATE OF CALIFORNIA. THE PARTIES MAY PURSUE ALL FORMS OF DISCOVERY AVAILABLE IN THE SUPERIOR COURTS OF THE STATE OF CALIFORNIA, INCLUDING, WITHOUT LIMITATION, SITE INSPECTIONS, INTERROGATORIES, DEPOSITIONS, ADMISSIONS REQUESTS AND DOCUMENT REQUESTS.

(6) THE SELECTED OR APPOINTED REFEREE SHALL HAVE THE POWER TO DECIDE ALL ISSUES IN THE ACTION OR PROCEEDING, WHETHER OF FACT OR OF LAW, AND SHALL HAVE THE POWER TO GRANT ALL LEGAL AND EQUITABLE REMEDIES, INCLUDING COMPENSATORY DAMAGES. THE REFEREE SHALL NOT HAVE THE POWER TO AWARD PUNITIVE, SPECIAL AND/OR CONSEQUENTIAL DAMAGES.

(7) THE REFEREE SHALL CONDUCT NEUTRAL AND IMPARTIAL PROCEEDINGS IN ACCORDANCE WITH THE APPLICABLE RULES OF JAMS OR SUCH OTHER JUDICIAL DISPUTE RESOLUTION PROVIDER, AS SELECTED BY THE PARTIES.

(8) NO ACTION OF ANY PARTY IN CONNECTION WITH THE REFERENCE PROCEEDING SHALL BE DEEMED TO BE A WAIVER OF THE ATTORNEY/CLIENT PRIVILEGE OR THE WORK/PRODUCT PRIVILEGE.

(9) EACH OWNER, BY ACCEPTANCE OF A DEED TO A CONDOMINIUM, ACKNOWLEDGES THAT, PURSUANT TO THE ABOVE JUDICIAL REFERENCE PROVISIONS, HE/SHE VOLUNTARILY AND KNOWINGLY WAIVES AND COVENANTS NOT TO ASSERT HIS/HER CONSTITUTIONAL RIGHT TO TRIAL BY JURY OF ANY DISPUTES, INCLUDING, BUT NOT LIMITED TO, DISPUTES RELATING TO CONSTRUCTION DEFECTS, MISREPRESENTATION OR FAILURE TO DISCLOSE MATERIAL FACTS, AND COVENANTS AND AGREES THAT THIS WAIVER OF JURY TRIAL SHALL BE BINDING UPON HIS/HER SUCCESSORS AND ASSIGNS AND UPON ALL PERSONS AND ENTITIES ASSERTING RIGHTS OR CLAIMS OR OTHERWISE ACTING ON BEHALF OF ANY OWNER, THE ASSOCIATION, OR THEIR SUCCESSORS AND ASSIGNS.

(Q) AMENDMENT OF SECTION. THIS SECTION 10.05 SHALL NOT BE AMENDED WITHOUT THE PRIOR WRITTEN CONSENT OF DECLARANT.

10.06 Recovery of Monetary Damages. If the Association or any Owner recovers monetary damages from any party pursuant to the foregoing, the Association or Owner shall first apply such funds to repair any defect that has resulted in the award of such damage (reasonable costs and attorneys' fees excepted). Included in the foregoing shall be the ability of the Association to fund reserves for the purpose of repairing the defect that has resulted in such award. If the Association has excess funds remaining after repair of such any defect by the Association, such funds shall be paid into the Association's reserve account.

This Section 10.06 shall not be amended without the prior written consent of Declarant.

10.07 Binding on Successors. This Declaration shall be binding upon, and shall inure to the benefit of, the successors and assigns of Declarant, and the heirs, personal representatives, grantees, lessees, sublessees, contract purchasers, guests and assignees of the Owners.

10.08 Attorneys' Fees Except as otherwise provided herein, in any action arising from rights and obligations established under this Declaration, including but not limited to actions for

damages resulting from a breach of this Declaration or actions for specific enforcement hereof, the prevailing party shall be entitled to recover such a reasonable sum as the court, arbitrator, referee or other decision-maker may fix as attorneys' fees and costs.

10.09 Breaches: Effect on Liens A breach of any of the provisions of this Declaration will not render invalid or otherwise affect the lien of any Mortgage or deed of trust.

10.10 Reports to Prospective Purchasers In accordance with California Civil Code Section 1368, as amended, the Owner shall, as soon as practicable before transfer of title or execution of a real property sales contract therefor, as defined in California Civil Code Section 2985, provide the following to the prospective purchaser:

- (A) **Governing Documents.** A copy of the Governing Documents;
- (B) **Financial Reports.** A copy of the most recent financial reports described in Article VII, Sections 7.04 and 7.05 of the Bylaws;
- (C) **Certificate of Financial Information.** A certificate signed by an authorized representative of the Association as to the amount of the Association's current general and special assessments and fees, as well as any assessments levied upon the Owner's Condominium which are unpaid on the date of the statement. The certificate shall also include information on late charges, interest and costs of collection which, as of the date of the certificate, are or may be made a Lien upon the Owner's Condominium pursuant to California Civil Code Section 1367. A properly executed certificate of the Association as to the status of assessments on a Condominium is binding upon the Association as of the date of its issuance.
- (D) **Assessment Changes.** Any change in the Association's current general and special assessments and fees which have been approved by the Board, but have not become due and payable as of the date disclosure is provided.
- (E) **Notice of Alleged Violations.** A copy or summary of any notice previously sent to the Owner that sets forth any alleged violation of the Governing Documents that remains unresolved.

10.11 Requests for Reports by Owner. Upon written request, the Association shall, within ten (10) days of the mailing or delivery of the request, provide the Owner with a copy of the requested items specified hereinabove. The Association may charge a fee for this service, which shall not exceed the reasonable cost to prepare and reproduce the requested items.

10.12 Delivery of Documents to Owners. Documents shall be delivered to Owners by any of the means described in Section 1350.7 of the Civil Code, including but not limited to: (A) personal delivery; (B) first-class mail, postage prepaid, addressed to the Owners at the address last shown on the books of the Association or as otherwise provided by the Owners (delivery deemed complete on deposit into the mail); (C) email, facsimile or other electronic means if such Owner has agreed to such method of delivery (delivery complete at time of transmission); or (D) inclusion of document with a billing statement, newsletter or other documents being delivered to the Owners by an authorized method.

ARTICLE XI

Duration and Amendment

11.01 Term. The provisions contained herein shall run with the land and shall be binding on all parties and all persons claiming under them until fifty (50) years from the date hereof, after which time this Declaration shall be deemed automatically extended for successive periods of twenty-one (21) years, unless an instrument executed by a majority of the Voting Power of the Association shall be recorded, canceling and terminating this Declaration.

11.02 Amendment. This Declaration may be amended or repealed in whole or part as to all or any part of the Development as follows:

(A) If, at the time all of the Development is owned solely by Declarant, the Declaration may be amended or repealed by Declarant alone.

(B) After the sale of the first Condominium, the Declaration may be amended or repealed by the affirmative vote of a majority of the Voting Power of the Association, which includes a majority of the Voting Power of the Association other than Declarant. Any vote of the Members regarding any amendment or repeal of this Declaration shall be conducted in accordance with the procedures set forth in Civil Code Section 1363.03.

The foregoing notwithstanding, the vote or written consent of (i) a majority of the Voting Power of the Association, and (ii) the vote or written consent of the Owners of each of the Commercial Units, shall be required to: (1) amend Sections 1.05, 1.22, 2.02, 2.05, 2.06, 4.12(A), 4.12(C), 4.12(D), 4.12(E), 4.15, 4.18, 5.02(C), 5.02(D), 5.02(L), 5.02(M), 6.02(A), 6.02(D), 6.02(E), 6.03(B) and this Section 11.02; or (2) provide for, govern or regulate the hours of operation of the Commercial Units, or the activities or types or numbers of customers of the Commercial Units.

Similarly, notwithstanding the foregoing, the vote or written consent of (i) a majority of the Voting Power of the Association, and (ii) the vote or written consent of the Owners of a majority of the Parking Units shall be required to: (1) amend Sections 1.18, 1.22, 2.03, 2.05, 2.06, 4.15, 4.18, 5.02(E), 5.02(L), 5.02(M), 6.02(A), 6.02(D), 6.02(E), 6.03(B) and this Section 11.02; or (2) provide for, govern or regulate the use of the Parking Units.

(C) The amendment must be in writing. Pursuant to Civil Code Section 1355(a), as amended, attached or appended to the amendment shall be the written certification of the President of the Association that such writing contains the amendment to the Declaration and that such amendment was approved by the percentage of the votes of the Members required by the Declaration. Such amendment shall then be recorded in the office of the Recorder of Santa Barbara County, California.

(D) Notwithstanding the foregoing, the voting power required to amend a specific provision of the Declaration shall not be less than the percentage of affirmative votes required for action to be taken under that provision; and while Declarant controls one-fourth (1/4) or more of the Voting Power of the Association, no amendment or termination of this

Declaration shall be valid without the prior consent of the California Real Estate Commissioner, if required under applicable law.

IN WITNESS WHEREOF, the foregoing instrument was subscribed the day and year first above written.

121 DLG, LLC

By: Thomas E. Luria, Manager

EXHIBIT "A"

LEGAL DESCRIPTION OF THE REAL PROPERTY

EXHIBIT "B"

SAMPLE GRANT DEED

EXHIBIT "C"

LIST OF PERMITTED COMMERCIAL USES

1. Retail, wholesale or service store or business, provided that: (i) there shall be no manufacturing, assembly, processing, treatment and/or compounding of products other than such as are customarily incidental or essential to such establishment(s); (ii) there shall not be more than ten (10) persons engaged in any such manufacturing, assembly, processing, treatment and/or compounding of products; (iii) not more than fifty percent (50%) of the floor area of any Commercial Unit shall be used in manufacturing, assembly, processing, treatment and/or compounding of products; and (iv) such operations shall not be objectionable to other Owners due to noise, odor, dust, smoke, vibration or other similar causes.
2. Contractor, provided that such use shall not involve or require outside storage or storage of heavy equipment.
3. Interior decorating shop.
4. Medical laboratory.
5. Radio and television store.
6. Restaurant, tea room or café.
7. Studio.
8. Telephone exchange.
9. Upholstery shop.
10. General office use permitted by applicable zoning ordinances.

Note: The definition and interpretation of terms used in the above list of permitted commercial uses shall be consistent with the definition and interpretation of such terms under the City of Santa Barbara Zoning Ordinances.