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DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
PLAZA 26 CONDOMINIUMS

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**DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
PLAZA 26 CONDOMINIUMS**

This Declaration of Covenants, Conditions and Restrictions for Plaza 26 Condominiums is made by Plaza 26, LLC, a California limited liability company (the "Declarant").

RECITALS

A. The Declarant is the owner of that certain real property located in the City of Sacramento, County of Sacramento, State of California, that is more particularly described as Lot 1 in Block bounded by "Q" and "R" Streets and 26th and 27th Streets of the City of Sacramento, according to the Map or Plan thereof (Assessor's Parcel Number 007-0336-001) (the "Property"). The Property is being developed and improved by the Declarant as a six (6) unit Condominium Project (the "Project"). At times herein the Project is referred to by its common name which is "Plaza 26".

B. In addition to the six (6) Condominiums, as defined in Section 1.14, below, the Project will include an Association Common Area, as defined in Section 1.04, below, Units, as defined in Section 1.36, below; Building Common Areas, as defined in Section 1.08, below; and Exclusive Use Common Areas, as defined in Section 1.20, below.

C. The Owner of a Condominium in the Project will receive a separate interest in an individual Unit and an undivided fifty percent (50%) interest as a tenant-in-common in the Building Common Area of the Building in which the Owner's Unit is located. Each Condominium shall also have appurtenant to it a membership in the Plaza 26 Condominium Association, a California nonprofit mutual benefit corporation (the "Association"). The Association will own the Association Common Area of the Project and perform other duties and responsibilities as set forth in this Declaration and the other Governing Documents of the Project.

D. The Declarant intends by the Recordation of this Declaration to impose on the real property constituting the Project mutually beneficial restrictions under a general plan of improvement for the benefit of all of the Owners of Condominiums therein. Accordingly, the Declarant hereby declares that the Property and the Condominiums and Common Areas of the Project shall be held, conveyed, mortgaged, encumbered, leased, rented, used, occupied, sold and improved, subject to the following declarations, limitations, covenants, conditions, restrictions and easements, all of which are imposed as equitable servitudes pursuant to a general plan for the development of Plaza 26 for the purpose of enhancing and protecting the value and attractiveness of the Project, and every part of it, in accordance with the plan for the improvements of the Project and its division into Condominiums. All of the limitations, covenants, conditions, restrictions and easements shall constitute covenants that run with the land and are binding upon the Declarant and its successors and assigns, and all parties having or acquiring any right, title or interest in or to any part of the Project or the Property comprising the Plaza 26 condominiums. It is the express intent of the Declarant that this Declaration satisfy the

requirements of California Civil Code sections 1350 through 1378 and 1468, as those sections apply to condominium projects.

ARTICLE I DEFINITIONS

Section 1.01. "Articles" means and refers to the Articles of Incorporation of the Plaza 26 Condominium Association, a California nonprofit mutual benefit corporation, which are filed in the Office of the Secretary of State of California, as such Articles may be amended from time to time.

Section 1.02. "Assessment" means any Regular, Special, Emergency or Special Individual Assessment made or assessed by the Association against an Owner and the Owner's Condominium in accordance with the provisions of Article IV, below.

Section 1.03. "Association" means the Plaza 26 Condominium Association, a California nonprofit mutual benefit corporation, its successors and assigns. The Association is an "association" as defined in California Civil Code section 1351(a).

Section 1.04. "Association Common Area" means and refers to all portions of the Project other than the Units, the Building Common Areas, and the Exclusive Use Common Areas. Without limiting the foregoing, the Association Common Area includes the following elements of the Project: the paved area for vehicle and pedestrian access between Buildings 1 and 2, the monument for the Project that is located at the intersection of Q Street and 26th Street, the Project walkways, water feature, patio and barbeque areas, and landscaping that is located within the Project.

Section 1.05. "Association Rules" means the rules and regulations adopted by the Board of Directors of the Association pursuant to Section 3.08 of this Declaration, as the same may be in effect from time to time.

Section 1.06. "Board of Directors" or "Board" means the Board of Directors of the Association.

Section 1.07. "Building" means and refers to each of the three building within the Project that contain Units, unless the reference in this Declaration is to a "Garage Building" or "Garage Buildings", in which case the reference is to one or more of the three building structures that contain garage parking bays. When clearly implied by the context, a reference simply to "Buildings" is intended to refer to both Buildings containing Units and Garage Buildings.

Section 1.08. "Building Common Area" means and refers to the ground ten feet (10') beneath and the airspace five feet (5') outside of, surrounding and above each Building containing Units within the Project, as shown on the Condominium Plan. The Building Common Area includes, without limitation, the outside perimeter walls, bearing walls, columns, girders, ceiling joists, unfinished floors, the roof and foundation of the Building, tanks, pumps, motors, ducts, and chutes; conduits, pipes, plumbing, utility meters and other utility installations (except

the outlets thereof when located within either Unit within the Building), required to provide power, light, telephone, gas, water, sewage, and drainage; exterior sprinklers and sprinkler pipes to the Building and the Units contained therein. The Building Common Area (which does not include the Units or the Exclusive Use Common Areas, as defined herein) shall be owned by the Owners of the two Units in each Building as tenants-in-common.

Section 1.09. "Bylaws" means the Bylaws of the Association as such Bylaws may be amended from time to time.

Section 1.10. "City" means the City of Sacramento, County of Sacramento, State of California, and its various departments, divisions, and agencies.

Section 1.11. "Common Area" is a collective term that refers to the following three types of Common Areas within the Project, as defined by California Civil Code section 1351(b), and described in the Condominium Plan and Section 2.02, below: (a) "Association Common Area" which consists of all of the real property shown on the Subdivision Map, excepting therefrom the Units, the Building Common Areas, and Exclusive Use Common Areas as such interests are further defined in the Plan; (b) "Building Common Areas" as defined in Section 1.08 above; and (c) "Exclusive Use Common Areas" which consist of those portions of the Project that are designated as "Exclusive Use Common Area" or "EUCAs" on the Condominium Plan. Each designated Exclusive Use Common Area is appurtenant to and designated for the exclusive use of one or more, but fewer than all, of the Owners of Condominiums within the Project.

Section 1.12. "Common Expense" means and includes the actual and estimated expenses incurred by the Association to:

- (a) Maintain, repair, operate, and replace the Common Areas and Common Facilities of the Project (other than any improvements within Exclusive Use Common Areas) and all improvements located therein or thereon;
- (b) Contributions to reasonable reserves to defray the future repair or replacement of, or additions to, those major components of the Project that the Association is obligated to maintain, repair, and replace, as well as reasonable reserves for such other purposes as found and determined by the Board of Directors;
- (c) The insurance premium cost for any insurance that the Association is required to maintain pursuant to Article X, below;
- (d) Costs incurred to manage the Association, including, without limitation, any third-party management fees, costs incurred with accountants, attorneys, reserve study consultants, assessment collection service providers;
- (e) All sums, not listed above that are designated as Common Expenses by or pursuant to the Governing Documents; and

(f) The use of Association funds to defray costs and expenses incurred by the Association in the performance of its functions or in the proper discharge of the responsibilities of the Board as provided in this Declaration and the other Governing Documents of the Project.

Section 1.13. "Common Facilities" means and refers to the paved vehicle and pedestrian access areas within the Project, the landscaping that is located in any Common Areas of the Project, the fencing around the perimeter of the Project, the vehicle entry gate and its electrical components, the walkways and patio areas of the Project, the water feature, the barbeque areas, and the utilities, berms, pipes, lines, lighting fixtures, and other facilities constructed or installed, to be constructed or installed, or currently located on or within any portion of the Association Common Area.

Section 1.14. "Condominium" shall mean an estate in real property as defined in California Civil Code sections 783 and 1351(f). Each Condominium within the Project consists of a fee title estate in real property as defined in California Civil Code section 1351(f) containing two elements, namely: (i) a separate interest in the space that is defined in Section 1.35, below, as a "Unit", and (ii) an undivided interest as a tenant-in-common in the Building Common Area of the Building in which the Owner's Unit is located. The Condominiums in the Project are more particularly described in Section 2.02, below, and in the Condominium Plan recorded with respect to the Plaza 26 Project.

Section 1.15. "Condominium Plan" means the recorded three-dimensional plan of the Project which identifies the Association Common Area, the Building Common Area, the Exclusive Use Common Areas, and the Units, all as more particularly provided in California Civil Code section 1351(e). The Condominium Plan is being Recorded in the Official Records of Sacramento County concurrently with the Recordation of this Declaration.

Section 1.16. "County" means the County of Sacramento, State of California, and its various departments, divisions, employees and representatives.

Section 1.17. "Declarant" refers to Plaza 26, LLC, a California limited liability company, its successors and assigns, if such successors and assigns acquire or hold record title to any portion of the Property for development purposes and the successor or assign is identified as a successor Declarant in a Recorded instrument that make reference to this Declaration and specifically to this right of assignment.

Section 1.18. "Declaration" means this instrument as it may be amended from time to time.

Section 1.19. "Emergency Assessment" means an Assessment that the Association is authorized and empowered to impose under the limited circumstances defined in California Civil Code section 1366(b) and Section 4.05, below.

Section 1.20. "Exclusive Use Common Area" or "EUCA" means and refers to those portions of the "Association Common Area" that are designated as such in the Condominium Plan and set aside for the exclusive use of a Unit Owner or Owners to the exclusion of other Unit owners, pursuant to Section 2.02(e) of this Declaration, and shall constitute "exclusive use common area" as defined in California Civil Code section 1351(f). As so defined, the Exclusive

Use Common Areas in this Project include the garage bays in Garage Buildings within the Project, the front steps and entryways to each Unit, and the HVAC equipment that services each Unit.

Section 1.21. "Family" means one or more persons each related to the other by blood, marriage or legal adoption, or a group of not more than three (3) persons not so related who maintain a common household in a Unit within the Project.

Section 1.22. "Governing Documents" refers collectively to this Declaration, as amended from time to time, the Exhibits that are attached to this Declaration, together with the other basic documents used to create and govern the Project, including the Subdivision Map, the Articles, the Bylaws, the Condominium Plan and the Association Rules.

Section 1.23. "Improvement" means and refers to, without limitation, the construction, installation, alteration or remodeling of any Building, walls, landscaping, skylights, outside or exterior wiring, awnings, trellis, or any other structure of any kind. The term "Improvement" shall also include any structural modifications or additions to, or reconstruction of, any portion of the Owner's Unit if such work involves any structural component of the Building containing the Unit.

Section 1.24. "Majority of a Quorum" means the vote of a majority of the votes cast at a meeting or by written ballot when the number of Members attending the meeting in person or by proxy or casting written ballots equals or exceeds the quorum requirement for Member action, as specified in the Bylaws or otherwise by statute.

Section 1.25. "Member" means every person or entity who holds a membership in the Association and whose rights as a Member are not suspended pursuant to Section 13.06, below.

Section 1.26. "Mortgage" means any security device encumbering all or any portion of the Property, including any deed of trust. "Mortgage" shall refer to a beneficiary under a deed of trust as well as to a mortgagee in the conventional sense.

Section 1.27. "Owner" means any person, firm, corporation or other entity (including the Declarant, but excluding any person or entity holding such interest merely as security for the payment of a debt or the performance of an obligation) which holds a fee simple interest in any Condominium and includes (except when the context otherwise requires) the family, guests, tenants and invitees of such Owner. The term "Owner" shall also include the Declarant for so long as the Declarant owns any Condominium within the Project.

Section 1.28. "Project" means the common interest development condominium project (as that term is defined in California Civil Code section 1351(f)) that is being implemented pursuant to the plan of development set forth in this Declaration, the Subdivision Map, the Condominium Plan and the other Governing Documents for the Project. At times herein, the terms "Project" and "Plaza 26" are used interchangeably.

Section 1.29. "Property" means the property upon which the Project is located, as more particularly described in Exhibit "A", attached hereto. The Property and the Project constructed thereon is a statutory "condominium project" as defined in California Civil Code section 1351(f).

Section 1.30. "Record", "Recorded", "Recording", and "Recordation" means, with respect to any document, the recordation or filing of such document in the Office of the Sacramento County Recorder.

Section 1.31. "Regular Assessment" means an Assessment levied against an Owner and his or her Condominium in accordance with Section 4.02, below.

Section 1.32. "Single Family Residential Use" means occupancy and use of a Unit in the Project for single family dwelling purposes in conformity with this Declaration and the requirements imposed by applicable zoning laws or other state or municipal rules and regulations. In no event shall a Unit be occupied by more individuals than permitted by applicable law, zoning or regulation.

Section 1.33. "Special Assessment" means an Assessment levied against an Owner and his or her Condominium in accordance with Section 4.03, below.

Section 1.34. "Special Individual Assessment" means an Assessment levied against an Owner and his or her Condominium in accordance with Section 4.04, below.

Section 1.35. "Subdivision Map" means the final subdivision or parcel map for the Project, as filed with the County.

Section 1.36. "Unit" means the elements of the Condominium, as defined in Section 1.14, above, that are owned separately, consisting of a separate interest in space, the boundaries of which are described as the area designated as a "Unit" within one of the Condominium Buildings as shown on the Condominium Plan. The dimensions of each Unit are measured from the interior unfinished surfaces of the perimeter walls, floor, ceiling, windows, window frames, and perimeter doors and door frames. As so defined, the Unit does not include any bearing wall or other structural member necessary to the support or structural rigidity of any portion of the Building Common Area (including, for example, load bearing walls, support beams and columns, ventilation shafts, ducts for heating and cooling purposes, flues and walls, support beams and columns and shafts and wells containing utility conduits or pipes or which provide access to any portion of the Building's utility systems), except that the finished surfaces shall be part of each Unit. Each Unit includes all improvements and personal property situated within its boundaries, including, but not limited to, interior walls (except interior bearing walls), appliances, interior doors, and all electrical, heating, plumbing, and other utility fixtures.

ARTICLE II DESCRIPTION OF THE PROJECT, DIVISION OF THE PROPERTY, AND CREATION OF PROPERTY RIGHTS

Section 2.01. Description of the Project. The Project is a residential development consisting of the land, the Condominiums and all other Improvements located thereon. Reference is made to the Condominium Plan for further details.

Section 2.02. Division of the Property. Pursuant to the Plaza 26 Condominium Plan and the other Governing Documents, the various real property interests comprising the Project are divided as follows:

(a) **Units.** Each Owner of a Condominium owns a separate interest (as defined in California Civil Code section 1351(1)(2)), in a Unit, as defined in Section 1.36, above. Each Unit is a separate freehold estate, as designated on the Condominium Plan and includes all of the improvements within the Unit's boundaries.

(b) **Undivided Fractional Fee Interest in the Building Common Area:** The Condominium Plan recorded on the Property depicts six (6) Condominium Units that are located within three (3) separate buildings, two (2) Units per building. The interest in the Building Common Area in the Property which shall be conveyed with each respective Unit in the Property is a one-half (1/2) undivided fractional fee interest for each single building and applying to each of the three Buildings. The respective undivided fractional fee interest established and to be conveyed with the respective Unit cannot be changed. Declarant, for and on behalf of itself, and its successors, assigns and grantees, covenants and agrees that neither the Unit nor the respective undivided fractional fee interest in the Building Common Area shall be separately conveyed or encumbered. An otherwise valid conveyance or encumbrance referring only to the Unit shall also convey or encumber the respective undivided fractional fee interest in the Building Common Area. Any attempt to convey or encumber the undivided fractional fee interest in the Building Common Area without the respective Unit shall be null and void.

(c) **Association Common Area.** The Association Common Area of the Project consists of the Property (and all Improvements constructed therein), but does not include the Units, the Building Common Areas, or any Exclusive Use Common Areas. The Association Common Area shall each be conveyed to the Association prior to the close of escrow of the sale of the first Condominium in the Project. When the Association Common Area is conveyed by the Declarant to the Association, an easement shall be deemed automatically reserved over the Association Common Area so conveyed in favor of the Declarant for ingress and egress, and for the construction or completion of construction of utilities, and other amenities included in plans approved by the City of Sacramento, and for construction of the Buildings and Units and the utilities serving the same. The easement shall automatically terminate five (5) years after the Recordation of this Declaration. The Association's ownership interest in the Association Common Area of the Project is appurtenant to the interests of the Owners in their Condominiums and may not be separated from those interests (except in the limited circumstances described in Section 12.02, below).

(d) **Easements Over the Association Common Area.** Each Owner shall have a nonexclusive easement appurtenant to his or her Condominium for ingress, egress, access, use and enjoyment on and over the Association Common Areas of the Project.

(e) **Exclusive Use Common Areas.** The following described portions of the Common Area, referred to as "Exclusive Use Common Areas" or "EUCA" on the Condominium Plan, are set aside and allocated for the exclusive use of the Owner of the Condominium to which they are attached or assigned as shown on the Condominium Plan, and are appurtenant to that Condominium: The garage bays in each Garage Building, the front steps and landing area that

are at the entrance to each Unit, and the HVAC system that services each Unit. Any transfer of the Condominium to which the rights are appurtenant automatically transfers the Exclusive Use Common Area rights appurtenant thereto, regardless of whether the instrument of transfer describes the Exclusive Use Common Area rights as set forth in the Governing Documents.

Section 2.03. Combining of Residential Units; Designated Exclusive Use Association Property. The Declarant and, subject to the provisions of Article V of this Declaration, the Association, shall have the right to grant to an Owner who acquires fee title to two (2) adjacent Residential Units, without amending this Declaration or the Condominium Plan, an Exclusive Use Easement on and through any demising wall(s) separating two (2) Residential Units, and the right to alter, modify or remove such demising walls, subject to the consent of the Declarant and conformance with the requirements of the Board of Directors, pursuant to the provisions of Section 5.06, below. In the event that two (2) adjoining Residential Units are combined into one (1) residential living space by the removal of the walls as contemplated by this Section, they shall continue to be considered as two (2) separate Units for purposes of Membership in the Association, Voting Power, and Assessments. Notwithstanding the foregoing, the consent of the Board is not required for any combination of Residential Units by the Declarant.

Section 2.04. Rights of Entry and Use. The Units and the Common Areas of the Project (including Exclusive Use Common Areas) shall be subject to the following rights of entry and use:

(a) The right of the Association's agents or employees to enter any portion of the Association Common Area to cure any violation of this Declaration or the Bylaws, provided that the Owner has received notice and a hearing as required by Section 13.06(d)(iii), below (except in the case of an emergency, in which case the Association will only be obligated to give such notice as the circumstances may reasonably permit) and the Owner has failed to cure the violation or take steps necessary to cure the violation within thirty (30) days after the finding of a violation by the Association;

(b) The access rights of the Association to maintain, repair or replace improvements or property located in the Association Common Area and the exterior of Buildings in the Project as described in Section 3.07(c), below;

(c) The rights of the Owners, the Association, and the Declarant to install, maintain, repair or replace utilities as described in Section 9.02, below;

(d) Any easements affecting the Common Area that are granted or conveyed by either the Association or the Declarant pursuant to Sections 9.02 and 9.03, below;

(e) The rights of the Declarant during the construction period as described in Section 9.03, below;

(f) The rights of Owners to make improvements or alterations to their Units as authorized by California Civil Code section 1360(a)(2), subject to the architectural review and approval provisions of Article V, below; and

(g) The right of the Association to adopt rules and regulations as provided in Section 3.08, below, (the "Association Rules") and, in the event of a breach of the Association Rules or of any other Governing Document provision, to initiate disciplinary action against the violating Owner or tenant in accordance with Section 13.06, below. Such action may include the levying of fines and/or the temporary suspension of an Owner's voting rights as a Member of the Association.

Section 2.05. Partition Prohibited. The Association Common Area and the Building Common Areas of the Project shall remain undivided as set forth above. Except as provided by California Civil Code section 1359 or authorized under Articles XI and XII, below, no Owner shall bring any action for partition of the Common Areas, it being agreed that this restriction is necessary in order to preserve the rights of the Owners with respect to the operation and management of the Project. Judicial partition by sale of a single Condominium owned by two (2) or more persons and division of the sale proceeds is not prohibited by this Section 2.05, but partition of title to a single Condominium from other elements of the Project is prohibited.

Section 2.06. Delegation of Use.

(a) Delegation of Use and Leasing of Units. Any Owner may delegate his or her rights of use and enjoyment of the Owner's Unit, including any appurtenant right to use the Development's Common Areas, to the Owner's guests, lessees and to such other persons as may be permitted by the Governing Documents. Any Owner may delegate his or her rights to use and enjoy the Association Common Area and Common Facilities to his or her family members or tenants, lessees or contract purchasers who reside in the Unit; provided, however, that any rental or lease may only be to a single family for Single Family Residential Use.

(b) Requirements That Must Be Observed In All Residential Leases. The following specific limitations shall apply to all leases or tenancies of a Unit within the Development: (i) the rental shall apply to not less than an entire Unit including its appurtenant rights (except voting rights in the Association which may not be transferred to a tenant or lessee); and (ii) any rental shall be evidenced by a written lease or rental agreement which shall provide that the tenancy is subject to the terms of the Governing Documents and that any failure of the tenant to comply with the terms of any Governing Document relating to residential leases, property use restrictions or the use and enjoyment of any portion of the Common Areas and Common Facilities shall constitute a default under the lease or rental agreement and shall entitle the Owner to terminate the tenancy upon thirty (30) days' written notice. The Owner-lessor's right to terminate a lease or rental agreement on account of the tenant's violation of the Governing Documents shall in no way restrict the right of the Association, the Declarant, or any Owner to enforce the Governing Documents in accordance with Article XIII, below, when the Owner's tenant is violating the Governing Documents.

(c) Discipline of Lessees. Subject to subparagraph (d) below, in the event that any tenant or lessee fails to honor the provisions of any Governing Document, the Association shall be entitled to take such corrective action as it deems necessary or appropriate under the circumstances in order to preserve the quiet enjoyment of other Owners and residents within the Development. Without limiting the foregoing, the Association's actions in response to a tenant's

violation of the Governing Documents may include the imposition of fines and penalties against the Owner-lessor of the Unit.

(d) Due Process Requirements for Disciplinary Action. Except for circumstances in which immediate corrective action is necessary to prevent damage or destruction to the Development or to preserve the rights of quiet enjoyment of other Owners, the Association shall have no right to initiate disciplinary action against an Owner-lessor (or the Owner's lessee or tenant) on account of the misconduct of the Owner's lessee or tenant unless and until the following conditions have been satisfied: (i) the Owner has received written notice from the Board or the Association's property manager detailing the nature of the lessee's/tenant's alleged infraction or misconduct and advising the Owner of his or her right to a hearing on the matter in the event the Owner believes that remedial or disciplinary action is unwarranted or unnecessary; (ii) the Owner has been given a reasonable opportunity to take corrective action on a voluntary basis or to appear at a hearing, if one is requested by the Owner; and (iii) the Owner has failed to prevent or correct the tenant's objectionable actions or misconduct. Any hearing requested hereunder shall be conducted in accordance with Section 13.06(d), below.

Section 2.07. Obligations of Owners. Owners of Units in the Project shall be subject to the following obligations:

(a) Owner's Duty to Notify Association of Tenants and Contract Purchasers. Each Owner shall notify the secretary of the Association or the Association's property manager, if any, of the names of any contract purchaser or tenant residing in the Owner's Unit. Each Owner, contract purchaser or tenant shall also notify the secretary of the Association of the names of all persons to whom such Owner, contract purchaser or tenant has delegated any rights to use and enjoy the Property and the Project and the relationship that each such person bears to the Owner, contract purchaser or tenant.

(b) Contract Purchasers. The Owner of a Unit who is selling his or her Unit pursuant to a contract of sale (as defined in California Civil Code section 2985) must delegate his or her voting rights as a Member of the Association and his or her right to use and enjoy the Association Common Areas and Common Facilities to any contract purchaser in possession of the property. Notwithstanding the foregoing, the Owner-Seller shall remain liable for any default in the payment of Assessments by the contract purchaser until such time as title to the Condominium Unit that is the subject of the contract of sale has been transferred to the purchaser.

(c) Notification Regarding Governing Documents.

(i) As more particularly provided in California Civil Code section 1368, as soon as practicable before transfer of title or the execution of a real property sales contract with respect to any Unit, the Owner thereof must give the prospective purchaser:

(A) a copy of the Governing Documents of the Association, including any Association Rules;

(B) a copy of the most recent documents distributed by the Association pursuant to California Civil Code sections 1365 and 1365.1 (see Article XII of the Bylaws pertaining to the disclosure of financial information);

(C) a true statement in writing from an authorized representative of the Association as to: (1) the amount of the Association's current regular and special assessments and fees; (2) any assessments levied upon the Owner's Unit that are unpaid on the date of the statement and any monetary fines or penalties levied upon the Owner's Unit and unpaid on the date of the statement; (3) true information relating to late charges, attorneys' fees, interest, and costs of collection which, as of the date the statement is issued, are or may become a lien on the Unit pursuant to California Civil Code section 1367.1 ("delinquency statement");

(D) a copy or summary of any notice previously sent to the Owner pursuant to California Civil Code section 1363(h), that sets forth any alleged violations of the Governing Documents that remain unresolved at the time of the request;

(E) a copy of the preliminary list of defects provided to each Member of the Association pursuant to California Civil Code section 1375, unless the Association and the builder subsequently enter into a settlement agreement or otherwise resolve the matter and the Association complies with California Civil Code section 1375.1; and

(F) a statement disclosing any change in the Association's current Regular and Special Assessments and fees which have been approved by the Board but have not become due and payable as of the date the disclosure is provided.

(ii) Within ten (10) days of the mailing or delivery of a request for the information described in subparagraph (c)(i), above, the Association shall provide the Owner with copies of the requested items. The items required to be made available to Owners pursuant to this Section may be maintained by the Association in electronic form and requesting parties shall have the option of receiving them by electronic transmission or machine readable storage media if the association maintains these items in electronic form. The Association shall be entitled to impose a fee for providing the requested items equal to (but not more than) the reasonable cost of preparing and reproducing the requested items.

(iii) The provisions of this Section, except for those provisions relating to the furnishing of a delinquency statement, shall not apply to any Owner who is subject to the requirements of California Business and Professions Code section 11018.1 (i.e., the obligation to provide prospective purchasers with a Department of Real Estate Public Report).

(d) Obligation to Provide Subsequent Purchasers with Information Relating to Declarant Repair Rights and Obligations and Unit Maintenance Standards. California Civil Code section 912 requires home builders, such as Declarant, to provide their initial home buyers with certain documents enumerated in that Code section, including (i) copies of all maintenance and preventative maintenance recommendations that pertain to the Unit; (ii) copies of all manufactured products maintenance, preventative maintenance, and limited warranty information relating to components of the Unit; (iii) copies of the builder's limited contractual warranties; (iv) a written copy of California Civil Code sections 895 et seq.; and (iv) other

documents provided by the builder to the initial buyer of a Unit in the Project. California Civil Code section 912(h) obligates the initial buyer of a Condominium from the Declarant to provide these documents to subsequent purchasers of the Condominium.

(e) Payment of Assessments and Compliance with Rules. Each Owner shall pay, when due, each Regular, Special, Emergency, and Special Individual Assessment levied against the Owner and his or her Unit and shall observe, comply with and abide by any and all rules and regulations set forth in, or promulgated by the Association pursuant to, any Governing Document for the purpose of protecting the interests of all Owners or protecting the Common Area and Common Facilities.

(f) Discharge of Assessment Liens. Each Owner shall promptly discharge any Assessment lien that may hereafter become a charge against his or her Condominium in accordance with Section 4.10(b)(v), below.

(g) Joint Ownership of Condominiums. In the event of joint ownership of any Condominium, the obligations and liabilities of the multiple Owners under the Governing Documents shall be joint and several. Without limiting the foregoing, this subparagraph (g) shall apply to all obligations, duties and responsibilities of Owners as set forth in this Declaration, including, without limitation, the obligation to pay Assessments.

ARTICLE III PLAZA 26 CONDOMINIUM ASSOCIATION

Section 3.01. Formation of the Association. The Plaza 26 Condominium Association is a California nonprofit mutual benefit corporation. On or before the first close of escrow for the sale of a Unit in the Project to an Owner, the Association shall be charged with the duties and invested with the powers set forth in the Governing Documents, including, but not limited to, control, maintenance and repair of the Association Common Areas and Common Facilities of the Project.

Section 3.02. Association Action; Board of Directors and Officers. With the exception of those matters requiring approval of Members under the Governing Documents or California law, the affairs of the Association shall be conducted by the Board of Directors and such officers as the Board may elect or appoint. Except as otherwise provided in the Governing Documents or California law, all matters requiring the approval of Members shall be deemed approved if approved by at least fifty-one percent (51%) of the Members.

Section 3.03. Membership.

(a) Qualifications. Each Owner of a Unit, including the Declarant, shall be a Member of the Association. An Owner shall hold one (1) membership in the Association for each Unit he or she owns. Sole or joint ownership of a Unit or interest in it shall be the sole qualification for membership in the Association. Each Owner shall remain a Member of the Association until his or her ownership of, or ownership interest in, all Units in the Project ceases, at which time the

Owner's membership in the Association shall automatically cease. Persons or entities who hold an interest in a Unit merely as security for performance of an obligation are not Members.

(b) Members' Rights and Duties. Membership in the Association shall give rise to the rights, duties, and obligations set forth in the Governing Documents and any amendments thereto.

Section 3.04. Membership Voting.

(a) Commencement of Voting Rights. Unless the sale of Units within the Project is subject to a subsidization plan, approved by the California Commissioner of Real Estate which provides otherwise, voting rights attributable to the ownership of Units shall not vest until Assessments against those Units have been levied by the Association.

(b) Classes of Membership. The Association shall have two (2) classes of voting membership, namely a Class A Membership which shall initially consist of all Owners of Condominiums except the Declarant and a Class B Membership which shall be held by the Declarant. The voting rights and other privileges of the two (2) classes of membership and the conversion of the Declarant's Class B membership into Class A membership shall be as set forth in Article IV of the Bylaws.

(c) Suspension of Voting Rights. Voting rights may be temporarily suspended under those circumstances described in Section 13.06, below.

(d) Intent of Provisions Imposing Limitations on Declarant Voting Rights. With the exception of any membership vote pursuant to Section 3.11, below, (relating to the enforcement of bonded obligations), no provision of any Governing Document requiring approval of a prescribed majority of the voting power of Members of the Association other than the Declarant is intended to preclude the Declarant from casting votes attributable to any Units owned by the Declarant. Instead, what is required is the approval of a bare majority of the Class B voting power as well as the approval of the prescribed majority of the Class A voting power. Once the Class B membership has been converted to Class A membership, the intent is to require the approval of a bare majority of the total voting power of the Association as well as the approval of the prescribed majority of the total voting power of the Members other than the Declarant.

Section 3.05. Assessments. The Association shall have the power to establish, fix and levy Assessments against the Owners of Units within the Project and to enforce payment of such Assessments, as more particularly provided in Article IV, below. Any Assessments levied by the Association against its Members shall be levied in accordance with, and pursuant to, the provisions of this Declaration.

Section 3.06. Transfer of Memberships. Membership in the Association shall not be transferred, encumbered, pledged or alienated in any way, except upon the sale of the Condominium to which it is appurtenant, and then, only to the purchaser. In the case of a sale, the membership appurtenant to the transferred Unit shall pass automatically to the purchaser upon the Recordation of a deed evidencing the transfer of title. In the case of an encumbrance Recorded with respect to any Unit, the Mortgagee shall not possess any membership rights until the Mortgagee becomes an Owner by foreclosure or acceptance of a deed in lieu thereof.

Tenants who are delegated rights of occupancy and use of a Unit pursuant to Section 2.06, above, do not thereby become Members, although the tenant and his or her family and guests shall at all times be subject to the property use restrictions and enforcement/disciplinary provisions of the Governing Documents. If any Owner fails or refuses to transfer the membership registered in his or her name to the purchaser of his or her Unit, the Association shall have the right to record the transfer upon its books and thereupon any other membership outstanding in the name of the Owner shall be null and void.

Section 3.07. Powers and Authority of the Association.

(a) **Association Powers, Generally.** The Association shall have the responsibility of owning, managing and maintaining the Association Common Areas and Common Facilities of the Project in accordance with Section 7.01(a), below, maintaining the exteriors of Building Common Areas to the extent provided in Section 7.01(b), below, and discharging the other duties and responsibilities imposed on the Association by this Declaration and the other the Governing Documents. In the discharge of such responsibilities and duties, the Association shall have all of the powers of a nonprofit mutual benefit corporation organized under the laws of the State of California in the ownership and management of its property and the discharge of its responsibilities hereunder for the benefit of its Members, subject only to such limitations upon the exercise of such powers as are expressly set forth in the Governing Documents. The Association shall have the power to do any and all lawful things which may be authorized, required or permitted to be done under and by virtue of the Governing Documents, and to do and perform any and all acts which may be necessary or proper for, or incidental to, the exercise of any of the express powers of the Association for the peace, health, comfort, safety or general welfare of the Owners. The specific powers of the Association and the limitations thereon are set forth in Article IX of the Bylaws.

(b) **Association as Attorney-In-Fact for Owners.** Without limiting the generality of the foregoing, the Association is hereby irrevocably appointed as the attorney-in-fact for the Owners of each and every Unit to (i) manage, control and deal with the interest of such Owners in the Common Area so as to permit the Association to fulfill all of its duties and obligations hereunder and to exercise all of its rights hereunder; (ii) deal with the Property and the Project upon their destruction or obsolescence as hereinafter provided; and (iii) to deal with and handle insurance and insurance proceeds, as provided in Article X, below, and condemnation and condemnation awards, as provided in Article XII, below. The acceptance by any person or entity of any interest in any Unit shall constitute an appointment of the Association as the Owner's attorney-in-fact as provided above.

(c) **Association's Limited Right of Entry.**

(i) **Right of Entry, Generally.** Without limiting the foregoing description of powers, but in addition thereto, the Association and its agents shall have the right and power to enter any portion of the Association Common Area and the exterior of any Building in the Project in order to perform the Association's obligations under this Declaration, including:

- (A) the obligation to enforce the architectural and land use restrictions of Articles V and VIII, below;

- (B) any obligations with respect to construction, maintenance and repair of Common Facilities, to paint the exterior of Buildings and to replace and repair the roofs of Buildings; or
- (C) the right, in the discretion of the Board of Directors, to make necessary repairs that an Owner has failed to perform pursuant to Section 7.02, below which, if left undone, will pose a threat to, or cause an unreasonable interference with, any portion of the Project, the Owner of an immediately adjacent Unit in the same Building, or the Owners in common.

(ii) Limitations on Exercise of Right. The Association's right of entry with respect to Buildings containing Units shall be subject to the following:

(A) The Association's right of entry may be exercised immediately and without prior notice to the Owner or resident of a Unit in case of an emergency originating in or threatening the Unit where entry is required or any adjoining Units or Building Common Area. The Association's work may be performed under such circumstances whether or not the Owner or his or her lessee is present.

(B) In all non-emergency situations involving routine repair and/or maintenance activities, the Association, or its agents, shall furnish the Owners of Units in the Building where access is needed, or the lessee of any such Owner, with at least twenty-four (24) hours prior written notice of the Association's intent perform work on the Building, specifying the purpose and scheduled time of such entry and shall make every reasonable effort to perform its work and schedule its entry in a manner that respects the privacy of the persons residing in Units within the Building.

(C) In all non-emergency situations involving access by the Association for purposes of enforcing the Governing Documents against an Owner or lessee in default, the Association's entry shall be subject to observance of the notice and hearing requirements imposed by Section 13.06, below.

(d) Association's Authority to Initiate California Civil Code Section 896 Claims Concerning Alleged Defects in Residential Construction. Subject to the provisions of this Declaration, (including, without limitation, the provisions of Section 13.08, below relating to the Arbitration of Disputes), the Association shall have the power, but not the duty, to initiate, defend, settle or intervene in mediation, arbitration, judicial or administrative proceedings on behalf of the Association in matters pertaining to: (i) the application or enforcement of this Declaration; and (ii) damage to the Association Common Area or Common Facilities or alleged damage to any portion of the Units for which the Association is obligated to maintain, repair or replace; provided however that no representative of the Declarant serving as a Director of the Association shall vote on the initiation of any claim under California Civil Code section 895 et. seq., such that from and after the first annual meeting of the Association's membership, the Declarant shall have no control over the Association's ability to decide whether to initiate a claim under such statutory provisions and in the event of such a vote, the affirmative vote of at least two (2) non-Declarant Directors shall be binding, so long as a quorum of the Board is

present at any meeting where such a vote is taken. The Association and not the individual Members shall have the power to pursue any claims or other actions using the non-adversarial proceedings for construction defect resolution pursuant to California Civil Code section 895, et seq. and California Civil Code section 1375, (and any successor, statutes or laws). Any recovery by the Association with respect to any damage to or defect in the Association Common Area or Common Facilities or portions of the Project for which the Association has a responsibility to repair, maintain or replace shall be utilized solely for the purpose of paying for the costs of obtaining the recovery and for correcting such damage or defect.

Section 3.08. Association Rules.

(a) **Rule Making Power.** The Board may, from time to time and subject to the provisions of this Declaration, propose, enact and amend rules and regulations of general application to the Owners ("Association Rules"). The Association Rules may concern, but need not be limited to: (i) matters pertaining to use of the Association Common Area and improvements thereon; (ii) architectural control and the rules of the Architectural Control Committee under Article V, below; (iii) regulation of pet ownership, parking, signs, collection and disposal of refuse and other matters subject to regulation and restriction under Article VIII, below; (iv) collection of delinquent Assessments in accordance with Section 4.10(b), below; (v) minimum standards of maintenance of landscaping in Exclusive Use Common Areas or yard areas of the Owner's Unit; (vi) the conduct of disciplinary proceedings in accordance with Section 13.06(d), below; and (vii) any other subject or matter within the jurisdiction of the Association as provided in the Governing Documents.

Notwithstanding the foregoing grant of authority, the Association Rules shall not be inconsistent with or materially alter any provision of the Governing Documents or the rights, preferences and privileges of the Owners thereunder. In the event of any material conflict between any Association Rule and the provisions of any other Governing Document, the conflicting provisions contained in the other Governing Document shall prevail. All Association Rules shall be adopted, amended and repealed (as the case may be) in good faith and in substantial compliance with this Declaration and California Civil Code sections 1357.100 through 1357.150.

(b) **Distribution of Rules.** A copy of the Association Rules, as they may from time to time be adopted, amended or repealed, shall be mailed or otherwise delivered to each Owner.

(c) **Adoption and Amendment of Rules.**

(i) **Requirement of Prior Notice to the Members of Certain Operating Rules or Amendments Thereto.** California Civil Code section 1357.100 defines an "Operating Rule" as an Association Rule or regulation that applies generally to the management and operation of the Project or to the conduct of the business and affairs of the Association. That California Civil Code section further defines a "Rule Change" as any adoption, amendment, or repeal of an Operating Rule by the Board of Directors. California Civil Code section 1357.120 identifies seven types of Operating Rules (and Rule Changes involving such Operating Rules) that must first be provided to the members in writing at least thirty (30) days prior to the Board taking action to implement the Rule Change. The notice must include the text of the proposed Rule

Change and a description of the purpose and effect of the proposed Rule Change. This requirement of prior notice to the Members applies only to Operating Rules that relate to one or more of the following subjects:

- (A) Use of the Association Common Areas of the Project;
- (B) Use of any Unit in the Project (including the adoption of Architectural Rules);
- (C) Member discipline, including any schedule of monetary penalties for violation of the Governing Documents and any procedure for the imposition of penalties;
- (D) Any standards for delinquent Assessment payment plans;
- (E) Any procedures adopted by the Association for resolution of disputes;
- (F) Any procedures for reviewing and approving or disapproving a proposed physical change in a Member's Unit or to the Common Areas of the Project pursuant to Article V, below; and
- (G) Procedures for the conduct of elections.

Specifically excluded by California Civil Code section 1357.120 from the requirement of prior notice to Members as a prerequisite to the adoption of Operating Rules are the following actions of the Board, regardless of whether those actions may be construed as being Association Rules or "Operating Rules", as defined in the California Civil Code: (i) any Rule Change that the Board adopts to address an imminent threat to public health or safety or imminent risk of substantial economic loss to the Association (such "emergency rules" can be adopted and remain in effect for up to one hundred and twenty (120) days); (ii) decisions regarding maintenance of the Common Areas or Common Facilities; (iii) a decision on a specific matter that is not intended to apply to all Members, generally; (iv) establishing the amount of an assessment; (v) adoption of a Rule Change that is required by law (if the Board of Directors has no discretion regarding the substantive effect of the Rule Change); and (vi) issuance of a document that merely repeats existing law or the Governing Documents.

With respect solely to Operating Rules and/or Rule Changes listed in subparagraphs (A) through (G), of paragraph (c)(i) above, California Civil Code section 1357.140 gives Members owning five percent (5%) or more of the Units in the Project the right to demand that a special meeting of the Members be called to reverse a proposed Rule Change, so long as the request for the special meeting is delivered to the Association not more than thirty (30) days after the Members are given notice of the Rule Change. In the context of this Project, this statutory right can be exercised by any single Unit Owner. If a proper and timely demand for a special meeting to vote to rescind an Operating Rule or Rule Change is tendered to the Association, the Board shall establish the date, time and location of the meeting and provide notice thereof to the Members in accordance with California Corporations Code section 7511(c). In lieu of calling a

meeting of the Members pursuant to this subparagraph, the Board may conduct any vote initiated by Members to challenge the adoption of an Operating Rule by use of a mailed written ballot voting process conducted in accordance with the requirements of California Corporations Code section 7513.

So long as a quorum of the Members is present at any such meeting (or so long as a quorum of the Members respond to a vote conducted by written ballot), the Rule Change can be reversed on the affirmative vote of a Majority of a Quorum of the Members, with each Member having one vote on the matter for each Unit owned. If the Members vote to reverse an Operating rule or a Rule Change, the Board may not take action to readopt the Operating Rule or Rule Change for a period of one year after the date of the special meeting where reversal of the Operating Rule or Rule Change was approved; provided, however, that this provision is not intended to preclude the Board from adopting a different Operating Rule or Rule Change on the same subject as the Rule Change that was successfully reversed. As soon as possible following the close of voting on any proposal to reverse an Operating Rule or Rule Change, but not more than fifteen (15) days after the close of voting, the Board shall provide notice to each Member of the results of the Member vote by personal delivery or first-class mail.

(ii) Minimum Content for Election Rules. California Civil Code section 1363.03 requires associations to adopt rules regarding the conduct of elections that do all of the following:

(A) Ensure that any candidate or member advocating a point of view is provided access to Association media, newsletters, or Internet Web sites during a campaign so long as the access is reasonably related to that election, equal access shall be provided to all candidates and members advocating a point of view (whether or not endorsed by the Board). The Association may not edit or redact any content from these campaign communications, but may include a statement specifying that the candidate or Member, and not the Association, is responsible for that content.

(B) Ensure access to the Common Area meeting space, if any exists, during a campaign, at no cost, to all candidates, including those who are not incumbents, and to all Members advocating a point of view (whether or not endorsed by the Board) so long as use of the space is for a purpose that is reasonably related to the election.

(C) Specify the qualifications for candidates for election to the Board of Directors and any other elected position, and procedures for the nomination of candidates. A nomination or election procedure shall not be deemed reasonable if it disallows any Member of the Association from nominating himself or herself for election to the Board.

(D) Specify the qualifications for voting, the voting power of each membership, the authenticity, validity, and effect of proxies, and the voting period for elections, including the times at which polls will open and close.

(E) Specify a method of selecting one or three inspectors of election by the Board of Directors.

(iii) Adoption of Other Association Rules. Except as provided in subparagraph (c)(i), above, with respect to certain Operating Rules and Rule Changes that must first be distributed to the Members, any other Association Rules may be adopted or amended from time to time by majority vote of the Board; provided, however, that no Association Rule or amendment thereto shall be adopted by the Board until at least thirty (30) days after the proposed rule or rule amendment has been distributed in writing to each Member, along with a description of the purpose and effect of the proposed Association Rule or amendment thereto. The notice describing the proposed rule or amendment shall also set forth the date, time and location of the Board meeting at which action on the proposal is scheduled to be taken. Any duly adopted rule or amendment to the Association Rules shall become effective immediately following the date of adoption thereof by the Board, or at such later date as the Board may deem appropriate. Any duly adopted rule or rule amendment shall be distributed to the Owners by mail or personal delivery.

(iv) Prohibition on Adoption of Certain Rules. In accordance with California Civil Code section 1368.1, any rule or regulation of an association that arbitrarily or unreasonably restricts an Owner's ability to market his or her Condominium Unit is void. Without limiting the foregoing, in no event shall the Association be entitled to impose an Assessment or fee in connection with the marketing of an Owner's Unit in an amount that exceeds the Association's actual and direct costs (see also, Section 4.01(e), below).

Section 3.09. Breach of Rules or Restrictions. Any breach of the Association Rules or of any other Governing Document provision shall give rise to the rights and remedies set forth in Article XIII, below.

Section 3.10. Limitation on Liability of the Association's Directors and Officers.

(a) Claims Regarding Breach of Duty. No director or officer of the Association (collectively and individually referred to as the "Released Party") shall be personally liable to any of the Members, or to any other person, for any error or omission in the discharge of his or her duties and responsibilities or for his or her failure to provide any service required under the Governing Documents; provided that such Released Party has, upon the basis of such information as he or she possessed, acted in good faith, in a manner that such person believes to be in the best interests of the Association and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.

Without limiting the generality of the foregoing, this standard of care and limitation of liability shall extend to such matters as the establishment of the Association's annual financial budget, the funding of Association capital replacement and reserve accounts, repair and maintenance of Common Areas and Common Facilities and enforcement of the Governing Documents.

(b) Other Claims Involving Tortious Acts and Property Damage. No person who suffers bodily injury (including, without limitation, emotional distress or wrongful death) as a result of the tortious act or omission of a volunteer director or volunteer officer of the Association shall recover damages from such director or officer if all of the following conditions are satisfied:

- (i) The director or officer owns no more than two (2) Units in the Project;
- (ii) The act or omission was performed within the scope of the volunteer director's or officer's Association duties;
- (iii) The act or omission was performed in good faith;
- (iv) The act or omission was not willful, wanton, or grossly negligent;
- (v) The Association maintained and had in effect at the time the act or omission occurred and at the time a claim is made general liability insurance with coverage of at least Two Million Dollars (\$2,000,000.00).

The payment of actual expenses incurred by a director or officer in the execution of such person's Association duties shall not affect such person's status as a volunteer director or officer for the purposes of this section. The provisions of this subparagraph (b) are intended to reflect the protections accorded to volunteer directors and officers of Associations pursuant to California Civil Code section 1365.7. In the event said California Civil Code section is amended or superseded by another, similar provision of the California statutes, this subparagraph (b) shall be deemed amended, without the necessity of further Member approval, to correspond to the amended or successor California Civil Code provision.

So long as the Association maintains the general liability insurance required by this Section 3.10(b), any cause of action in tort against any Owner of a Condominium in the Project arising solely by reason of an ownership interest as a tenant-in-common in any portion of the Common Area shall be brought only against the Association and not against the individual Owners.

Section 3.11. Enforcement of Bonded Obligations. If any of the Common Area improvements within the Property have not been completed prior to the close of escrow in the first sale of a Unit in the Project, and if the Association is the obligee under a bond or other arrangement ("bond") to secure performance of a commitment of the Declarant to complete such Common Area improvements, then 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 recorded within sixty (60) days after the completion date specified for that improvement in the "planned construction statement" appended to the bond. However, if the Association has given an extension in writing for the completion of any Common Area improvement, the Board shall consider and vote on the action to enforce the obligations under the bond only if a notice of completion has not been recorded within thirty (30) days after the expiration of the extension.

If the Board fails to consider and vote on the action to enforce the obligations under the bond or decides not to initiate action to enforce the obligations under the bond, then on the petition in writing to the Board signed by Members representing not less than five (5%) percent of the total voting power of the Association other than the Declarant, the Board shall call a special membership meeting for the purpose of voting to override the decision of the Board not to initiate action or to compel the Board to take action to enforce the obligations under the bond.

The meeting shall be called by the Board by fixing a date not less than thirty-five (35) days nor more than forty-five (45) days after receipt by the Board of said petition. Notice of the meeting shall be given to all Owners entitled to vote in the manner provided in Section 5.04 of the Bylaws for notices of special membership meetings. At the meeting, the vote in person or by proxy of a majority of the Owners entitled to vote (other than Declarant) in favor of taking action to enforce the obligations under the bond shall be deemed to be the decision of the Association and the Board shall then implement the Owners' decision by initiating and pursuing appropriate action in the name of the Association.

ARTICLE IV ASSESSMENTS

Section 4.01. Assessments Generally.

(a) **Covenant to Pay Assessments.** Declarant for each Unit owned by the Declarant within the Project, and each Owner of a Unit by acceptance of a deed therefor (whether or not it shall be so expressed in such deed), covenants and agrees to pay to the Association: (i) Regular Assessments; (ii) Special Assessments; (iii) Emergency Assessments; and (iv) Special Individual Assessments. Each such Assessment shall be established and collected as hereinafter provided.

(b) **Extent of Owner's Personal Obligation for Assessments.** All Assessments, together with late charges, interest, and reasonable costs (including reasonable attorneys' fees) for the collection thereof, shall be a debt and a personal obligation of the person who is the Owner of the Unit at the time the Assessment is levied. Each Owner who acquires title to a Unit (whether by conventional conveyance, at a judicial sale, trustee's sale or otherwise) shall be personally liable only for Assessments attributable to the Unit so purchased which become due and payable after the date that the person acquires title. Accordingly, when a person acquires title to a Unit, he or she shall not be personally liable for delinquent Assessments of prior Owners unless the new Owner expressly assumes the personal liability. However, if the acquired Unit is conveyed subject to a valid lien for delinquent Assessments (and related costs of collection), the Association may continue to exercise its foreclosure remedies against the Unit, regardless of the change of ownership, and/or the Association may pursue its collection remedies against the prior Owner, individually.

(c) **Creation of Assessment Lien.** All Assessments and fees, other than Special Individual Assessments, together with late charges, interest, and reasonable costs for the collection thereof (including reasonable attorneys' fees), shall be a personal obligation of the assessed Owner as of the date that the Assessment is levied. In addition, the amount of the Assessment, plus any costs of collection, late charges, and interest assessed in accordance with section 1366 of the California Civil Code, shall be a lien on the Owner's Unit from and after the date that the Association causes to be Recorded in the Office of the County Recorder a Notice of Delinquent Assessment pursuant to Section 4.10(b)(v), below. Any lien for unpaid Assessments (other than Special Individual Assessments) created pursuant to the provisions of this Article IV may be subject to foreclosure to the extent and as provided in Section 4.10(b), below. Certain

Special Individual Assessments are prohibited by law from being recovered through the use of non-judicial foreclosure remedies.

(d) No Avoidance of Assessment Obligations. No Owner may exempt himself/herself or the Owner's Unit from liability or charge for the Owner's share of any Assessment made against the Owner or his or her share of any Regular, Special or Emergency Assessment made against the Owner's Unit, by waiving or relinquishing, or offering to waive or relinquish, the Owner's right to use and enjoy all or any portion of the Common Area or Common Facilities or by the abandonment or non-use of the Owner's Unit.

(e) Improper Assessment. The Association shall not impose or collect an Assessment, penalty or fee which exceeds the amount necessary for the purpose or purposes for which it is levied.

Section 4.02. Regular Assessments.

(a) Preparation of Annual Budget; Establishment of Regular Assessments. Not less than thirty (30) nor more than ninety (90) days prior to the beginning of the Association's fiscal year, the Board shall determine the estimated Common Expenses of the Association for that fiscal year (including additions to any reserve fund established to defray the costs of future repairs, replacement or additions to the Common Facilities) by preparing and distributing to all Members a budget satisfying the requirements of Section 12.05 of the Bylaws. If the Board fails to distribute the budget for any fiscal year within the time period specified in the first sentence of this Section, the Board shall not be permitted to increase Regular Assessments for that fiscal year unless the Board first obtains the approval of the requisite percentage of the Members in accordance with Section 4.08, below.

(b) Establishment of Regular Assessment by Board/Membership Approval Requirements. The total annual expenses estimated in the Association's budget (less projected income from sources other than Assessments) shall become the aggregate Regular Assessment for the next succeeding fiscal year; provided, however, that, except as provided in Section 4.05, below, the Board of Directors may not impose a Regular Assessment that is more than twenty (20%) percent greater than the Regular Assessment for the Association's immediately preceding fiscal year without the Members' prior approval in accordance with Section 4.08, below.

(c) Commencement of Regular Assessments. Regular Assessments shall commence with respect to all Units within the Project on the closing date of the first sale of a Unit to an Owner other than the Declarant.

(d) Allocation of Regular Assessment. The total estimated Common Expenses, determined in accordance with subparagraph (a), shall be allocated among, assessed against, and charged to each Owner according to the ratio of the number of Units within the Project owned by the assessed Owner to the total number of Units subject to Assessment so that each Unit bears an equal share of the total Regular Assessment.

(e) Assessment Roll. That portion of the estimated Common Expenses assessed against and charged to each Owner shall be set forth and recorded in an Assessment roll which shall be maintained and available with the records of the Association and shall be open for

inspection at all reasonable times by each Owner or his or her authorized representative for any purpose reasonably related to the Owner's interest as a property Owner or as a Member of the Association. The Assessment roll shall show, for each Condominium, the name and address of the Owner of Record, all Regular, Special and Special Individual Assessments levied against each Owner and his or her Condominium, and the amount of such Assessments which have been paid or remain unpaid. The delinquency statement required by Section 2.07(c)(i)(C), above, shall be conclusive upon the Association and the Owner of such Unit as to the amount of such indebtedness appearing on the Association's Assessment roll as of the date of such statement, in favor of all persons who rely thereon in good faith.

(f) Mailing Notice of Assessment. The Association shall provide notice by first-class mail to each Unit Owner of any increase in the Regular Assessment or of any Special Assessment not less than thirty (30) nor more than sixty (60) days prior to the Assessment becoming due.

(g) Failure to Make Estimate. If, for any reason, the Board of Directors fails to make an estimate of the Common Expenses for any fiscal year, then the Regular Assessment made for the preceding fiscal year, together with any Special Assessment made pursuant to Section 4.03(a)(i), below, for that year, shall be assessed against each Owner and his or her Unit on account of the then current fiscal year, and installment payments (as hereinafter provided) based upon such automatic Assessment shall be payable on the regular payment dates established by the Board.

(h) Installment Payment. The Regular Assessment made against each Owner shall be due and payable in advance to the Association in equal monthly installments on the first day of each month or on such other date or dates as may be established from time to time by the Board of Directors. Installments of Regular Assessments shall be delinquent if not paid within fifteen (15) days of the due date as established by the Board.

Section 4.03. Special Assessments.

(a) Purposes for Which Special Assessments May Be Levied. Subject to the membership approval requirements set forth in subparagraph (b) below, the Board of Directors shall have the authority to levy Special Assessments against the Owners and their Units for the following purposes:

(i) Regular Assessment Insufficient in Amount. If, at any time, the Regular Assessment for any fiscal year is insufficient in amount due to extraordinary expenses not contemplated in the budget prepared for said fiscal year, then the Board of Directors shall levy and collect a Special Assessment, applicable to the remainder of such year only, for the purpose of defraying, in whole or in part, any deficit which the Association may incur in the performance of its duties and the discharge of its obligations hereunder.

(ii) Capital Improvements. The Board may also levy Special Assessments for additional capital Improvements within the Common Area (i.e., Improvements not in existence on the date of this Declaration that are unrelated to repairs for damage to, or destruction of, the existing Common Facilities). The Special Assessment power conferred hereunder is not

intended to diminish the Board's obligation to plan and budget for normal maintenance, and replacement repair of the Common Area or existing Common Facilities through Regular Assessments (including the funding of reasonable reserves) and to maintain adequate insurance on the Common Area and g Common Facilities in accordance with Article X, below.

(b) Special Assessments Requiring Membership Approval. The following Special Assessments require prior membership approval in accordance with Section 4.08, below: (i) any Special Assessments which, in the aggregate, exceed five percent (5%) of the Association's budgeted gross expenses for the fiscal year in which the Special Assessment(s) is/are levied; and (ii) any Special Assessments imposed pursuant to subparagraph (a)(i) of this Section when the Board has failed to distribute a budget to the Members within the time specified in Section 4.02(a), above. The foregoing Member approval requirements shall not apply, however, to any Special Assessment imposed to address any "emergency situation" as defined in Section 4.05, below.

(c) Allocation and Payment of Special Assessments. When levied by the Board or approved by the Members as provided above, the Special Assessment shall be divided among, assessed against and charged to each Owner and his or her Unit (including the Declarant as to any unsold or retained Units) in the same manner prescribed for the allocation of Regular Assessments pursuant to Section 4.02(d), above. The Special Assessment so levied shall be recorded on the Association's Assessment roll and notice thereof shall be mailed to each Owner.

Special Assessments for purposes described in subparagraph (a)(i) of this Section shall be due as a separate debt of the Owner and a lien against his or her Unit, and shall be payable to the Association in equal monthly installments during the remainder of the then current fiscal year. Special Assessments for purposes described in subparagraph (a)(ii) shall be due as a separate debt of the Owner and a lien against his or her Unit, and shall be payable in full to the Association within thirty (30) days after the mailing of such notice or within such extended period as the Board shall determine to be appropriate under the circumstances giving rise to the Special Assessment.

Section 4.04. Special Individual Assessments.

(a) Circumstances Giving Rise to Special Individual Assessments. In addition to the Special Assessments levied against all Owners in accordance with Section 4.03, above, the Board of Directors may impose Special Individual Assessments against an Owner in any of the circumstances described in subparagraphs (i) through (iii) below; provided, however, that no Special Individual Assessments may be imposed against an Owner pursuant to this section until the Owner has been afforded the notice and hearing rights to which the Owner is entitled pursuant to Section 13.06, below, and, if appropriate, has been given a reasonable opportunity to comply voluntarily with the Governing Documents. Subject to the foregoing, the acts and circumstances giving rise to liability for Special Individual Assessments include the following:

(i) Damage to Common Area or Common Facilities. In the event that any damage to, or destruction of, any portion of the Common Area or the Common Facilities, or any portion of any Unit which the Association is obligated to repair and maintain, is caused by the willful misconduct or negligent act or omission of any Owner, any member of his or her family,

or any of his or her tenants, guests, servants, employees, licensees or invitees, the Board shall cause the same to be repaired or replaced, and all costs and expenses incurred in connection therewith (to the extent not compensated by insurance proceeds) shall be assessed and charged solely to and against such Owner as a Special Individual Assessment.

(ii) Expenses Incurred in Gaining Member Compliance. In the event that the Association incurs any costs or expenses to: (A) accomplish the payment of delinquent Assessments; (B) perform any repair, maintenance or replacement to any portion of the Project that the Owner is responsible to maintain under the Governing Documents but has failed to undertake or complete in a timely fashion; or (C) otherwise bring the Owner and/or his or her Unit into compliance with any provision of the Governing Documents, the amount incurred by the Association (including reasonable fines and penalties duly imposed hereunder, title company fees, accounting fees, court costs and reasonable attorneys fees) shall be assessed and charged solely to and against such Owner as a Special Individual Assessment.

(iii) Required Maintenance With Respect to Separate Interests. As more particularly provided in Section 2.04, above, (and without limiting the generality of that Section), if any Unit or Exclusive Use Common Area is maintained so as to become a nuisance, or a fire or safety hazard for any reason, the Association shall have the right to enter the dwelling Owner's Unit or Exclusive Use Common Area, correct the condition and recover the cost of such action through imposition of a Special Individual Assessment against the offending Owner. Any entry on the property of any Owner by the Association shall be effected in accordance with Section 3.07(c), above.

(iv) Roof Repair or Replacement. In order to assure a uniformity of appearance of Buildings in the Project and to facilitate the prosecution of repair and maintenance work, the repair and replacement of the exterior roofing materials on Buildings in the Project shall be the responsibility of the Association pursuant to Section 7.02(b), below, and the cost of such work shall be recovered from, and levied against, only the Owners of Units in the Building or the Owners with the exclusive right to use a garage bay in the Garage Building where the roof repair or replacement work is undertaken.

(b) Levy of Special Individual Assessment and Payment. Once a Special Individual Assessment has been levied against an Owner for any reason described in subparagraph (a), above, such Special Individual Assessment shall be recorded on the Association's Assessment roll and notice thereof shall be mailed to the affected Owner. The Special Individual Assessment shall thereafter be due as a separate debt of the Owner payable in full to the Association within thirty (30) days after the mailing of notice of the Assessment.

(c) Limitation on Right to Lien Units For Special Individual Assessments. With the exception of Special Individual Assessments imposed by the Board of Directors to recover reasonable late payment penalties for delinquent Assessments and/or charges to reimburse the Association for its reasonable costs (including attorneys' fees) of collecting delinquent Assessments, Special Individual Assessments shall not be recoverable through the imposition of a lien against the Owner's Unit enforceable through foreclosure, but the same may be recovered by the Association through other legal processes. Special Individual Assessments relating to delinquent Assessments shall be subject to imposition of a lien and enforceable through

foreclosure or sale under a power of sale for failure of an Owner to pay such Assessment, all as more particularly provided in Section 4.10(b), below.

Section 4.05. Assessments to Address Emergency Situations.

(a) **Authority of Board to Impose Emergency Assessments.** The requirement of a membership vote to approve: (i) Regular Assessment increases in excess of twenty percent (20%) of the previous year's Regular Assessment; or (ii) Special Assessments which, in the aggregate, exceed five percent (5%) of the Association's budgeted gross expenses for the fiscal year in which the Special Assessment(s) is/are levied, shall not apply to Assessments necessary to address emergency situations ("Emergency Assessments"). For purposes of this Section, an emergency situation is any of the following:

(i) An extraordinary expense required by an order of a court.

(ii) An extraordinary expense necessary to repair or maintain the Common Areas or Common Facilities of the Project where a threat to personal safety is discovered.

(iii) An extraordinary expense necessary to repair or maintain the Common Areas or Common Facilities of the Project that could not have been reasonably foreseen by the Board in preparing and distributing the budget pursuant to Section 4.02(a), above; provided, however, that prior to the imposition or collection of an assessment under this subparagraph (iii), the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process. The Board's resolution shall be distributed to the Members together with the notice of assessment.

(b) **Payment of Emergency Assessments.** When levied by the Board the Emergency Assessment shall be divided among, assessed against and charged to each Owner and his or her Condominium (including the Declarant as to any unsold or retained Condominiums) in the same manner prescribed for the allocation of Regular Assessments pursuant to Section 4.02(d), above. The Emergency Assessment so levied shall be recorded on the Association's Assessment roll and notice thereof shall be mailed to each Owner. An Emergency Assessment shall be due as a separate debt of the Owner and shall be payable in full to the Association within thirty (30) days after the mailing of the notice of the Emergency Assessment or within such extended period as the Board shall determine to be appropriate under the circumstances giving rise to the Emergency Assessment. If an Emergency Assessment is not paid on or before the due date, the Assessment may be enforced in the manner provided in Section 4.10(b), below.

Section 4.06. Purpose and Reasonableness of Assessments. Each Assessment made in accordance with the provisions of this Declaration is hereby declared and agreed to be for use exclusively: (a) to promote the health, safety and welfare of individuals residing within the Project; (b) to promote the enjoyment and use of the Property and the Project by the Owners and their families, tenants, invitees, licensees, guests and employees; and (c) to provide for the repair, maintenance, replacement and protection of the Common Area and Common Facilities. Each and every Assessment levied hereunder is further declared and agreed to be a reasonable Assessment, and to constitute a separate, distinct and personal obligation (with respect to which a

separate lien may be created hereby, except as limited by subparagraph (iii) above) of the Owner of the Unit against which the Assessment is imposed that shall be binding on the Owner's heirs, successors and assigns; provided, however, that the personal obligation of each Owner for delinquent Assessments shall not pass to the Owner's successors in title unless expressly assumed by them. Subject to the limitations imposed by Section 4.10(b)(vi), below, which limit the right of the Association to impose a lien as a remedy for collecting most Special Individual Assessments, the Association shall also be entitled to collect delinquent Assessments through the pursuit of lien and foreclosure remedies, as more particularly provided in Section 4.10(b), subparagraphs (v) through (vii), below.

Section 4.07. Exemption of Certain Portions of the Property From Assessments. The following real property subject to this Declaration shall, unless devoted to the use as a residential Condominium Unit, be exempt from the Assessments and the lien thereof provided herein:

- (a) Any portion of the Property dedicated and accepted by a local public authority;
- (b) The Common Areas and Common Facilities of the Project; and
- (c) Any Unit owned by the Association.

Section 4.08. Notice and Procedure for Member Approval Pursuant to Sections 4.02 and 4.03. In the event that Member approval is required in connection with any increase or imposition of Assessments pursuant to Sections 4.02 and 4.03, above, the affirmative vote required to approve the increase shall be a Majority of a Quorum of the Members. The quorum required for such membership action shall be a majority of the Members. Any vote on an increase in the Regular Assessment or on the imposition of a Special Assessment that requires approval of the Members must be conducted by use of a secret ballot and that balloting process shall be conducted using the same procedures for the casting of ballots in the election of directors pursuant to Section 7.05 of the Bylaws.

Section 4.09. Maintenance of Assessment Funds.

(a) Bank Accounts. All sums received or collected by the Association from Assessments, together with any interest or late charges thereon, shall be promptly deposited in one or more insured checking, savings or money market accounts in a bank or savings and loan association selected by the Board of Directors. In addition, the Board shall be entitled to make prudent investment of reserve funds in insured certificates of deposit, money market funds or similar investments consistent with the investment standards normally observed by trustees. The Board and such officers or agents of the Association as the Board shall designate shall have exclusive control of said account(s) and investments and shall be responsible to the Owners for the maintenance at all times of accurate records thereof. The withdrawal of funds from Association accounts shall be subject to the minimum signature requirements imposed by California Civil Code section 1365.5 and Section 12.02 of the Bylaws. Any interest received on deposits shall be credited proportionately to the balances of the various Assessment fund accounts maintained on the books of the Association as provided in subparagraph (b), below.

(b) Expenditure of Assessment Funds. Except as provided below, the proceeds of each Assessment shall be used only for the purpose for which such Assessment was made, and

such funds shall be received and held in trust by the Association for such purpose. Notwithstanding the foregoing, the Board, in its discretion, may make appropriate adjustments among the various line items in the Board's approved general operating budget if the Board determines that it is prudent and in the best interest of the Association and its Members to make such adjustments. If the proceeds of any Special Assessment exceed the requirement of which such Assessment was levied, such surplus may, in the Board's discretion, be: (i) returned proportionately to the contributors thereof; (ii) reallocated among the Association's reserve accounts if any such account is, in the Board's opinion, underfunded; or (iii) credited proportionately on account of the Owners' future Regular Assessment obligations.

(c) Separate Accounts; Commingling of Funds. Except as otherwise provided in subparagraph (d), below, to preclude a multiplicity of bank accounts, the proceeds of all Assessments may be commingled in one or more accounts and need not be deposited in separate accounts so long as the separate accounting records described herein are maintained. For purposes of accounting, but without requiring any physical segregation of assets, the Association shall keep a separate accounting of all funds received by the Association in payment of each Assessment and of all disbursements made therefrom; provided, however, that receipts and disbursements of Special Assessments made pursuant to Section 4.03(a)(i), above, shall be accounted for together with the receipts and disbursements of Regular Assessments, and a separate accounting shall be maintained for each capital Improvement for which reserve funds for replacement are allocated.

Unless the Association is exempt from federal or state taxes, all sums allocated to capital replacement funds shall be accounted for as contributions to the capital of the Association and as trust funds segregated from the regular income of the Association or in any other manner authorized by law or regulations of the Internal Revenue Service and the California Franchise Tax Board that will prevent such funds from being taxed as income of the Association.

(d) Reserve Funds. As more particularly provided in Section 12.06 of the Association Bylaws, the Association Board is required by law to periodically identify the major components of the Project that the Association is obligated to repair, replace, restore or maintain which, as of the date of the study, have a remaining useful life of thirty (30) years or less. In the capital reserve analysis process, the Board is also obligated to identify the probable remaining useful life of the components identified in the study and to estimate the cost of repair, replacement, restoration, or maintenance of the components during and at the end of their useful life. The information developed in this capital reserve replacement analysis is then to be used by the Board as a component of preparing the annual budget of the Association. The Board shall not expend funds designated as reserve funds for any purpose other than the repair, restoration, replacement, or maintenance of, or for litigation involving the repair, restoration, replacement, or maintenance of, major components which the Association is obligated to repair, restore, replace, or maintain and for which the reserve fund was established. However, the Board may authorize the temporary transfer of money from a reserve fund to the Association's general operating fund to meet short term cash flow requirements or other expenses, provided the Board has provided notice to its Members of the Board's intent to consider the transfer in a notice of meeting that is provided to the Members in accordance with California Civil Code section 1365.05 and Section 8.05(c) of the Bylaws. This notice shall include the reasons why the transfer is needed, some of the options for repayment, and whether a Special Assessment may be considered. Furthermore,

if the Board authorizes the transfer, the Board must issue a written finding, recorded in the Board's minutes, explaining the reasons that the transfer is needed, and describing when and how the moneys will be repaid to the reserve fund.

If a short-term transfer is made, the transferred funds shall be restored to the reserve fund within one year of the date of the initial transfer, except that the Board may, after giving the same notice required for considering a transfer, and, upon making a finding supported by documentation that a temporary delay would be in the best interests of the Project, temporarily delay the restoration. The Board of Directors shall exercise prudent fiscal management in delaying restoration of these funds and in restoring the expended funds to the reserve account, and shall, if necessary, levy a Special Assessment to recover the full amount of the expended funds within the time limits required by this subparagraph (d). This Special Assessment is subject to the Member approval requirements of California Civil Code section 1366 and Section 4.03(b), above, if the aggregate amount of the Special Assessment exceeds five percent (5%) of the budgeted gross expenses of the Association for the year in which the Special Assessment is imposed. The Board may, at its discretion, extend the date the payment on the Special Assessment is due. Any extension shall not prevent the Board from pursuing any legal remedy to enforce the collection of an unpaid Special Assessment.

When the decision is made to use reserve funds or to temporarily transfer money from the reserve fund to pay for litigation, the Association shall notify the Members of that decision in the next available mailing to all Members pursuant to California Corporations Code section 5016, and of the availability of an accounting of those expenses. The Association shall make an accounting of expenses related to the litigation on at least a quarterly basis. The accounting shall be made available for inspection by Members at the Association's principal office.

(e) Limitations on Association's Authority to Assign or Pledge Assessment Obligations. The Association may not voluntarily assign or pledge its right to collect payments or Assessments, or to enforce or foreclose a lien to a third party, except when the assignment or pledge is made to a financial institution or lender chartered or licensed under federal or state law, when acting within the scope of that charter or license, as security for a loan obtained by the Association. However, the restrictions imposed by this subparagraph (e) shall not restrict the right or ability of the Association to assign any unpaid obligations of a former Member to a third party for purposes of collection.

Section 4.10. Collection of Assessments; Enforcement of Liens. Installments of Regular Assessments shall be delinquent if not paid within fifteen (15) days of the due date as established by the Board. Special Assessments, Special Individual Assessments, and Emergency Assessments shall be delinquent if not paid within the times prescribed in Sections 4.03(c), 4.04(b) and 4.05(b), respectively. When an Assessment becomes delinquent, the amount thereof may, at the Board's election, bear interest at the maximum rate allowed by law commencing thirty (30) days after the due date until the same is paid. In addition to the accrual of interest, the Board of Directors is authorized and empowered to promulgate a schedule of reasonable late charges for any delinquent Assessments, subject to the limitations imposed by California Civil Code sections 1366(c) and 1366.1 or comparable successor statutes. Once an Assessment becomes delinquent, the Association may elect to one or both of the following remedies:

(a) Enforcement of An Owner's Personal Obligation to Pay Assessments. The Association may bring a legal action directly against the Owner for breach of the Owner's personal obligation to pay the Assessment and in such action shall be entitled to recover the delinquent Assessment or Assessments, accompanying late charges, interest, costs and reasonable attorneys' fees. Commencement of a legal action shall not constitute a waiver of any lien rights as described in subparagraph (b), below.

(b) Imposition and Enforcement of Assessment Lien and Limitations Thereon. Except as otherwise provided in subparagraph (b)(ix), below, with respect to the limitation on the imposition of liens for Special Individual Assessments, the Association may impose a lien against the Owner's Condominium for the amount of the delinquent Assessment or Assessments, plus any reasonable costs of collection (including reasonable attorneys fees), late charges and interest by taking the following steps:

(i) Issuance of Delinquency Notice; Contents. At least thirty (30) days prior to recording a lien upon the Owner's Condominium to collect a delinquent Assessment, the Association shall notify the Owner in writing by certified mail of the following (the "Delinquency Notice"):

(A) A general description of the collection and lien enforcement procedures of the Association and the method of calculation of the amount, a statement that the Owner of the Condominium has the right to inspect the Association records, pursuant to Section 8333 of the Corporations Code, and the following statement in 14-point boldface type, if printed, or in capital letters, if typed: "IMPORTANT NOTICE: IF YOUR UNIT IS PLACED IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR ASSESSMENTS, IT MAY BE SOLD WITHOUT COURT ACTION."

(B) An itemized statement of the charges owed by the Owner, including items on the statement which indicate the amount of any delinquent Assessments, the fees and reasonable costs of collection, reasonable attorneys' fees, any late charges, and interest, if any.

(C) A statement that the Owner shall not be liable to pay the charges, interest, and costs of collection previously levied by the Association if it is subsequently determined that the Assessment was paid on time.

(D) The right of the notified Owner to request a meeting with the Board as provided in subparagraph (iv), below.

(E) The right to dispute the assessment debt by submitting a written request for dispute resolution to the Association pursuant to the Association's "meet and confer" program pursuant to California Civil Code sections 1363.810 et seq.

(F) The right of the noticed Member to request alternative dispute resolution with a neutral third party pursuant to California Civil Code section 1369.510 et seq. before the Association may initiate foreclosure against the Owner's Condominium, except that binding arbitration shall not be available if the Association intends to initiate a judicial foreclosure, rather than a non-judicial foreclosure.

(ii) Application of Payments. Any payments made by the Condominium Owner toward the delinquent Assessment shall first be applied to the Assessments that are owed at the time the payment is made; and only after the Assessments owed are paid in full shall the payments be applied to the fees and the costs of collection, attorneys' fees, late charges or interest. When an Owner makes a payment, the Owner may request a receipt and the Association shall provide it. The receipt shall indicate the date of payment and the person who received the payment on behalf of the Association. The Association shall provide its Members with a mailing address for overnight payment of Assessments.

(iii) Pre-Lien Offer to Meet and Confer with the Owner. Prior to recording a lien for delinquent assessments, the Association shall offer the Owner and, if so requested by the Owner, participate in dispute resolution pursuant to the Association's meet and confer program that is required by California Civil Code sections 1363.810 et seq.

(iv) Rights of Owners to Propose Payment Plans. An Owner may also submit a written request to meet with the Board to discuss a payment plan for the delinquent assessment. This request must also be made within fifteen (15) days of the postmark of the Delinquency Notice. The Association shall provide the Owners with the standards for payment plans, if such standards have been adopted. So long as a timely request for a meeting has been tendered, the Board shall meet with the Owner in executive session within forty-five (45) days of the postmark of the request for a meeting, unless there is no regularly-scheduled Board meeting within that period, in which case the Board may designate a committee of one or more Members to meet with the Owner. Payment plans may incorporate any Assessments that accrue during the payment plan period. Payment plans shall not impede an Association's ability to record a lien on the Owner's Condominium to secure payment of delinquent Assessments. Additional late fees shall not accrue during the payment plan period if the Owner is in compliance with the terms of the payment plan. In the event of a default on any payment plan, the Association may resume its efforts to collect the delinquent Assessments from the time prior to entering into the payment plan.

(v) Association Assessment Lien Rights. Except as provided in subparagraph (ix), below (relating to Special Individual Assessments), the amount of the Assessment, plus any costs of collection, late charges, and interest assessed in accordance with California Civil Code section 1366 shall be a lien on the Owner's Condominium from and after the time the Association causes to be recorded in the Office of the County Recorder a Notice of Delinquent Assessment, which shall state the amount of the Assessment and other sums imposed in accordance with California Civil Code section 1366, a legal description of the Owner's Condominium against which the Assessment and other sums are levied, the name of the record owner of the Owner's Condominium against which the lien is imposed. The itemized statement of the charges owed by the Owner that is required by subparagraph (b)(i)(B), of this Section 4.10 shall be recorded together with the Notice of Delinquent Assessment. The decision to record a lien for delinquent Assessments shall be made only by the Board of Directors of the Association and may not be delegated to an agent of the Association. The Board shall approve the decision by a majority vote of the Board in an open meeting and the vote shall be recorded in the minutes of the meeting.

In order for the lien to be imposed by non-judicial foreclosure as provided in subparagraph (vii), below, the Notice of Delinquent Assessment shall state the name and address of the trustee authorized by the Association to enforce the lien by sale. The Notice of Delinquent Assessment shall be signed by any officer of the Association or by the person designated by the Association for that purpose or if no one is designated, by the president of the Association. A copy of the recorded Notice of Delinquent Assessment shall be mailed by certified mail to every person whose name is shown as an Owner of the Condominium in the Association's records, and the notice shall be mailed no later than ten (10) calendar days after Recordation. 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, including Notices of Delinquent Assessments, required by California Civil Code section 1367.1 to the secondary address that is specified.

(vi) Priority of Assessment Liens. A lien created pursuant to subparagraph (v), above or subparagraph (ix), below, shall be prior to all other liens recorded against the Owner's Condominium subsequent to the Notice of Delinquent Assessment, except as described in Section 4.12, below.

(vii) Enforcement of Assessment Liens. Subject to the limitations of this Section 4.10(b) and in particular this subparagraph (vii), following the recording of a Notice of Delinquent Assessment, the Association's lien may be enforced in any manner permitted by law, including sale by the court, sale by the trustee designated in the Notice of Delinquent Assessment, or sale by a trustee substituted pursuant to California Civil Code section 2934a. Any sale by the trustee shall be conducted in accordance with California Civil Code sections 2924, 2924b and 2924c applicable to the exercise of powers of sale in mortgages and deeds of trusts. The fees of a trustee may not exceed the amounts prescribed in California Civil Code sections 2924c and 2924d.

The following specific limitations shall apply to the pursuit of foreclosure remedies:

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

(B) Prior to initiating a foreclosure for delinquent Assessments, the Association shall offer the Owner and, if so requested by the Owner, participate in dispute resolution pursuant to the Association's meet and confer program that is required by California Civil Code section 1363.810 et seq. or alternate dispute resolution with a neutral third party pursuant to California Civil Code section 1369.510 et seq. The decision to pursue dispute resolution or a particular type of alternative dispute resolution shall be the choice of the Owner,

except that binding arbitration shall not be available if the Association intends to initiate judicial foreclosure, rather than non-judicial foreclosure.

(C) If the Board votes to commence foreclosure proceedings to collect delinquent Assessments pursuant to this subparagraph (vii), the Board shall provide notice of that decision by personal service to an Owner of the Condominium who occupies the Unit or to the Owner's legal representative. If the Owner does not occupy the Unit that is the subject of the foreclosure proceeding, the Board shall provide written notice to the Owner by first-class mail, postage prepaid, at the most current address for the Owner that is shown on the books of the Association. In the absence of written notification by the Owner to the Association, the address of the Owner's Unit may be treated as the Owner's mailing address.

(D) Neither judicial nor non-judicial foreclosure remedies may be utilized by the Association to collect delinquent Assessments until the delinquent Assessment amount, exclusive of any accelerated assessments, late charges, fees, costs of collection, attorney's fees, and interest, equals or exceeds \$5,000.00 or the Assessments are more than twelve (12) months delinquent. Delinquent Assessments in a smaller amount may not be collected through the use of foreclosure remedies, but may be collected through the use of any of the following other means: (aa) a civil action in small claims court; (bb) by recording a lien on the Owner's Condominium (subject to the restrictions on foreclosure of that lien); or (cc) any other manner provided by law, other than judicial or non-judicial foreclosure. If the Association elects to record a lien for delinquent Assessments, subparagraphs (b)(iii) and (b)(v), above shall continue to apply. The limitations on the use of foreclosure remedies set forth in this subparagraph (D) do not apply to assessment collection actions against the Declarant in its capacity as an Owner when the Declarant's Assessment obligations are delinquent.

(viii) Foreclosed Owner's Rights of Redemption. A non-judicial foreclosure by the Association of an Owner's interest in his or her Condominium to collect a debt for delinquent Assessments shall be subject to a right of redemption. The redemption period within which the foreclosed Condominium may be redeemed from a foreclosure sale under this subparagraph (viii) (which reflects California Civil Code section 1367.4(c)(4)) ends ninety (90) days after the sale.

(ix) Limitation on Authority to Use Lien and Foreclosure Remedies to Collect Special Individual Assessments. For so long as any Units in the Project are being sold under authority of a Department of Real Estate Public Report, a Special Individual Assessment or other monetary charge imposed by the Association: (A) as a means of reimbursing the Association for costs incurred by the Association in the repair of damage to Common Area Improvements or landscaping for which the Member or the Member's guests or tenants were responsible; or (B) as a disciplinary measure for failure of a Member to comply with the Governing Documents (except for reasonable late payment penalties, interest, and other reasonable costs of collection authorized by California Civil Code section 1366) may not be characterized nor treated as an Assessment that may become a lien against the Owner's Condominium enforceable by the sale of the interest under California Civil Code sections 2924, 2924b and 2924c.

Once the Association is no longer subject to the regulatory jurisdiction of the Department of Real Estate, the following categories of Special Individual Assessments may be collected

through the use of lien and foreclosure remedies in accordance with subparagraphs (v) through (viii), above: (A) Special Individual Assessments or other monetary charges imposed by the Association as a means of reimbursing the Association for costs incurred in the repair of damage to Common Areas and Common Facilities for which the Member or the Member's guests or tenants were responsible; and (B) Special Individual Assessments imposed to recover late charges, reasonable costs of collection and interest assessed in accordance with California Civil Code section 1366(e).

(x) Obligation to Record Lien Releases. If it is determined that a lien previously recorded against a Condominium was recorded in error, the party who recorded the lien, within twenty-one (21) calendar days, shall record or cause to be Recorded in the Office of the County Recorder a lien release or notice of rescission and provide the Owner of the Condominium with a declaration that the lien filing or recording was in error and a copy of the lien release or notice of rescission. If the determination that the lien was recorded in error is the result of dispute resolution meet and confer proceedings conducted pursuant to California Civil Code section 1363.810 or alternative dispute resolution with a neutral third-party pursuant to California Civil Code section 1369.510, the Association shall also be obligated to promptly reverse all late charges, fees, interest, attorney's fees, costs of collection, costs imposed for the issuance of the notices prescribed by California Civil Code section 1367.1, and costs of recording the lien release and all costs incurred in the mediation or alternative dispute resolution process.

In addition, within twenty-one (21) days of the payment of the sums specified in the Notice of Delinquent Assessment, the Association shall record or cause to be Recorded in the Office of the County Recorder a lien release or notice of rescission and provide the Owner of the Condominium a copy of the lien release or notice that the delinquent Assessment has been satisfied.

(xi) Effect of Failure to Adhere to Lien Restrictions. If the Association fails to comply with the procedures set forth in this Section 4.10(b) prior to recording a lien for delinquent assessments, the Association shall recommence the required notice process prior to recording a lien. Any costs associated with recommencing the notice process shall be borne by the Association and not by the Owner of the Condominium to which the assessments pertain.

The provisions of this Section 4.10(b) are intended to comply with the requirements of California Civil Code sections 1367.1, 1367.4 and 1367.5, as in effect on July 1, 2006. If these sections of the California Civil Code are amended or modified in the future in a way that is binding on the Association and causes this Section to be in conflict with applicable law, the provisions of this Section 4.10(b) automatically shall be amended or modified in the same manner by action of the Board of Directors without necessity of approval of the amendment by the Members so long as all Members are given a copy of the recorded amendment and the decision to approve the amendment is made at a duly noticed open meeting of the Board of Directors.

Section 4.11. Transfer of Condominium by Sale or Foreclosure. The following rules shall govern the right of the Association to enforce its Assessment collection remedies following the sale or foreclosure of a Condominium: