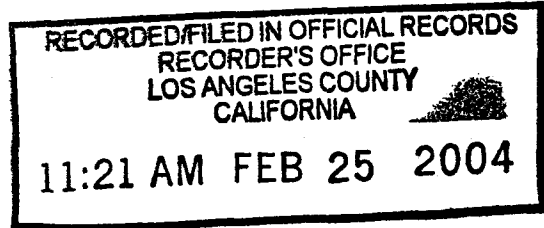


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**FIRST RESTATED DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
BARCELONA OF PASADENA CONDOMINIUM ASSOCIATION**

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**FIRST RESTATED DECLARATION OF COVENANTS, CONDITIONS, AND  
RESTRICTIONS OF BARCELONA OF PASADENA CONDOMINIUM ASSOCIATION**

10

The Declaration of Covenant, Conditions, and Restrictions for **BARCELONA OF PASADENA CONDOMINIUM ASSOCIATION**, executed by **BARCELONA APARTMENTS**, a California corporation ("Declarant"), and recorded on March 4, 1993 as Instrument No. 93-416281, and amended by a First Amendment thereto recorded on September 8, 1993, as Instrument No. 93-1743821, and further amended by a Second Amendment thereto recorded on March 9, 1995, as Instrument No. 95-364508, all of Official Records of Los Angeles County, California (collectively, the "Original Declaration") are hereby consolidated into this single Declaration covering the Properties commonly known as 85 North Madison Avenue, Pasadena, California 91101 and are amended, consolidated and restated in their entirety to read as follows:

**RECITALS**

[R1] 1. Declarant was the original owner of that certain real property ("Properties") located in the City of Pasadena, County of Los Angeles, State of California, commonly known as 85 North Madison Avenue, Pasadena, California 91101 and is more particularly described as follows:

Those portions of Lots 1,2,3,4 of Davis & Farris Subdivision of the Northern portion of Lot 10, in Block "D" of the San Pasqual Tract, as per Map Recorded in Book 16, Page 93, Miscellaneous Records of said County described as follows:

Beginning at a point of intersection of the North line of Herkimer Street, with the West line of Madison Avenue, 100 feet; thence West parallel with the North line of Herkimer Street, 145 feet; thence South parallel with the West line of Madison Avenue, 100 feet to the North line of Herkimer Street; thence East along the North line of Herkimer Street, 145 feet to the point of beginning.

[R2] 2. Declarant conveyed the Properties, subject to certain easements, protective covenants, conditions, restrictions, reservations, liens and charges as set forth in the Original Declaration referred to above, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of Properties and all of which shall run with the Properties and be binding on all parties having or acquiring any

right, title or interest in the Properties, or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

[R3] 3. It was the further intention of the Declarant to sell and convey residential Condominiums to the Owners, subject to the protective covenants, conditions, restrictions, limitations, reservations, grants of easements, rights, rights-of-way, liens, charges and equitable servitudes between Declarant and such Owners which are set forth in this Declaration and which are intended to be in furtherance of a general plan for the subdivision, development, sale and use of the Properties in furtherance of a plan of condominium ownership as described in section 1351(e) of the California Civil Code. Finally, it was the intention of Declarant that the "Common Areas" and "Common Facilities" be owned and maintained by the Association, but reserved exclusively for the use and enjoyment of the Members of the Association, their tenants, lessees, guests and invitees, all subject to the terms and conditions of the Governing Documents.

[R4.1] 4. On January 12, 2004, 67% percent of the Owners of Condominiums within the Properties voted by written ballot to amend, consolidate and restate the Original Declarations, all in accordance with the procedures for amendment set forth in the Original Declarations. It was the intention of said Owners to replace the Original Declarations, in their entirety, with the recordation of this Declaration. The Owners' action to amend and restate the Original Declarations as set forth herein and the fact that the requisite percentage of affirmative votes required in the Original Declarations was achieved, is attested by the execution of this First Restated Declaration by duly authorized officers of the Association, as required by California Civil Code section 1355(a). As so amended and restated, the easements, covenants, restrictions and conditions set forth herein shall run with the Properties and shall be binding upon all parties having or acquiring any right, title or interest in the Properties or any portion thereof, and shall inure to the benefit of each Owner thereof.

## ARTICLE I

### Definitions

[1.1] **Section 1. "Architectural Committee"** means the committee created in accordance with Article V of this Declaration.

[1.2] **Section 2. "Articles"** means the Articles of Incorporation of **BARCELONA OF PASADENA CONDOMINIUM ASSOCIATION**, which are filed in the Office of the California Secretary of

State, as such Articles may be amended from time to time.

[1.3] **Section 3. "Assessment"** means any Regular, Special or Special Individual Assessment made or assessed by the Association against an Owner and his or her Condominium in accordance with the provisions of Article IV of this Declaration.

[1.4] **Section 4. "Association"** means **BARCELONA OF PASADENA CONDOMINIUM ASSOCIATION**, a California nonprofit corporation (formed pursuant to the Nonprofit Mutual Benefit Corporation Law of the State of California), its successors and assigns. The Association is an "association" as defined in California Civil Code section 1351(a).

[1.5] **Section 5. "Association Rules"** means the rules, regulations and policies adopted by the Board of Directors of the Association, pursuant to Article III, section 7 of this Declaration, as the same may be in effect from time to time.

[1.6] **Section 6. "Board of Directors"** or "Board" means the Board of Directors of the Association.

[1.7] **Section 7. "Bylaws"** means the Bylaws of the Association, as such Bylaws may be amended from time to time.

[1.8] **Section 8. "City"** means the City of Pasadena and its various departments, divisions, employees and representatives.

[1.9] **Section 9. "Common Area"** means the entire Project and Unit 7, except all other Units as defined in Article I, section 29.

Unless the context clearly indicates a contrary intent, any reference herein to the "Common Areas" shall also include any Common Facilities located thereon.

The basement, excepting Module B, is designated as "Common Area". The Association is not responsible for personal items of Owners or their Tenants which are stored in the basement.

[1.10] **Section 10. "Common Expense"** means any use of Common Funds authorized by Article IV hereof and Article IX of the Bylaws and includes, without limitation: (a) All expenses or charges incurred by or on behalf of the Association for the management, maintenance, administration, insurance, operation, repairs, additions, alterations or reconstruction of the Common Area, Common Facilities, (b) all expenses or charges reasonably incurred to procure insurance for the protection of the

Association and its Board of Directors, (c) any amounts reasonably necessary for reserves for maintenance, repair and replacement of the Common Areas and Common Facilities, and for nonpayment of any Assessments, and (d) the use of such funds to defray the 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 the Governing Documents. 13

[1.11] **Section 11. "Common Facilities"** means the trees, hedges, plantings, lawns, shrubs, landscaping, fences, utilities, pipes, lines, lighting fixtures, building, structures and other facilities constructed or installed, or to be constructed or installed, or currently located within the Common Area.

[1.12] **Section 12. "Condominium"** means an estate in real property as described in the California Civil Code sections 783 and 1351(f) consisting of an undivided interest as a tenant in common in all or any portion of the Common Area, together with a separate fee interest in a Unit and any other separate interests in the real property as are described in this Declaration, in the Condominium Plan, or in the deed conveying the Condominium.

[1.13] **Section 13. "Condominium Plan"** means a condominium plan recorded pursuant to California Civil Code section 1351(e) respecting the Project, and any amendments to the plan.

[1.14] **Section 14. "County"** means the County of Los Angeles, State of California, and its various departments, divisions, employees and representatives.

[1.15] **Section 15. "Declarant"** means the original developer of the Properties, namely **BARCELONA APARTMENTS**, a California corporation.

[1.16] **Section 16. "Declaration"** means this instrument, as it may be amended from time to time. The "Original Declarations" means and refer[s] to the document referenced in the Preamble to this Declaration together with all amendments and annexations thereto, adopted prior to adoption of this Declaration.

[1.17] **Section 17. "Governing Documents"** is a collective term that means and refers to this Declaration and to the Articles, the Bylaws, and the Association Rules.

[1.18] **Section 18. "Improvement"** includes all structures and appurtenances thereto of every type and kind, including but not limited to, buildings, walkways, sprinkler pipes, driveways, screening, walls, block walls, floors, ceilings, plumbing,

heating and air conditioning equipment and fixtures, windows, water heaters, retaining walls, awnings, stairs, landscaping, hedges, windbreaks, the exterior surfaces of any visible structure and the paint on such surfaces, planted trees and shrubs, poles, signs, exterior air conditioning and water softener fixtures or equipment or any structure of any kind. 14

[1.19] **Section 19. "Member"** means every person or entity who holds a membership in the Association and whose rights as a Member are not suspended pursuant to Article XIV, section 6 hereof.

[1.20] **Section 20. "Mortgage"** means any security device encumbering all or any portion of the Properties, including any deed of trust. "Mortgagee" shall refer to a beneficiary under a deed of trust as well as to a mortgagee in the conventional sense.

[1.21] **Section 21 "Owner"** means any person, firm, corporation or other entity which owns a fee simple interest in any Condominium. The term "Owner" shall include the Declarant for so long as the Declarant possesses any Condominium within the Properties, and, except where the context otherwise requires, the family, guests, tenants and invitees of an Owner.

[1.22] **Section 22. "Owner of Record"** and "Member of the Association" include an Owner and mean any person, firm, corporation or other entity in which title to a Condominium is vested as shown by the official records of the Office of the County Recorder.

[1.23] **Section 23. "Project"** means the Properties and the improvements located thereon which are intended to create a condominium project as described in California Civil Code section 1351(f).

[1.24] **Section 24. "Properties"** means all parcels of real property (Common Area and Condominium Units) described in recital "R1" hereof, together with all buildings, structures, utilities, Common Facilities, and other improvements located thereon or hereafter constructed or installed thereon, and all appurtenances thereto.

[1.25] **Section 25. "Regular Assessment"** means an Assessment levied on an Owner and his or her Condominium in accordance with Article IV, section 2 hereof.

[1.26] **Section 26. "Single Family Residential Use"** means

occupation and use of a Unit for single family dwelling purposes in conformity with this Declaration and the requirements imposed by applicable zoning or other applicable laws or governmental regulations limiting the number of persons who may occupy single family residential dwellings. The Units which are singles may be occupied by no more than one (1) person. The Units which are one (1) bedrooms may be occupied by no more than two (2) persons. The restrictions on occupancy imposed by this paragraph are intended to avoid an overburdening of Common Areas and Common Facilities and overtaxing the aged infrastructure of the Properties. A listing of the unit types and corresponding unit numbers is attached as Exhibit "A".

[1.27] **Section 27. "Special Assessment"** means an Assessment levied on an Owner and his or her Condominium in accordance with Article IV, section 3 hereof.

[1.28] **Section 28. "Special Individual Assessment"** means an Assessment made against an Owner and his or her Condominium in accordance with Article IV, section 4 hereof.

[1.29] **Section 29. "Unit"** means the elements of a Condominium that are not owned in common with the Owners of Condominiums in the Project, such Units and their respective boundaries being shown and particularly described in the Condominium Plan, deeds conveying Condominiums, and this Declaration. "Unit" does not include other interests in real property that are less than estates in real property, such as exclusive or nonexclusive easements. In interpreting deeds and plans, the existing physical boundaries of a Unit, or of a Unit reconstructed in substantial accordance with the original plan, shall be conclusively presumed to be its boundaries, rather than the description expressed in the deed or Condominium Plan or in the deed and those of the building and regardless of settling or lateral movement of the building. Whenever reference to a Unit is made in this Declaration, in the Condominium Plan, in any deed, or elsewhere, it shall be assumed that such reference is made to the Unit as a whole, including each of its component elements.

## ARTICLE II

### Property Rights and Obligations of Owners

[2.1] **Section 1. Elements of Condominium.** Ownership of each Condominium within the Project includes a Unit; an undivided interest in the Common Area ratio, which is specified in the deed from Declarant to each Owner and which undivided interest cannot be altered or changed as long as the prohibition against

severability of component interests in a Condominium remains in effect as provided in Article II, section 1 of this Declaration; a membership in the Association; and any exclusive or nonexclusive easement or easements appurtenant to such Condominium over the Common Area as described in the Declaration, the Condominium Plan and the deed to the Condominium.

**[2.2] Section 2. Owners' Nonexclusive Easements of Enjoyment.**

Every Owner shall have a nonexclusive right and easement of enjoyment in and to the Common Areas within the Properties, including ingress and egress to and from his or her Condominium, which shall be appurtenant to and shall pass with the title to every Condominium, subject to the following rights and restrictions:

(a) The right of the Association to adopt Association Rules as provided in Article III, section 7 hereof, regulating the use and enjoyment of the Properties for the benefit and well-being of the Owners in common, and, in the event of the breach of such rules or any provision of any Governing Document by any Owner or Tenant, to temporarily suspend the voting rights and/or right to use the common facilities, by any Owner and/or the Owner's Tenants and guests, subject to compliance with the due process requirements of Article XIV, section 6 hereof.

(b) The right of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the common area and common facilities and in aid thereof to mortgage said property; provided, however, that the rights of any such Mortgagee in said properties shall be subordinate to the rights of the Owners hereunder; and further provided that any such indebtedness shall be considered an expense of the Association for purposes of the Special Assessment provisions of Article IV, section 3 hereof.

(c) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed by the Owners; provided, however, that no such dedication or transfer shall be effective unless an instrument, approved by at least two-thirds of the voting power of the Members, and their first Mortgagees consenting to such dedication or transfer has been recorded. Furthermore, no dedication shall be permitted that impairs the ingress and egress to any Unit. Said instrument may be executed in counterparts so long as each counterpart is in recordable form.

**[2.3] Section 3. Persons Subject to Governing Documents.** All present and future Owners, tenants and occupants of Units within



the Properties shall be subject to, and shall comply with, each and every provision of the Governing Documents, as the same or any of them shall be amended from time to time, unless a particular provision is specifically restricted in its application to one or more of such classes of persons (i.e., Owners, tenants, invitees, etc.). The acceptance of a deed to any Condominium, the entering into a lease, sublease or contract of sale with respect to any Unit, or the occupancy of any Unit shall constitute the consent and agreement of such Owner, tenant or occupant that each and all of the provisions of this Declaration, as the same or any of them may be amended from time to time, shall be binding upon said person and that said person will observe and comply with the Governing Documents.

**[2.4] Section 4. Delegation of Use.**

(a) Delegation of Use and Leasing of Units. Any Owner may delegate the Owner's rights to use and enjoy the Common Area and Common Facilities to members of the Owner's family or to the Owner's tenants, lessees or contract purchasers who reside in the Owner's Unit. Such delegation of use or leasing of units, excepting Unit 1, shall be for Single Family Residential Use as it is defined in this Declaration, and for a term not less than 90 days.

During any period when a Unit has been rented or leased, the Owner-lessor, his or her family, guests and invitees shall not be entitled to use and enjoy the Common Areas or Common Facilities of the Properties, except to the extent reasonably necessary to perform the Owner's responsibilities as a lessor of the Unit, provided that this restriction shall not apply to an Owner-lessor who is contemporaneously residing in another Unit within the Properties.

Any rental or lease of a Unit shall be subject to the provisions of the Governing Documents, including CC&Rs, Bylaws and Rules and Regulations, all of which shall be deemed incorporated by reference in the lease or rental agreement. Each Owner-lessor shall provide any tenant or lessee with a current copy of all Governing Documents and shall be responsible for compliance by the Owner's tenant or lessee with all of the provisions of the Governing Documents during the tenant's/lessee's occupancy and use of the Unit.

(b) Security Deposit. Through its rule-making power, exercised in accordance with Article III, section 7 hereof, the Board of Directors is hereby authorized and empowered to establish and implement an Association security deposit procedure to protect the Association, the Common Area and Common Facilities from negligence, damage and/or destruction caused by the tenants/

lessees of any Owner, their families and guests. Said security deposit, if required, shall be payable by the owner and shall be fixed in an amount not to exceed the greater of \$400.00 or one month's Regular Assessment, whichever is greater, and shall be held by the Association in a separate security deposit fund in the name of the Association. Within two weeks following receipt of notice from the Owner-lessor that the Unit is no longer being leased, the Association shall furnish the Owner with an itemized statement indicating the basis for, and the amount of, any security received and the disposition of the security and shall return the remaining portion of the security to the Owner.

(c) Recoverable Costs and Expenses. In the event of (i) damage to, or destruction of, Common Areas or Common Facilities by a tenant/lessee or the Owner of a leased Unit; (ii) the imposition of a fine or penalty against an Owner-lessor as a result of any act or omission of the Owner's tenant or lessee.

The Association shall be entitled to apply the security deposit to the Recoverable Costs and Expenses. The Owner-lessor shall thereupon immediately reimburse the security deposit fund in an amount equal to the sums thus applied. Upon termination of the lease and notification to the Association of such termination, the security deposit, or the balance thereof, shall be refunded to the Owner without interest. As a condition to the Association's right to apply security deposit funds in the manner provided above, the Association must give the Owner-lessor the notice and hearing rights specified in this Declaration.

**[2.5] Section 5. Obligations of Owners.** Owners of Condominiums within the Properties shall be subject to the following:

(a) Owner's Duty to Notify Association of Sale, Lease or Rental of Condominium. Within five (5) business days after the consummation of the sale, transfer, lease or rental of any condominium under circumstances whereby the transferee becomes an Owner, lessee/tenant or contract purchaser thereof, the transferee, or the Owner in the case of a lease or rental, shall notify the Association, or its management company, in writing of such sale, lease or rental. Such notification shall set forth and include:

- (1) Re: Lease or Rental of Units - A copy of the Lease or Rental Agreement executed by the Owner-lessor and tenant/lessee. All Leases or Rental Agreements shall include a provision providing that any violation of the Association's Governing Documents shall constitute a breach of the Lease or Rental Agreement authorizing the Owner to bring an Unlawful Detainer action against the

tenant/lessee;

- (2) Re: Lease or Rental of Units - A written statement signed by each and every adult tenant/lessee agreeing to be fully bound by the Association's Governing Documents, including, but not limited to, all association disciplinary powers and procedures;
- (3) The names of the transferee or lessee and the transferor or lessor;
- (4) The unit number of the condominium purchased or leased by the transferee;
- (5) The number and names of all persons who intend to occupy said Unit;
- (6) The transferee's mailing address and telephone number; and

(b) Contract Purchasers. A contract seller of a Condominium must delegate his or her voting rights as a Member of the Association and seller's right to use and enjoy the Common Area and Common Facilities to any contract purchaser in possession of the property subject to the contract of sale. Notwithstanding the foregoing, the contract seller shall remain liable for any default in the payment of Assessments by the contract purchaser until title to the property sold has been transferred to the purchaser.

(c) Notification Regarding Governing Documents.

(i) As more particularly provided in the 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 Condominium, the Owner thereof must give the prospective purchaser (A) a current copy of the Governing Documents; (B) the Association's most current financial statement; (C) a true statement in writing from the Association ("delinquency statement") as to the amount of any delinquent Assessments, together with information relating to late charges, attorneys' fees, interest, and reasonable costs of collection which, as of the date the statement is issued, are or may become a lien on the Condominium being sold; (D) a true statement in writing from an authorized representative of the Association as to the amount of the Association's current Regular and Special Assessments (if any) and fees; and (E) a notice of any change in

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the Association's current Regular or Special Assessments and fees that have been approved by the Board but that have not become due and payable as of the date that the information is provided.

(ii) The Association shall, within 10 days of the mailing or delivery of a request for the information described in subparagraph (c)(i), above, provide the Owner with a copy of the current Governing Documents, together with the delinquency statement referred to in the immediately preceding paragraph. The Association shall be entitled to impose a fee for providing the Governing Documents and delinquency statement equal to (but not more than) the reasonable cost of preparing and reproducing the requested materials. In addition, the Association may impose a reasonable fee to cover its actual costs incurred to change its records in connection with a change of ownership of Condominium.

(d) Payment of Assessments and Compliance With Rules. Each Owner shall pay when due each Regular, Special and Special Individual Assessment levied against the Owner and his or her Condominium 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.

(e) Discharge of Assessment Liens. Each Owner shall promptly discharge any Assessment lien that may hereafter become a charge against his or her Condominium.

(f) 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 (f) shall apply to all obligations, duties and responsibilities of Owners as set forth in this Declaration, including, without limitation, the payment of all Assessments.

(g) Prohibition on Avoidance of Obligations. No Owner, by non-use of the Common Area or Common Facilities, abandonment of the Owner's Condominium or otherwise may avoid the burdens and obligations imposed on such Owner by the Governing Documents, including, without limitation, the payment of Assessments levied against the Owner and his or her Condominium pursuant to this Declaration.

(h) Termination of Obligations. Upon the conveyance, sale, assignment or other transfer of a Condominium to a new Owner, the transferor-Owner shall not be liable for any Assessments levied with respect to such Condominium which become due after the date

of recording of the deed evidencing said transfer and, upon such recording, all Association membership rights possessed by the transferor by virtue of the ownership of said Condominium shall cease. 21

### ARTICLE III

#### Homeowners Association

**[3.1] Section 1. Association Membership.** Every Owner of a Condominium shall be a Member of the Association. Each Owner shall hold one membership in the Association for each Condominium owned and the membership shall be appurtenant to such Condominium. Ownership of a Condominium 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 in all Condominiums in the Properties ceases, at which time his or her membership in the Association shall automatically cease. Persons or entities who hold an interest in a Condominium merely as security for performance of an obligation are not Members until such time as the security holder comes into title to the Condominium through foreclosure or deed in lieu thereof.

**[3.2] Section 2. One Class of Membership.** The Association shall have one class of membership and the rights, duties, obligations and privileges of the Members shall be as set forth in the Governing Documents.

**[3.3] Section 3. Voting Rights of Members.** Each Member of the Association shall be entitled to one vote for each Condominium owned by said Member. When more than one person holds an interest in any Condominium, all such persons shall be Members, although in no event shall more than one vote be cast with respect to any Condominium. Voting rights may be temporarily suspended under those circumstances described in Article XIV, section 6 hereof.

**[3.4] Section 4. Assessments.** The Association shall have the power to establish, fix and levy Assessments against the Owners of Condominiums within the Properties and to enforce payment of such Assessments in accordance with Article IV of this Declaration. Any Assessments levied by the Association on its Members shall be levied in accordance with and pursuant to the provisions of this Declaration.

**[3.5] Section 5. Transfer of Memberships.** Membership in the Association shall not be transferred, encumbered, pledged or

alienated in any way, except upon the sale or encumbrance of the Condominium to which it is appurtenant and then only to the purchaser. In the case of a sale, membership passes automatically to the purchaser upon recording of a deed evidencing transfer of title to the Condominium. In the case of an encumbrance of such Condominium, a Mortgagee does not have membership rights until he or she becomes an Owner by foreclosure or deed in lieu thereof. Tenants who are delegated rights of use pursuant to Article II, section 3 hereof do not thereby become Members, although the tenant and Members of the tenant's family shall, at all times, be subject to the provisions of all Governing Documents. Any attempt to make a prohibited transfer is void. In the event the Owner of any Condominium should fail or refuse to transfer the membership registered in the Owner's name to the purchaser of his or her Condominium, the Association shall have the right to record the transfer upon its books and thereupon any other membership outstanding in the name of the seller shall be null and void.

**[3.6] Section 6. Powers and Authority of the Association.**

(a) Powers Generally. The Association shall have the responsibility of owning, managing and maintaining the Common Areas and Common Facilities and discharging the other duties and responsibilities imposed on the Association by 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 properties 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 and its Board of Directors 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 shall be as set forth in Article IX of the Bylaws.

(b) Association's Limited Right of Entry. The Association, and/or its agents shall have the right, when necessary, to enter any Unit to perform the Association's obligations under this Declaration, including (i) exterior maintenance or repair obligations; (ii) obligations to enforce the architectural restrictions of Article V hereof; (iii) any obligations with respect to construction, maintenance and repair of Common Facilities; or (iv) to make necessary repairs that an Owner has

failed to perform which, if left undone, will pose a threat to, or cause an unreasonable interference with, Association property or the Owners in common.

The Association's rights of entry under this subparagraph (b) shall be immediate in case of an emergency originating in or threatening the Unit where entry is required, or any adjoining Units or Common Area, and the Association's work may be performed under such circumstances whether or not the Owner or his or her lessee is present. In all nonemergency situations, the Association or its agents shall furnish the Owner or his or her lessee with at least 24 hours' written notice of its intent to enter the Unit, 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 within the Unit.

(c) 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 Properties upon their destruction or obsolescence as hereinafter provided; and (iii) deal with and handle insurance and insurance proceeds, as provided in Article IX hereof, and condemnation and condemnation awards, as provided in Article X hereof. 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.

(d) Security or Patrol Services. The Association may, but shall not be obligated to, provide security or patrol services, with the types, extent, nature, and hours of such services to be determined from time to time by the Board, in the event that the Association considers it appropriate and in the best interests of the Members to provide a security or similar service. Any services provided or contracted by the Association pursuant to this subparagraph are not intended to replace, or to supplement, in any manner, governmental law enforcement, fire, or safety services and no references herein to "security, safety, or patrol" shall be construed as a representation that the development provides enhanced or special security features.

### **[3.7] Section 7. 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 of Condominiums within the Properties. Such rules may concern, but need not be limited to (i) matters pertaining to the maintenance, repair, management and use of the Common Area and Common Facilities by Owners, their tenants, guests and invitees, or any other person(s) who have rights of use and enjoyment of such Common Area and Common Facilities; (ii) architectural control and the rules of the Architectural Committee under Article V, hereof; (iii) the conduct of disciplinary proceedings in accordance with Article XIV, section 6 hereof; (iv) regulation of parking, pet ownership and other matters subject to regulation and restriction under Article VI hereof; (v) collection and disposal of refuse; 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 other Governing Documents or the rights, preferences and privileges of Members thereunder. In the event of any material conflict between any Association Rule and any provision of the other Governing Documents, the conflicting provisions contained in the other Governing Documents shall be deemed to prevail.

(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. A copy of the Association Rules shall also be available and open for inspection during normal business hours at the principal office of the Association.

(c) Adoption and Amendment of Rules. Association Rules may be adopted or amended from time to time by majority vote of the Board, provided, however, that no Association Rules or amendments thereto shall be adopted by the Board until at least 30 days after the proposed rule or rule amendment has been (i) published in the Association newsletter, if any, or otherwise communicated to the Owners in writing and (ii) posted in the Association's principal office. 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 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.



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**[3.8] Section 8. 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 XIV hereof.

**[3.9] Section 9. Limitation on Liability of 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 Association's Members, or to any other person, for any error or omission in the discharge of their duties and responsibilities or for their failure to provide any service required hereunder or under the Bylaws, provided that such Released Party has, upon the basis of such information as may be possessed by the Released Party, 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 member of the Board or volunteer officer of the Association shall recover damages from such Board member or officer if all of the following conditions are satisfied:

(i) The act or omission was performed within the scope of the volunteer Board member's or officer's Association duties;

(ii) The act or omission was performed in good faith;

(iii) The act or omission was not willful, wanton, or grossly negligent;

(iv) The Association maintained and had in effect at the time the act or omission occurred and at the time a claim was made one or more policies of insurance that include coverage for general liability of the Association and individual liability of the

officers and directors of the Association for negligent acts or omissions in their official capacities, with minimum coverage for both types of insurance being not less than \$1,000,000. 26

The payment of actual expenses incurred by a Board member or officer in the execution of that person's Association duties shall not affect that person's status as a volunteer Board member or officer for the purposes of this section. However, any director or officer who receives direct or indirect compensation from a financial institution that acquired a Unit within the Properties as the result of a judicial or nonjudicial foreclosure proceeding is not a volunteer.

The provisions of this subparagraph (b) are intended to reflect the protections accorded to volunteer directors and officers of community associations under Civil Code section 1365.7. In the event that 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 Civil Code provision.

#### ARTICLE IV

##### Assessments

#### [4.1] Section 1. Assessments Generally.

(a) Covenant to Pay Assessments. Each Owner of one or more Condominiums, by acceptance of a deed or other conveyance therefor (whether or not it shall be so expressed in such deed or conveyance), covenants and agrees to pay to the Association (i) Regular Assessments, (ii) Special Assessments, and (iii) Special Individual Assessments. Each such Assessment shall be established and collected as hereinafter provided. In the event that the Civil Code provision(s) governing assessment collection and notification of association members are amended or superseded by other, similar provision(s) of the California statutes, this section shall be deemed amended without the necessity of further Member approval, to correspond to the amended or successor Civil Code provision(s).

(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 was the Owner of the Condominium at the time the Assessment was levied. Each Owner who acquires title to a Condominium (whether at judicial sale, trustee's sale or otherwise) shall be

personally liable only for Assessments attributable to the Condominium so purchased which become due and payable after the date of such sale, and shall not be personally liable for delinquent Assessments of prior Owners unless the new Owner expressly assumes the personal liability. Any unpaid Assessment of a previous Owner shall remain the debt of such previous Owner against whom assessed.

(c) Creation of Assessment Lien. All Assessments, together with late charges, interest, and reasonable costs (including reasonable attorneys' fees) for the collection thereof, shall be a charge on the Condominium and shall be a continuing lien upon the Condominium against which such Assessment is made. Any lien for unpaid Assessments created pursuant to the provisions of this article may be subject to foreclosure as provided in Article IV, section 9(b) hereof.

(d) No Avoidance of Assessment Obligations. No Owner may exempt himself or herself from personal liability for Assessments duly levied by the Association, nor release the Condominium or other property owned by him or her from the liens and charges hereof, by waiver of the use and enjoyment of the Common Area or any facilities thereon or by abandonment or non-use of his or her Condominium or any other portion of the Properties.

#### **[4.2] Section 2. Regular Assessments.**

(a) Preparation of Annual Budget: Establishment of Regular Assessments. Not less than 45 nor more than 60 days prior to the beginning of the Association's fiscal year, the Board shall estimate the total amount required to fund the Association's anticipated Common Expenses for the next succeeding 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 Association Members a budget satisfying the requirements of Article XII, section 5 of the Bylaws. If the Board fails to distribute the budget for any fiscal year within the time period provided for in this section, the Board shall not be permitted to increase Regular Assessments for that fiscal year unless the Board first obtains the approval of Owners, constituting a quorum, casting a majority of the votes at a meeting or election of the Association conducted in accordance with the Bylaws. If the Board fails to distribute the budget for any fiscal year within the time period provided for in this action, the Board shall not be permitted to increase Regular Assessments for that fiscal year unless the Board first obtains the approval of Owners, constituting a quorum, casting a majority of the votes of a meeting or election of the Association conducted in accordance

with the Bylaws.

(b) Establishment of Regular Assessment by Board or 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 that, except as provided in subparagraph (a) above, and subparagraph (c) below, the Board of Directors may not impose a Regular Assessment that is more than 20 percent greater than the Regular Assessment for the Association's immediately preceding fiscal year without the vote or written assent of Members, constituting a quorum, casting a majority of the votes at a meeting or election of the Association (see Article IV, section 7, below).

(c) Assessments to Address Emergency Situations. The requirement of a membership vote to approve Regular Assessment increases in excess of 20 percent of the previous year's Regular Assessment shall not apply to assessment increases necessary to address emergency situations. For purposes of this subparagraph (c), 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, Common Facilities or any portion of the separate interests where a threat to personal safety is discovered.

(iii) An extraordinary expense necessary to repair or maintain the Common Areas and Common Facilities that could not have been reasonably foreseen by the Board in preparing and distributing the budget pursuant to subparagraph (a) above, provided that, prior to the imposition or collection of an assessment under this paragraph (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.

(d) Allocation of Regular Assessment.

(i) Regular Variable Assessments. The total estimated Common Variable Expenses, enumerated in Exhibit "B" herein, shall be allocated among, assessed against, and charged to each Owner in accordance with the ratio or proportion set out in Exhibit "C" herein. Based upon this ratio or proportion, the percentage share

of the total Regular Variable Assessment allocable to each Condominium within the Properties shall be as set forth in Exhibit "C" herein attached hereto and incorporated herein by reference. It is the intent of this allocation to equitably allocate Assessments in proportion to the value of common services furnished to the Owner's separate interest.

(ii) Regular Fixed Assessments. The total estimated Common Fixed Expenses, which include all other expenses of the Association not designated as Regular Variable Expenses in Exhibit "B" herein, determined in accordance with subparagraph (a), above, shall be allocated among, assessed against, and charged to each Owner according to the ratio of the number of Condominiums within the Properties owned by the assessed Owner to the total number of Condominiums subject to Assessments so that each Condominium bears an equal share of the Regular Fixed Assessments.

(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 (which may be maintained in the form of a computer printout) 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 Article II, section 4(c) hereof shall be conclusive upon the Association and the Owner of such Condominium 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 Board of Directors shall mail to each Owner at the street address of the Owner's Condominium, or at such other address as the Owner may from time to time designate in writing to the Association, a statement of the amount of the Regular Assessment for the next succeeding fiscal year no less than 45 days prior to the beginning of the next fiscal year.

(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 Article IV, section 3(a)(i) for that year, shall be assessed against each Owner and his or her Condominium 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 Association.

(h) Installment Payment of Assessments. The Regular Assessment, both Variable and Fixed, levied against each Owner and his or her Condominium 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 Association's Board of Directors. Installments of Regular Assessments shall be delinquent if not paid by the 15th day of the month in which the Assessment is due.

#### **[4.3] Section 3. 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 Condominiums 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, except as prohibited by Article IV, section 2(a), 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. The Board's assessment authority pursuant to this section 3 subparagraph (a)(i) shall be subject to membership approval requirements under the circumstances described in Article IV, section 2(a).

(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 existing Common Facilities in accordance with Article IX hereof. 31

(b) Special Assessments Requiring Membership Approval. No Special Assessments described in (i) section 3(a) hereof, which in the aggregate exceed 5 percent of the budgeted gross expenses of the Association for the fiscal year in which the Special Assessment(s) is levied; or (ii) in the last sentence of Article IV, section 2(a), shall be made without the vote or written assent of Members, constituting a quorum, casting a majority of the votes at a meeting or election of the Association, provided that this membership approval requirement shall not apply to any Special Assessment levied to address "emergency situations" as defined in this Article IV, section 2(c).

(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 Condominium in the same manner prescribed for the allocation of Regular Assessments pursuant to Article IV, section 2(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 this section 3(a)(i) shall be due as a separate debt of the Owner and a lien against his or her Condominium, 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 this section 3(a)(ii) shall be due as a separate debt of the Owner and a lien against his or her Condominium, and shall be payable in full to the Association within 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.

#### **[4.4] Section 4. Special Individual Assessments.**

(a) Circumstances Giving Rise to Special Individual Assessments. In addition to the Special Assessments levied against all Owners in accordance with for in section 3, above, the Board of Directors may impose Special Individual Assessments against an Owner in any of the circumstances described in subparagraphs (i) through (ii) below, provided that no Special Individual Assessments may be imposed against an Owner pursuant to this section 4 until the Owner has been afforded the notice and hearing rights to which the Owner is entitled pursuant to Article XIV, section 6 hereof, and, if appropriate, has been

given a reasonable opportunity to comply voluntarily with the Association's 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, 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 accomplish (A) the payment of delinquent Assessments, (B) any repair, maintenance or replacement to any portion of the Properties that the Owner is responsible to maintain under the Governing Documents but has failed to undertake or complete in a timely fashion, or (C) to otherwise bring the Owner and/or his or her Condominium into compliance with any provision of the Governing Documents, the amount incurred by the Association (including fines and penalties, if allowable by later statutory changes, 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 on Condominiums. As more particularly provided in Article III, section 6(b) (and without limiting the generality of that subparagraph), if any Condominium is maintained so as to become a nuisance, fire or safety hazard for any reason, the Association shall have the right to enter said Condominium, correct the offensive or hazardous condition and recover the cost of such action through imposition of a Special Individual Assessment against the offending Owner.

(b) Levy of Special Individual Assessment and Payment. Once a Special Individual Assessment has been levied against an Owner for any reason described, and subject to the conditions imposed, in this section 4(a), such Special Individual Assessment shall be recorded on the Association's Assessment roll, notice thereof shall be mailed to the affected Owner and the Special Individual Assessment shall thereafter be due as a separate debt of the Owner payable in full to the Association within 30 days after the mailing of notice of the Assessment. Special Individual Assessments imposed to recover monetary penalties for failure of



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a Member to comply with the Governing Documents may only become a lien against the Member's Condominium that is subject to foreclosure if such lien and foreclosure remedies are subsequently permitted by law. Currently Civil Code section 1367 prohibits such liens. However, except as specifically prohibited by law, it is the intent of this Declaration that Special Individual Assessments (including without limitation those imposed to recover late payment penalties or to reimburse the association for the cost of repairing damage to the Common Areas or Common Facilities for which the assessed Member is responsible), if not paid prior to delinquency, may be collected either in an action at law or by resort to the lien and foreclosure remedies set forth in section 9(b), below.

**[4.5] Section 5. 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 recreation, health, safety and welfare of individuals residing within the Properties; (b) to promote the enjoyment and use of the Properties 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) of the Owner of the Condominium against which the Assessment is imposed that shall be binding on the Owner's heirs, successors and assigns, provided 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.

**[4.6] Section 6. Exemption of Certain of the Properties From Assessments.** The following real property subject to this Declaration shall, unless devoted to use as a residential dwelling, be exempt from the Assessments and the lien thereof provided herein:

- (a) Any portion of the Properties dedicated and accepted by a local public authority;
- (b) The Common Area and Common Facilities; and
- (c) Any Condominium owned by the Association.

**[4.7] Section 7. Notice and Procedure for Member Approval Pursuant to Sections 2 and 3.** In the event that Member approval is required in connection with any increase or imposition of

Assessments pursuant to sections 2 and 3 of this Article IV, approval of the requisite percentage of the Members shall be solicited either by written ballot conducted in accordance with Corporations Code section 7513 and Article IV, section 6 of the Bylaws or at a meeting of the Members called for that purpose, duly noticed in accordance with Article V, section 4 of the Bylaws. The quorum required for such membership action shall be a majority of the Members.

**[4.8] Section 8. 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 which has offices located within the State of California. 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 Article XII, section 2 of the Bylaws.

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. Any interest received on such 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) Separate Accounts: Commingling of 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 amount required to accomplish the purpose for which such Assessment was levied,

such surplus may, in the Board's discretion, be returned proportionately to the contributors thereof, reallocated among the Association's reserve accounts if any such account is, in the Board's opinion, underfunded or credited proportionately on account of the Owners' future Regular Assessment obligations.

For purposes of accounting, but without requiring any physical segregation of assets, the Association shall maintain a separate accounting of all funds received by it in payment of each Assessment and of all disbursements made therefrom, provided that receipts and disbursements of Special Assessments made pursuant to this Article IV, section 3(a)(i) shall be accounted for together with the receipts and disbursements of Regular Assessments; and separate liability accounts 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.

**[4.9] Section 9. Collection of Assessments; Enforcement of Liens.** Installments of Regular Assessments shall be delinquent if not paid within 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 section 4.3 (c). When an assessment becomes delinquent, the amount thereof may, at the Board's election, bear interest at the maximum rate allowed by law beginning 30 days after the due date until the same is paid. In addition to the accrual of interest, the Board 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 one or both of the following remedies:

(a) Enforcement of Personal Obligation. 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 attorney 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 section 4.4, with respect to the limitation on the imposition of liens for Special Individual Assessments, the Association may impose a lien against the Owner's Unit for the amount of the delinquent assessment or assessments, plus any reasonable costs of collection (including reasonable attorney fees), late charges, and interest by taking the following steps:

(i) At least 30 days prior to recording a lien upon the Owner's Unit 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 Unit has the right to inspect the Association records, pursuant to Corporations Code section 8333, 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 attorney fees, any late charges, and any interest.

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

(ii) Any payments made by the Unit Owner toward the delinquent assessments shall first be applied to the assessments that are owed at the time the payment is made; and only after the assessments are paid in full shall the payments be applied to the fees and costs of collection, attorney 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 payments of assessments.

(iii) An Owner may dispute the amounts claimed as due and owing in the Delinquency Notice by submitting to the Board a

written explanation of the reasons for his or her dispute. If the Owner wishes to submit an explanation, it must be mailed to the Association within 15 days of the postmark of the Delinquency Notice. The Board shall respond in writing to the Owner within 15 days of the date of the postmark of the Owner's explanation.

(iv) An Owner may also submit a written request to meet with the Board to discuss a payment plan for the delinquent assessment(s). This request must also be made within 25 days of the postmark of the Delinquency Notice. The Association shall provide the Owner with the standards for payment plans, if such standards have been adopted. As long as a timely request for a meeting has been tendered, the Board shall meet with the Owner in executive session within 45 days of the postmark of the request for the 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.

(v) The amount of any assessment, plus any costs of collection, late charges, and interest assessed in accordance with Civil Code section 1366 shall be a lien on the Owner's Unit from and after the time the Association causes to be recorded with the County Recorder a Notice of Delinquent Assessment, which shall state the amount of the assessment and other sums imposed in accordance with Civil Code section 1366, a legal description of the Owner's Unit against which the assessment and other sums are levied, the name of the record owner of the Owner's Unit against which the lien is imposed. 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 and mailed in the manner set forth in Civil Code section 2924(b) to all record owners of the Owner's Unit no later than 10 calendar days after recordation. Within 21 days of the payment of 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 Unit Owner a copy of the lien release or notice that the delinquent assessment has been satisfied.

(vi) A Special Individual Assessment or other monetary charge 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 may become a lien against the

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Member's Unit that is enforceable by sale of the Unit in non-judicial foreclosure pursuant to Civil Code sections 2924, 2924b and 2924c.

(vii) A lien created pursuant to subparagraph (vi), above, shall be prior to all other liens recorded against the Owner's Unit subsequent to the Notice of Delinquent Assessment, except as described in section 4.10.

(viii) Subject to the limitations of this section 4.9(b), after the expiration of 30 days following the recording of a Notice of Delinquent Assessment, the 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 Civil Code section 2934a. Any sale by the trustee shall be conducted in accordance with Civil Code 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 Civil Code section 2924c and 2924d.

(ix) If it is determined that a lien previously recorded against a Unit was recorded in error, the party who recorded the lien, within 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 Unit Owner with a declaration that the lien filing or recording was in error and a copy of the lien release or notice of rescission.

(x) If the Association fails to comply with the procedures set forth in this section 4.9(b) before recording a lien, the Association shall recommence the notice process. Any costs associated with recommencing the notice process shall be borne by the Association and not by the Unit Owner.

The provisions of this section 4.9(b) are intended to comply with the requirements of Civil Code section 1367.1 in effect as of January 1, 2003. If these sections 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 4.9(b) automatically shall be amended or modified in the same manner.

**[4.10] Transfer of Condominium Unit 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 Unit:

(a) Except as provided in subparagraph (b), below, the sale

or transfer of any Condominium Unit shall not affect any Assessment lien which has been duly Recorded against the Unit prior to the sale or transfer, and the Association can continue to foreclose its lien in spite of the change in ownership.

(b) The Association's Assessment lien shall be extinguished as to all delinquent sums, late charges, interest and costs of collection incurred prior to the sale or transfer of a Condominium Unit pursuant to a foreclosure or exercise of a power of sale by the holder of a prior encumbrance (but not pursuant to a deed-in-lieu of foreclosure). A "prior encumbrance" means any first Mortgage or other Mortgage or lien Recorded against the Unit at any time prior to Recordation of the Association's Assessment lien (see Section 4.11, below).

(c) No sale or transfer of a Unit as the result of foreclosure, exercise of a power of sale, or otherwise, shall relieve the new Owner of such Unit (whether it be the former beneficiary of the first Mortgage or other prior encumbrance or a third party acquiring an interest in the Unit) from liability for any Assessments which thereafter becomes due with respect to the Unit or from the lien thereof.

(d) Any Assessments, late charges, interest and associated costs of collection which are lost as a result of a sale or transfer of a Unit covered by subparagraph (b), above, shall be deemed to be a Common Expense collectible from the Owners of all of the Units, including the person who acquires the Unit and his or her successors and assigns.

(e) No sale or transfer of a Unit as the result of foreclosure, exercise of a power of sale, or otherwise, shall affect the Association's right to maintain an action against the foreclosed previous Owner personally to collect the delinquent Assessments, late charges, interest and associated costs of collection incurred prior to and/or in connection with the sale or transfer.

**[4.11] Priorities.** When a Notice of Delinquent Assessment has been recorded, such notice shall constitute a lien on the Unit prior and superior to all other liens or encumbrances recorded subsequent thereto except: (a) all taxes, bonds, assessments and other levies which, by law, would be superior thereto; and (b) the lien or charge of any first Mortgage of record (meaning any recorded Mortgage with first priority over other Mortgages) made in good faith and for value; provided, however, that such subordination shall apply only to the Assessments which have become due and payable prior to the transfer of such property pursuant to the exercise of a power of sale or a judicial foreclosure involving a default under such first Mortgage or other prior encumbrance.

**[4.12] Unallocated Taxes.** In the event that any taxes are assessed against the Common Area, or the personal property of the Association, rather than being assessed to the individual Units, such taxes shall be included in the Regular Assessment imposed pursuant to section 4.02, above, and, if necessary, a Special Assessment may be levied against the Units in an amount equal to such taxes to be paid in two installments, thirty days prior to the due date of each tax installment.

**[4.13] Assignment of Rents.** Each Owner does hereby presently assign to the Association, absolutely and regardless of possession of the property, all rents and other monies now due or hereafter to become due under any lease or agreement or otherwise for the use or occupancy of any or all parts of any Unit owned by the Owner, now existing or hereafter made for the purpose of collecting all Assessments due the Association pursuant to this Declaration which are in default. The Association hereby confers on each Owner the authority to collect and retain the rents and other monies derived from any such lease or agreement as they become due and payable; provided, however, that the Association at its sole discretion, may revoke such authority at any time, upon written notice to the Owner of a default in the payment of any Assessment due hereunder. Upon revocation of such authority the Association may, pursuant to court order or by court appointed receiver, collect and retain such monies, whether past due and unpaid or current.

**[4.14] Waiver of Exemptions.** Each Owner, to the extent permitted by law, waives, to the extent of any liens created pursuant to this Article, the benefit of any homestead or exemption law of California in effect at the time any Assessment or installment thereof becomes delinquent or any lien is imposed.

## ARTICLE V

### Architectural Control

#### **[5.1] Section 1. Architectural Committee Approval of Improvements.**

(a) Approval Generally. Before commencing construction or installation of any Improvement (as defined in Article I, section 18) within the Properties, the Owner planning such improvement must submit to the Association's Architectural Committee a written request for approval. The Owner's request shall include structural plans, specifications and plot plans, if any, satisfying the requirements of this Article V, section 5. Unless the Committee's approval of the proposal is first obtained, no work on the Improvement shall be undertaken. The Architectural



Committee shall base its decision to approve, disapprove or conditionally approve the proposed improvement on the criteria described in this Article V, section 6.

(b) Modifications to Approved Plans Must Also Be Approved. Once a work of improvement has been duly approved by the Architectural Committee, no material modifications shall be made in the approved plans and specifications therefore and no subsequent alteration, relocation, addition or modification shall be made to the work of Improvement, as approved, without a separate submittal to, and review and approval by, the Committee. If the proposed modification will have, or is likely to have, a material affect on other aspects or components of the work, the Architectural Committee, in its discretion, may order the Owner, his or her contractors and agents to cease working not only on the modified component of the Improvement, but also on any other affected component.

In the event that it comes to the knowledge and attention of the Association, its Architectural Committee, or the agents or employees of either that a work of Improvement, or any modification thereof, is proceeding without proper approval, the Association shall be entitled to exercise the enforcement remedies specified in section 11 of this Article V, including, without limitation, ordering an immediate cessation and abatement of all aspects of the work of Improvement until such time as proper Architectural Committee review and approval is obtained.

**[5.2] Section 2. Committee Membership.** The Architectural Committee shall be composed of three Members of the Association appointed by the Board. Committee members shall serve for one-year terms subject to the Board's power to remove any Committee member and to appoint his or her successor. Neither the members of the Architectural Committee nor its designated representatives shall be entitled to any compensation for services performed pursuant hereto.

**[5.3] Section 3. Duties of Committee.** It shall be the duty of the Architectural Committee to consider and act upon the proposals and plans submitted to it pursuant to this Declaration, to adopt Architectural Rules pursuant to this Article V, section 5, to perform other duties delegated to it by the Board of Directors and to carry out all other duties imposed upon it by this Declaration.

**[5.4] Section 4. Meetings.** The Architectural Committee shall meet from time to time as necessary to properly perform its duties hereunder. The vote or written consent of a majority of

the Committee members shall constitute the action of the Committee and the Committee shall keep and maintain a written record of all actions taken.

The Owner-Applicant shall be entitled to appear at any meeting of the Architectural Committee at which the Owner's proposal has been scheduled for review and consideration. The Owner shall be entitled to be heard on the matter and may be accompanied by his or her architect, engineer and/or contractor. Other Owners whose properties may be affected by the proposed Improvement in terms of the structural integrity of any adjoining Unit, noise or other considerations shall also be entitled to attend the meeting.

Reasonable notice of the time, place and proposed agenda for Architectural Committee meetings shall be communicated before the date of the meeting to any Owner-Applicant whose application is scheduled to be heard.

**[5.5] Section 5. Architectural Rules.** The Architectural Committee may, from time to time and with approval of the Board of Directors, adopt, amend and repeal rules and regulations to be known as "Architectural Rules." Said Rules shall interpret and implement the provisions hereof by setting forth (a) the standards and procedures for Architectural Committee review, including the required content of Improvement plans and specifications; (b) guidelines for architectural design, placement of any work of Improvement or color schemes, finishes and materials and similar features which are recommended or required for use within the Properties; and (c) the criteria and procedures for requesting variances from any property use restrictions that would otherwise apply to the proposed improvement under the Governing Documents (see this Article V, section 12, below). Notwithstanding the foregoing, no Architectural Rule shall be in derogation of the minimum standards required by this Declaration. In the event of any conflict between the Architectural Rules and this Declaration, the provisions of the Declaration shall prevail.

**[5.6] Section 6. Basis for Approval of Improvements.** When a proposed Improvement is submitted to the Architectural Committee for review, the Committee shall grant the requested approval only if the Committee, in its sole discretion, finds that all of the following provisions have been satisfied:

(a) The Owner has complied with those provisions of the Architectural Rules pertaining to the content, and procedures for submittal, of plans and specifications;

(b) The Owner's plans and specifications (i) conform to this

Declaration and to the Architectural Rules in effect at the time such plans are submitted to the Committee; (ii) will result in the construction of an Improvement that is in harmony with the design of the Properties; and (iii) will not interfere with the reasonable enjoyment of any other Owner of his or her property; and

(c) The proposed Improvement(s), if approved, will otherwise be consistent with the architectural and aesthetic standards prevailing within the Properties and with the overall plan and scheme of development and the purposes of this Declaration.

The Committee shall be entitled to determine that a proposed Improvement or component thereof is unacceptable when proposed on a particular Condominium, even if the same or a similar improvement or component has previously been approved for use at another location within the Properties if factors such as visibility from Common Areas or other Condominiums or prior adverse experience with the product or components used in construction of the Improvement, design of the Improvement or its use at other locations within the Properties mitigate against erection of the Improvement or use of a particular component thereof on the Condominium involved in the Owner's submittal. It is expressly agreed that the Committee shall be entitled to make subjective judgments and to consider the aesthetics of a proposal when considering an Owner's request so long as the committee acts reasonably and in good faith.

**[5.7] Section 7. Time Limits for Approval or Rejection.** Within 30 days after submission of plans and specifications satisfying the requirements of the Architectural Rules, the Architectural Committee shall return one set of such plans to the applicant, with either written notice of approval or disapproval or with written suggestions of changes required for approval or disapproval. If the Committee recommends that the plans and specifications be modified, the applicant may implement such changes to the plans, and within 30 days, resubmit plans incorporating such changes for approval to the Committee, which approval shall not be unreasonably withheld so long as the Owner has complied in all material respects with the requested changes. If no written notice of approval or disapproval is received by the Owner-applicant within 30 days after the Owner's plans and specifications (or revisions thereto) are submitted to the Committee, the plans shall be deemed to have been disapproved as submitted.

In approving a request for construction of an Improvement, the Architectural Committee may condition approval upon the adoption

of modifications in the plans and specifications or observance of restrictions as to location, noise abatement, color or materials modifications or similar mitigating conditions.

**[5.8] Section 8. Proceeding With Work.** Upon receipt of approval of an Improvement from the Architectural Committee, the Owner shall, as soon as practicable, satisfy all conditions thereof and diligently proceed with the commencement of construction and excavation, if required, pursuant to said approval. In all cases, work on an Improvement project shall commence within one year from the date of such approval. If the Owner fails to comply with this paragraph, any approval given pursuant to this Article V shall be deemed revoked unless the Architectural Committee, upon written request of the Owner prior to the expiration of the initial one-year period, extends the time for commencement or completion. No such extension shall be granted except upon a finding by the Architectural Committee that there has been no change in the circumstances upon which the original approval was granted and that the Owner has a bona fide intention and ability to complete the Improvement project within the time specified in the extension request.

**[5.9] Section 9. Failure to Complete Work.** Unless the Owner has been granted an extension of time to complete the project by the Architectural Committee, construction, reconstruction, refinishing or alteration of any such Improvement must be complete within six months after construction has commenced, except and for so long as such completion is rendered impossible or would result in great hardship to the Owner because of strikes, fires, national emergencies, natural calamities or other supervening forces beyond the control of the Owner or his or her agents.

If the Owner fails to comply with this section, the Architectural Committee shall notify the Board of such failure, and the Board shall proceed in accordance with the provisions of subparagraphs (c) and (d) of section 12 below as though the failure to complete the Improvement was a noncompliance with approved plans.

**[5.10] Section 10. Inspection of Work by Architectural Committee.** Inspection of the work relating to any approved Improvement and correction of defects therein shall proceed as follows:

(a) During the course of construction, representatives of the Architectural Committee shall have the right to inspect the Unit to confirm that the Improvement project is proceeding in accordance with the approved plans and specifications.

(b) Upon the completion of any work of Improvements for which Architectural Committee approval is required under this Article V, the Owner shall give the Architectural Committee a written notice of completion.

(c) Within 30 days thereafter, the Architectural Committee, or its duly authorized representative, may inspect the Improvement to determine whether it was constructed, reconstructed, altered or refinished in substantial compliance with the approval plans. If the Architectural Committee finds that the Improvement was not erected, constructed or installed in substantial compliance with the Owner's approved plans, then within the 30-day inspection period the Committee shall give the Owner a written notice of noncompliance detailing those aspects of the Improvement project that must be modified, completed or corrected. If the violation or nonconforming work is not corrected, the Association and its Architectural Committee shall have the enforcement rights and remedies set forth in section 11, below.

(d) If for any reason the Architectural Committee fails to notify the Owner of any noncompliance within 30 days after receipt of the Owner's notice of completion, the Improvement shall be deemed to have been constructed in accordance with the approved plans for the project, unless it can be demonstrated that the Owner knew of the noncompliance and intentionally mislead the Committee with respect thereto.

#### **[5.11] Section 11. Enforcement.**

(a) In addition to other enforcement remedies set forth in this Declaration, the Architectural Committee and/or Board of Directors shall have enforcement rights with respect to any matters required to be submitted to and approved by it, and may enforce such architectural control by any proceeding at law or in equity. In addition, the Committee and/or Board shall have the authority to order an abatement of any construction, alteration or other matter for which approval is required, to the extent that it has not been approved by the Committee or if it does not conform to the plans and specifications submitted to the Committee. No work for which approval is required shall be deemed to be approved simply because it has been completed without a complaint, notice of violation, or commencement of a suit to enjoin such work. If any legal proceeding is initiated to enforce any of the provisions hereof, the prevailing party shall be entitled to recover reasonable attorneys' fees in addition to the costs of such proceeding.

(b) If the Owner fails to remedy any noticed noncompliance within 30 days from the date of such notification, the

Architectural Committee shall notify the Board in writing of such failure. The Board shall then set a date on which a hearing before the Board shall be held regarding the alleged noncompliance. The hearing date shall not be more than 30 days nor less than 15 days after the notice of the noncompliance is issued by the Board to the Owner, to the Architectural Committee and, in the discretion of the Board, to any other interested party.

(c) At the hearing, the Owner, a representative(s) of the Architectural Committee and, in the Board's discretion, any other interested person may present information relevant to the question of the alleged noncompliance. After considering all such information, the Board shall determine whether there is a noncompliance and, if so, the nature thereof and the estimated cost of correcting or removing the same. If a noncompliance is determined to exist, the Board shall require the Owner to remedy or remove the same within such period or within any extension of such period as the Board, at its discretion, may grant. If the Owner fails to take corrective action after having a reasonable opportunity to do so, the Board, at its option, may either remove the noncomplying Improvement or remedy the noncompliance and the Owner shall reimburse the Association for all expenses incurred in connection therewith upon demand. If such expenses are not properly repaid by the Owner to the Association, the Board shall recover such expenses through the levy of a Special Individual Assessment against such Owner.

(d) The approval by the Architectural Committee of any plans, drawings or specifications for any work of Improvement done or proposed, or for any other matter requiring the approval of the Architectural Committee under this Declaration, or any waiver thereof, shall not be deemed to constitute a waiver of any right to withhold approval of any similar plan, drawing, specification or matter subsequently submitted for approval by the same or some other Owner. Different locations for Improvements, the size of the structure, proximity to other Units or Common Facilities and other factors may be taken into consideration by the Committee in reviewing a particular submittal.

**[5.12] Section 12. Variances.** The Architectural Committee and/or Board of Directors, in their sole discretion, shall be entitled to allow reasonable variances in any procedures specified in this Article V, to overcome practical difficulties, avoid unnecessary expense or prevent unnecessary hardship to Owner-applicants, provided that all of the following conditions are met:

(a) If the requested variance will necessitate deviation from,

or modification of, a property use restriction that would otherwise be applicable under this Declaration, the Architectural Committee and/or Board of Directors must conduct a public hearing on the proposed variance after giving prior written notice to the to all Owners of Units located in proximity to the subject Unit.

Said notice shall also be posted within the Properties. The notice shall be posted and mailed to the interested Owners at least 15 days prior to the date when the Architectural Committee and/or Board of Directors is scheduled to act on the requested variance. No decision shall be made with respect to the proposed variance until the 15-day comment period has elapsed.

(b) The Architectural Committee and/or Board of Directors must make a good faith written determination that the variance is consistent with one or more of the following criteria: (i) that the requested variance will not constitute a material deviation from any restriction contained herein or that the proposal allows the objectives of the violated requirement(s) to be substantially achieved despite noncompliance; or (ii) that the variance, if granted, will not result in a material detriment, or create an unreasonable nuisance with respect, to any other Condominium or Common Area within the Properties.

**[5.13] Section 13. Nonconforming Use of Properties.**

(a) Establishment of Nonconforming Use: Notice Requirements. In addition to its jurisdiction over the review and approval of new Improvements and regulation of the timely and proper completion of such Improvements, the Architectural Committee shall also be vested with authority and responsibility to regulate continued compliance on Condominiums with the provisions of this Article XIV, section 6, and VI (Property Use Restrictions) of this Declaration. To this end, a representative of the Architectural Committee may periodically tour the Properties from time to time and note any apparent violations of said articles ("architectural violations"). If the Architectural Committee agrees that its representative has identified an architectural violation on any Condominium, the Committee shall so notify the Owner, in writing. The notice shall detail the nature of the alleged violation and advise the Owner of his or her right to be heard on the matter in accordance with this Article V. If the Owner fails to make a timely request for a hearing, the Architectural Committee shall be entitled to make its own determination of whether a violation exists at the next regularly scheduled Committee meeting following expiration of the notice period.

If an architectural violation is determined to exist, the Association shall be entitled to pursue its immediate enforcement remedies under Article XIV, section 6, below.

**[5.14] Section 14. Limitation on Liability.** Neither the Association, its Architectural Committee nor any member thereof shall be liable to any Owner for any damage, loss or prejudice suffered or claimed on account of any mistakes in judgment, negligence or nonfeasance arising out of (a) the approval or disapproval of any plans, drawings and specifications, whether or not defective; (b) the construction or performance of any work of Improvement, whether or not pursuant to approved plans, drawings or specifications, whether or not the facts therein are correct, provided that such member has acted in good faith upon the basis of such information as may be possessed by him or her.

**[5.15] Section 15. Compliance With Governmental Regulations.** Review and approval by the Architectural Committee of any proposals, plans or other submittals pertaining to Improvements shall in no way be deemed to constitute satisfaction of, or compliance with, any building permit process or any other governmental requirements, the responsibility for which shall lie solely with the Owner who desires to construct, install, or modify the Improvement.

**[5.16] Section 16. Licensed Contractor.** All Improvements constructed in any Unit in the Properties shall be performed by a Contractor licensed under the laws of the State of California

## ARTICLE VI

### Use of Properties and Restrictions

In addition to the restrictions established by law or Association Rules promulgated by the Board of Directors (consistent with this Declaration), the following restrictions are hereby imposed upon the use of Condominium Units, Common Areas and other parcels within the Properties.

**[6.1] Section 1. Single Family Residential Use.** The use of the Units within the Properties, excepting Unit 1, is hereby restricted to Single Family Residential Use, as defined in article I, section 26 hereof. In no event shall a Residence be occupied by more individuals than permitted by this Declaration, applicable zoning laws or



governmental regulations. An Owner is permitted to lease or rent his or her Unit, subject to the provisions of Article II, section 4 ("Delegation or Use") of this Declaration.

**[6.2] Section 2. Conveyance of Condominiums.** Each Condominium shall be conveyed as a separately designated and legally described fee simple estate subject to this Declaration.

**[6.3] Section 3. Interior Improvements.** Any interior Improvement to a Unit involving structural components of the building structure, other than non-load-bearing interior walls, shall require prior architectural approval in accordance with Article V, above. Furthermore, no structural alterations to the interior of or Common Area surrounding any Unit shall be made and no plumbing or electrical work within any bearing or common walls shall be performed by any Owner without the prior written consent of the Association. Under no circumstances shall any Owner undertake any activity or work with respect to the Owner's Unit that will impair the structural soundness or integrity of another Unit or impair any easement or hereditament, or do any act or allow any condition to exist in or around the Owner's Unit which will adversely affect any other Units or their occupants.

**[6.4] Section 4. Common Areas.** The Common Areas shall be preserved for purposes ancillary to the use of the Association and its members. Such use shall be limited to the private use for the Association's Members, their tenants, families and guests, subject to the provisions of the Governing Documents. No Improvement, excavation or work which in any way alters any Common Area or Common Facility from its natural or existing state on the date such Common Area or Common Facility shall be made or done except by the Association and then only in strict compliance with the provisions of this Declaration.

Each Owner shall be liable to the remaining Owners for any damage to the Common Area and Common Facilities that may be sustained by reason of the negligence of that Owner, that Owner's family members, contract purchasers, tenants, guests, or invitees, but only to the extent that any such damage is not covered by casualty insurance in favor of the Association.

Each Owner, by acceptance of his or her deed, agrees personally and for family members, contract purchasers, tenants, guests, and invitees, to indemnify each and every other Owner, and to hold such Owner(s) harmless from, and to defend him against, any claim of any person for personal injury or property damage occurring within the Unit of that particular Owner, except to the extent (i) that such injury or damage is covered by liability insurance in favor of the Association or other Owner or

(ii) the injury or damage occurred by reason of the willful or negligent act or omission of the Association or other Owner or other person temporarily visiting his or her Unit.

**[6.5] Section 5. Prohibition of Noxious Activities.** No illegal, noxious or offensive activities shall be carried out or conducted in any Unit or Common Area nor shall anything be done within the Properties which is or could become an unreasonable annoyance or nuisance to neighboring property Owners. Without limiting the foregoing, no Owner shall permit noise, including but not limited to barking dogs, the operation of excessively noisy air conditioners, stereo amplifier systems, television systems, automobile or power tools, to emanate from an Owner's Unit or from activities within the Common Area, which would unreasonably disturb any other Owner's or tenant's enjoyment of his or her Unit or the Common Area.

**[6.6] Section 6. Prohibition Against Harassment.** Members and other Residents shall not engage in any abusive or harassing behavior, either verbal or physical, or any form of intimidation or aggression directed at other members, residents, guests, occupants, invitees, or directed at management, its agents, its employees, or vendors.

**[6.7] Section 7. Household Pets.** The following restrictions regarding the care and maintenance of pets within the Properties shall be observed by each Owner and resident:

The following restrictions regarding the care and maintenance of pets within the Project shall be observed by each Owner and resident:

(a) No more than 1 household pet may be kept within each Unit or Exclusive Use Common Area. The term "household pet" shall mean and include any domesticated bird, cat, dog or aquatic animal kept in an aquarium only. No other animals, or poultry of any kind shall be kept, bred or raised in any Unit. Any dog maintained or kept within the Properties shall not exceed 35 pounds in weight.

(b) Dogs shall only be allowed on the Common Area when they are leashed and otherwise under the supervision and restraint of their Owners. All pet Owners are responsible to ensure that their pet(s) do not annoy or intimidate any other person in any way within the Properties.

(c) Pets are not permitted to create any unreasonable annoyance or nuisance to the other Owners or residents. Pet owners are responsible for any disturbance or interference with other Owners or residents' right to use and enjoy their property.

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Pet owners will be fined for the cost of any cleaning, repair or replacement necessary for any portion of the Common Area or Common Facilities. Common areas, including all lawns and shrubbery, are not intended for depositing of pet excrement. Any such excrement must be immediately removed, the area cleaned and any residue disposed of by the Owner.

(d) No household pet shall be left chained or otherwise tethered in the Common Area. Pet owners shall be responsible for the prompt removal and disposal of pet wastes deposited by their pets within the Properties. Cat litter is to be tightly sealed in plastic bags for disposal.

(e) Each person bringing or keeping a pet on the Property shall be solely responsible for the conduct of such pets. All pet Owners are required to abide by and comply with all applicable laws of the city, county and state regarding responsibility for their pets.

(f) The Association, its Board, officers, employees and agents shall have no liability (whether by virtue of this Declaration or otherwise) to any Owners, their family members, guests, invitees, tenants and contract purchasers for any damage or injury to persons or property caused by any pet.

(g) The Board of Directors shall have the right to establish and enforce additional regulations imposing standards for the reasonable control and keeping of household pets in, upon and around the Property to ensure that the same do not interfere with the quiet and peaceful enjoyment of the Property by the other Owners. The regulations adopted by the Board may, in the Board's sole discretion, limit the right to maintain dogs, cats and other pets that are likely to be within the Common Areas from time to time, to Owners; provided, however, that any such rule shall not affect the rights of any lessee under a lease agreement in effect at the time the rule is adopted. If the Board of Directors determines that a particular pet is either dangerous or creating a nuisance, the Board may ban the pet from whatever portions of the Common Area it finds reasonable and necessary to preserve the rights of other Owners and residents.

**[6.8] Section 8. Signs.** No advertising signs, other than one (1) sign of customary and reasonable dimensions advertising a Condominium for sale or lease, shall be displayed to the public view on any Units, excepting Unit 1, or any portion of the Properties except such signs as are approved by the Board or committee appointed by the Board. Displaying of all signs must conform to current law, the applicable ordinances of the City and county in which the Properties are located. The Board of Directors or its appointed Committee, in its discretion, shall be entitled to regulate or prevent altogether the erection and maintenance of Owner's,

agent's or broker's directional signs on any Common Areas within the Properties, providing such restrictions conform to current law.

**[6.9] Section 9. Business Activities.** No business or commercial activities of any kind whatsoever shall be conducted in any Unit, excepting Unit 1, without the prior written approval of the Board, provided that the foregoing restriction shall not apply to the activities, signs or activities of the Association in the discharge of its responsibilities under the Governing Documents. Furthermore, no restrictions contained in this section 6.9 shall be construed in such a manner so as to prohibit any Owner from a) maintaining his or her personal library in his or her Unit, (b) keeping his or her personal business records or accounts therein, (c) handling his or her personal or professional telephone calls or correspondence therefrom, (d) leasing or renting his or her Unit in accordance with Article II, section 4 hereof, or (e) conducting any other activities within the Owner's Unit otherwise compatible with residential use and the provisions of this Declaration which are permitted under applicable zoning laws or regulations without the necessity of first obtaining a special use permit or specific governmental authorization. The uses described in (a) through (e), above, are expressly declared to be customarily incidental to the principal residential use of the Unit and not in violation of this section 6.8.

**[6.10] Section 10. Garbage.** No rubbish, trash, or garbage shall be allowed to accumulate outside of any Unit. Any trash that is accumulated by an Owner outside the interior walls of a Unit shall be stored entirely within appropriate covered disposal containers and facilities located within designated garbage areas within the Common Areas.

Any extraordinary accumulation of rubbish, trash, garbage or debris (such as debris generated upon vacating of premises or during the construction of modifications and Improvements) shall be removed from the Properties to a public dump or trash collection area by the Owner or tenant at his or her expense. The Association shall be entitled to impose reasonable fines and penalties for the collection of garbage and refuse disposed in a manner inconsistent with this section.

**[6.11] Section 11. Antennas and Similar Devices.** In order to ensure adequate esthetic controls and to maintain the general attractive appearance of the Properties, no Owner, resident or lessee shall, at his or her expense or otherwise, place or maintain any objects, such as masts, towers, poles, television and radio antennas, or television satellite reception dishes on or about the exterior of the Properties unless architectural

approval is first obtained in accordance with Article V, hereof. Furthermore, no activity shall be conducted within any Unit which causes an unreasonable broadcast interference with television or radio reception on any neighboring Unit.

The location of common antennas or connection facilities for any cable television system serving the Properties or more than one Unit shall be as designated by the Association or the Architectural Committee, and each Unit and its Owner shall be subject to the right of other Owners or the Association to install, use, and maintain such common antennas or cable television facilities.

**[6.12] Section 12. Diseases and Pests.** No Owner shall permit any thing or condition to exist in his or her Unit, which shall induce, breed, or harbor infectious plant diseases, rodents or noxious insects.

**[6.13] Section 13. Parking and Vehicle Restrictions.** Owners and/or their tenants are prohibited from parking their vehicle(s) in such a way as to block access to the trash dumpster(s) serving the Properties.

**[6.14] Section 14. Children.** Each Owner and resident shall be accountable to the remaining Owners and residents, their families, visitors, guests and invitees, for the conduct and behavior of their children and any children temporarily residing in or visiting the Owner/resident and for any property damage caused by such children.

**[6.15] Section 15. Activities Affecting Insurance.** Nothing shall be done or kept within any Unit or within the Common Area which will increase the rate of insurance relating thereto on any policy maintained by the Association (see Article IX, below) without the prior written consent of the Association and no Owner shall permit anything to be done or kept within his or her Unit or within the Common Area which would cause any Improvements to be uninsurable against loss by fire or casualty or result in the cancellation of insurance on any Unit or any part of the Common Area.

**[6.16] Section 16. Variances.** Upon application by any Owner, the Board of Directors/Architectural Committee shall be authorized and empowered to grant reasonable variances from the property use restrictions set forth in this Article VI, if specific application of the restriction will, in the sole discretion of the Board, either cause an undue hardship to the affected Owner or fail to further or preserve the common plan and scheme of development contemplated by this Declaration. In

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considering and acting upon any request for a variance, the Board/Committee shall follow the procedures set forth in Article V, section 12 for the granting of architectural variances.

**[6.17] Section 17. Enforcement of Property Use Restrictions.**

The objective of this Declaration shall be to promote and seek voluntary compliance by Owners and tenants with the environmental standards and property use restrictions contained herein. Accordingly, in the event that the Association becomes aware of an architectural or property use infraction that does not necessitate immediate corrective action under Article III, section 6 hereof, the Owner or Tenant responsible for the violation shall receive written notice thereof and shall be given a reasonable opportunity to comply voluntarily with the pertinent Governing Document provision(s). Such notice shall describe the noncomplying condition, request that the Owner or tenant correct the condition within a reasonable time specified in the notice, and advise the Owner or tenant of his or her appeal rights.

**ARTICLE VII**

**Exterior Maintenance Responsibilities**

**[7.1] Section 1. Common Area.** The Association shall be solely responsible for all maintenance, repair, upkeep and replacement within the Common Area. No person other than the Association or its duly authorized agents shall construct, reconstruct, refinish, alter or maintain any Improvement upon, or shall create any excavation or fill or change the natural or existing drainage of any portion of the Common Area.

In addition, no person shall remove any tree, shrub or other vegetation from, or plant any tree, shrub, or other vegetation upon the Common Area without express approval of the Association.

**[7.2] Section 2. Association Maintenance Responsibility With Respect Project Improvements.** The Association shall provide exterior maintenance of the Project as follows:

(a) Paint, stain, repair, replace and care for the exterior building surfaces of the Project including roofs, gutters, fences, downspouts and exterior walls, exterior doors, screen doors, exterior lighting fixtures and other hardware glass surfaces;

(b) Replace and care for trees, shrubs, grass, walks, and other landscaping Improvements.

(c) The Association shall maintain in good condition and repair the air conditioning and heating unit systems serving the Project including boilers, water or heat pumps and fan coils, flues, other nonmechanical components of such systems.

(d) Maintain the underground sewer, water and electrical lines, under the Common Area, but the Association shall not be responsible for the risers and connecting lines between such service lines and the individual Units.

The standards of landscaping, the selection and replacement of plant materials and the standards for exterior structural maintenance by the Association hereunder shall be determined by the Board of Directors.

**[7.3] Section 3. Owner Maintenance Responsibilities.**

(a) Each Owner of a Condominium shall be responsible for maintaining his or her Unit, including the equipment and fixtures in the Unit and the interior walls, ceilings, windows and doors of the owned Unit in a clean, sanitary, workable, and attractive condition. However, each Owner has complete discretion as to the choice of furniture, furnishings, and interior decorating, except that windows can be covered only by drapes, shutters, or shades and cannot be painted or covered by foil, cardboard, or other similar materials. Each Owner also shall be responsible for repair, replacement, and cleaning of the windows and glass of his or her Unit, both exterior and interior.

**[7.4] Section 4. Association Recovery of Costs of Certain Repairs and Maintenance.**

(a) In the event that the need for maintenance or repair, which would otherwise be the Association's responsibility hereunder is caused through the willful or negligent acts of an Owner, his or her family, guests, tenants, or invitees, and is not covered or paid for by Association insurance policies or any liability insurance maintained by the responsible Owner, the cost of such maintenance or repairs shall be subject to recovery by the Association through the imposition of a Special Individual Assessment against the offending Owner in accordance with Article IV, section 4 hereof.

(b) In the event that an Owner fails to perform maintenance functions for which he or she is responsible, the Association may give written notice to the offending Owner with a request to correct the failure within 15 days after receipt thereof. If the Owner refuses or fails to perform any necessary repair or maintenance, the Association may exercise its rights under

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Article III, section 6(b) to enter the Owner's Unit and perform the repair or maintenance so long as the Owner has been given notice and the opportunity for a hearing in accordance with article XIV, section 6, hereof.

**[7.5] Section 5. Cooperative Maintenance Obligations.** To the extent necessary or desirable to accomplish the Association's maintenance obligations hereunder, individual Owners shall cooperate with the Association and its agents and maintenance personnel in the prosecution of its work.

## ARTICLE VIII

### Easements

**[8.1] Section 1. Encroachment Easements.** If any portion of the Common Area encroaches on any Unit or if any portion of a Unit encroaches on the Common Area, regardless of the cause, a valid easement exists for such encroachment and for the maintenance of it as long as it remains, and all Units and the Common Area are made subject to such easements.

**[8.2] Section 2. Blanket Utility Easement.** There is hereby created a blanket easement upon, across, over and under all of the Properties for ingress, egress, installation, replacing, repairing and maintaining all utilities, including but not limited to water, sewers, gas, telephones, drainage and electricity and the master television antenna or cable television system. By virtue of this easement, it shall be expressly permissible for the providing utility company to erect and maintain the necessary equipment and underground facilities on the Common Area. Notwithstanding the foregoing, no sewer, electrical lines, water lines, or other utilities may be installed or relocated on said Properties except as initially designed and approved by the Declarant or thereafter approved by the Association's Board of Directors. The easements provided for in this Article VIII shall in no way effect any other recorded easement on the Properties.

**[8.3] Section 3. Maintenance Easements.** An easement is hereby granted to the Association, its officers, agents, employees, and to any management company or contractor selected by the Association to enter in or to cross over the Common Area and any Unit to perform the duties of maintenance and repair of the Units, Common Area, or Common Facilities, provided that any entry by the Association or its agents into any Unit shall only be



undertaken in strict compliance with Article III, section 6(b).

**[8.4] Section 4. Other Easements.** Each Unit and its Owner, and the Association as to the Common Area, are hereby declared to be subject to all the easements, dedications and rights-of-way granted or reserved in, on, over and under the Properties and each Unit and Common Area as shown on the Subdivision Map.

**[8.5] Section 5. Priority of Easements.** Wherever easements granted to the County are, in whole or in part, coterminous with any other easements, the easements of the County shall have and are hereby granted priority over said other easements in all respects.

## ARTICLE IX

### Insurance

**[9.1] Section 1. Types of Insurance Coverage.** The Association shall purchase, obtain and maintain, with the premiums therefor being paid out of Common Funds, the following types of insurance, if and to the extent such insurance, with the coverages described below, is available at a reasonable premium cost:

(a) Fire and Casualty Insurance. The Association shall obtain and maintain a master or blanket policy of fire and casualty insurance, for the full insurable value of all the Improvements within the Properties and on any Common Facilities. The insurance shall be kept in full force and effect at all times and the full replacement value of the insured property shall be redetermined on an annual basis.

(b) Public Liability and Property Damage Insurance. To the extent such insurance is reasonably obtainable, the Association shall obtain and maintain a policy of comprehensive public liability and property damage insurance naming as parties insured the Association, each member of the Association Board of Directors, any manager, the Owners and occupants of Units, and such other persons as the Board may determine. The policy will insure each named party against any liability incident to the ownership and use of the Common Area and any other Association-owned or maintained real or personal property and including, if obtainable, a cross-liability or severability of interest endorsement insuring each insured against liability to each other insured. The limits of such insurance shall not be less than \$1 million covering all claims for death, personal injury and property damage arising out of a single occurrence.

Such insurance shall include coverage against water damage liability, liability for property of others and any other liability or risk customarily covered with respect to projects similar in construction, location and use.

(c) Additional Insurance and Bonds. To the extent such insurance is reasonably obtainable, the Association may also purchase with Common Funds such additional insurance and bonds as it may, from time to time, determine to be necessary or desirable, including, without limiting the generality of this section, demolition insurance, flood insurance, and workers' compensation insurance. The Board shall also purchase and maintain fidelity bonds or insurance in an amount not less than 100 percent of each year's estimated annual operating expenses and reserves and shall contain an endorsement of any person who may serve without compensation. The Board shall purchase and maintain such insurance on personal property owned by the Association and any other insurance, including directors and officers liability insurance, that it deems necessary or desirable.

**[9.2] Section 2. Coverage Not Available.** In the event any insurance policy, or any endorsement thereof, required by section 1 is for any reason not available, then the Association shall obtain such other or substitute policy or endorsement as may be available which provides, as nearly as possible, the coverage described above. The Board shall notify the Owners of any material adverse changes in the Association's insurance coverage.

**[9.3] Section 3. Copies of Policies.** Copies of all insurance policies (or certificates thereof showing the premiums thereon have been paid) shall be retained by the Association and shall be available for inspection by Owners at any reasonable time.

**[9.4] Section 4. Individual Fire and Casualty Insurance Limited.** Except as provided in this section, no Owner can separately insure his or her Unit or any part of it against loss by fire or other casualty covered by the Association's blanket insurance carried under this Article IX, section 1(a). If any Owner violates this provision, any diminution in insurance proceeds otherwise payable pursuant to the provisions of section 1(a) that results from the existence of such other insurance will be chargeable to the Owner who acquired such other insurance, and the Owner will be liable to the Association to the extent of any diminution. An Owner can insure his or her personal property against loss. In addition, any Improvements made by an Owner within his or her Condominium may be separately insured by the Owner, but the insurance is to be limited to the type and nature of coverage commonly known as "tenant's Improvements." All such

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insurance that is individually carried must contain a waiver of subrogation rights by the carrier as to other Owners and the Association.

**[9.5] Section 5. Trustee.** All insurance proceeds payable under this Article IX, section 1, may, in the discretion of the Board of Directors, be paid to a trustee to be held and expended for the benefit of the Owners, Mortgagees and others, as their respective interests shall appear. Said trustee shall be a commercial bank or other institution with trust powers within the County that agrees in writing to accept such trust. If repair or reconstruction is authorized pursuant to Article X, below, the Association and any duly appointed trustee shall have the duty to contract for such work as provided in Article X, section 5.

**[9.6] Section 6. Adjustment of Losses.** The Board is appointed attorney-in-fact by each Owner to negotiate and agree on the value and extent of any loss under any policy carried pursuant to this Article IX, section 1. The Board is granted full right and authority to compromise and settle any claims or enforce any claim by legal action or otherwise and to execute releases in favor of any insured.

**[9.7] Section 7. Distribution to Mortgagees.** Subject to the provisions of Article XI, any Mortgagee has the option to apply insurance proceeds payable on account of a Condominium in reduction of the obligation secured by the Mortgage of such Mortgagee.

**[9.8] Section 8. Owner's Liability Insurance.** An Owner may carry whatever personal liability and property damage liability insurance with respect to his or her Condominium that he or she desires. However, any such policy shall include a waiver of subrogation clause acceptable by the Board and to any institutional First Mortgagee, if required.

## ARTICLE X

### Damage or Destruction

**[10.1] Section 1. Destruction; Proceeds Exceed 85 Percent of Reconstruction Costs.** If there is a total or partial destruction of the improvements in the Project, and if the available proceeds of the insurance carried pursuant to Article IX are sufficient to cover not less than 85 percent of the costs of repair and reconstruction, the improvements shall be promptly rebuilt unless, within 90 days from the date of destruction, Owners then

holding at least 75 percent of the total voting power of each class of Owners present and entitled to vote, in person or by proxy, at a duly constituted meeting or voting by written ballot in accordance with Article IV, section 6 of the Bylaws, the Association shall solicit and obtain bids from at least two reputable contractors to repair and reconstruct the improvements in accordance with the original plans and shall present this information to the Owners at the meeting. If repair and reconstruction is to take place the Association shall be required to execute, acknowledge, and record in the office of the County Recorder of the County not later than 120 days from the date of destruction, a certificate declaring the intention of the Owners to rebuild.

**[10.2] Section 2. Destruction; Proceeds Less Than 85 Percent of Reconstruction Costs.** If the proceeds of insurance carried pursuant to Article IX are less than 85 percent of the costs of repair and reconstruction, the improvements shall be promptly rebuilt, unless within 90 days from the date of destruction, Owners then holding at least  $66\frac{2}{3}$  percent of the total voting power of each class of Owners present and entitled to vote, in person or by proxy, at a duly constituted meeting or by written ballot, determine that repair and reconstruction shall not take place. If such a meeting is called, the Association shall solicit and obtain bids from at least two reputable contractors to repair and reconstruct the improvements in accordance with the original plans and shall present this information to the Owners at the meeting. If repair and reconstruction are to take place, the Association shall execute, acknowledge, and record in the office of the County Recorder of the County not later than 120 days from the date of destruction a certificate declaring the intention of the Owners to rebuild.

**[10.3] Section 3. Apportionment of Assessments.** If the Owners determine to rebuild, pursuant to sections 1 and 2, above, each Owner shall be obligated to contribute his or her proportionate share of the cost of reconstruction of restoration over and above the available insurance proceeds. The proportionate share of each Owner shall be based upon the ratio set out in Exhibit "C" herein. If any Owner fails or refuses to pay his or her proportionate share, the Association may levy a special assessment against the Condominium of such Owner, which may be enforced under the lien provisions contained in Article IV or in any other manner provided in this Declaration.

**[10.4] Section 4. Rebuilding Contract.** If the Owners determine to rebuild, the Board or its authorized representative shall, after obtaining bids from at least two reputable contractors as required by the paragraphs above, and award the repair and

reconstruction work to the lowest bidder that otherwise meets the requirements set forth by the Board in soliciting bids. The Board shall have the authority to enter into a written contract with the contractor for the repair and reconstruction, and the insurance proceeds held by the trustee shall be disbursed to this contractor according to the terms of the contract. It shall be the obligation of the Association to take all steps necessary to assure the commencement and completion of authorized repair and reconstruction at the earliest possible date.

**[10.5] Section 5. Rebuilding Not Authorized.** If the Owners determine not to rebuild, then, subject to the rights of Mortgagees as set forth in Article XI, any insurance proceeds then available for such rebuilding shall be distributed to each Owner according to the relative fair market values of their Condominiums. The Board shall select an independent appraiser who shall be a member of the Society of Real Estate Appraisers (SREA) or other nationally recognized appraisers' organization and who shall determine such relative values in accordance with the standards of such organizations as of a date immediately prior to such destruction. The Association shall have the duty, within 120 days from the date of destruction, to execute, acknowledge, and record in the office of the County Recorder of the County, a certificate declaring the intention of the Owners not to rebuild.

**[10.6] Section 6. Minor Repair and Reconstruction.** The Association shall have the duty to repair and reconstruct improvements, without the consent of Owners and irrespective of the amount of available insurance proceeds, in all instances of partial destruction where the estimated cost of repair and reconstruction does not exceed \$20,000 in the case of Common Area improvements. The Association can levy a special assessment for the cost of repairing and reconstructing improvements to the extent insurance proceeds are unavailable, such assessment to be levied as described in section 3, above, (but without the consent or approval of Owners, despite any contrary provisions in this Declaration).

**[10.7] Section 7. Revival of Right To Partition.** On recordation of a certificate described in section 5, above, the right of any Owner to partition through legal action as described in Article XII shall revive immediately. In addition, each owner, by accepting a deed to a condominium, grants to the Association an irrevocable power of attorney to sell the entire Project for the benefit of the Owners, to terminate the Declaration, and to dissolve the Association. The net proceeds following sale of the Project and dissolution of the Association shall be distributed to the Owners in the same manner that insurance proceeds are distributed under section 5, above.

**ARTICLE XI****Condemnation**

**[11.1] Section 1. Sale by Unanimous Consent.** If an action for condemnation of all or a portion of the Properties is proposed or threatened by any governmental agency having the right of eminent domain, then, on unanimous written consent of all the Owners and after notice to all Mortgagees, the Properties, or a portion of it may be sold by the Board acting as irrevocable attorney-in-fact of all of the Owners for a price deemed fair and equitable by the Board, but in no event less than the aggregate unpaid balance of all First Mortgages encumbering Condominiums within the Properties.

**[11.2] Section 2. Distribution of Proceeds of Sale.** If a sale occurs under section 1, and the agreement of sale does not by its terms apportion the sale proceeds among the Owners and their respective Mortgagees, the Board shall select an independent SREA appraiser who shall determine the relative fair market values of the Condominiums affected by the sale, in accordance with SREA standards. The sale proceeds shall then be apportioned among the Owners, and their respective Mortgagees according to such relative values.

**[11.3] Section 3. Distribution of Condemnation Award.** If the Properties, or a portion of it, are not sold, but is instead taken, the judgment of condemnation shall by its terms apportion the award among the Owners and their respective Mortgagees.

**[11.4] Section 4. Appraisal If Condemnation Award Not Apportioned.** If the judgment of condemnation does not by its terms apportion the award among the Owners and their respective Mortgagees, the Board shall select an independent SREA appraiser who shall determine the relative fair market values of the Condominiums affected by the condemnation, in accordance with SREA standards. The award shall then be apportioned among the Owners, and their respective Mortgagees, according to such relative values.

**ARTICLE XII****Partition of Common Area**

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**[12.1] Section 1. Suspension or Right of Partition.** Except as expressly provided in this Article XII, an Owner shall have no right to partition or divide his or her ownership of the Common Area. Partition of the Common Area can be had on a showing that the conditions to such partition as stated in Article X, relating to damage or destruction) or in Article XI (relating to condemnation) or in California Civil Code section 1359 have been met. Nothing in this Declaration shall prevent partition of a cotenancy in a Condominium.

**[12.2] Section 2. Distribution of Proceeds Upon Partition.** Proceeds of property resulting from a partition shall be distributed to and among the respective Owners and their Mortgagees as their interests appear in proportion to the ratio that the fair market value of each Owner's Condominium bears to the fair market value of all Owners' Condominiums determined by appraisal as provided in Article XI, section 2, but as of a date immediately prior to the event giving rise to the right of Owners to partition the Common Area.

**[12.3] Section 3. Power of Attorney.** Pursuant to California Civil Code section 1355(b)(9) each of the Owners irrevocably appoints the Association as attorney-in-fact and irrevocably grants to the Association full power in the name and stead of such Owner to sell the entire Project, and to execute deeds and conveyances to it, in one or more transactions, for the benefit of all Owners when partition of the Project may be had under Civil Code section 1359 and under the circumstances authorizing partition under this Declaration. The power of attorney shall (a) be binding on all Owners, whether they assume the obligations under this Declaration or not; (b) be exercisable by a majority of the Board acting on behalf of the Association, subject to obtaining the prior approval by vote or written consent of 75 percent of the Owners and 75 percent of all institutional first Mortgagees; and (c) be exercisable only after recordation with the County Recorder of a certificate executed by those who have power to exercise the power of attorney that the power of attorney is properly exercisable under Civil Code section 1359. This certificate shall be conclusive evidence of proper exercise in favor of any person relying on it in good faith.

### ARTICLE XIII

#### Nonseverability of Component Interests

**[13.1] Section 1. Severance Prohibited.** An Owner shall not be entitled to sever his or her Unit in any Condominium from his or

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her membership in the Association, and shall not be entitled to sever his or her Unit or his or her membership from the Owner's undivided interest in the Common Area for any purpose. None of the component interests in a Condominium can be severally sold, conveyed, encumbered, hypothecated, or otherwise dealt with; and any violation or attempted violation of this provision shall be void. Similarly, no Owner can sever any exclusive easement appurtenant to his or her Unit over the Common Area from the Owner's condominium, and any attempt to do so shall be void. The suspension of such right of severability will not extend beyond the period set forth in Article XII respecting the suspension of partition.

**[13.2] Section 2. Limitation on Interests Conveyed.** After the initial sales of the Condominiums, unless otherwise expressly stated, any conveyance of a Unit or any portion of it by an Owner shall be presumed to convey the entire Condominium. However, nothing contained in this section 2 shall preclude the Owner of any Condominium estate from creating an estate for life or an estate for years or from creating a cotenancy or joint tenancy in the ownership of the Condominium with any other person or persons.

#### ARTICLE XIV

##### Breach and Default

**[14.1] Section 1. Remedy at Law Inadequate.** Except for the nonpayment of any Assessment, it is hereby expressly declared and agreed that the remedy at law to recover damages for the breach, default or violation of any of the covenants, conditions, restrictions, limitations, reservations, grants of easements, rights, rights-of-way, liens, charges or equitable servitudes contained in this Declaration are inadequate and that the failure of any Owner, tenant, occupant or user of any Condominium, or any portion of the Common Area or Common Facilities, to comply with any provision of the Governing Documents may be enjoined by appropriate legal proceedings instituted by any Owner, the Association, its officers or Board of Directors, or by their respective successors in interest.

**[14.2] Section 2. Nuisance.** Without limiting the generality of the foregoing section 1, the result of every act or omission whereby any covenant contained in this Declaration is violated in whole or in part is hereby declared to be a nuisance, and every remedy against nuisance, either public or private, shall be applicable against every such act or omission.



[14.3] **Section 3. Costs and Attorneys' Fees.** In any action brought because of any alleged breach or default of any Owner or other party hereto under this Declaration, the court may award to any party in any such action such attorneys' fees and other costs as the court deems just and reasonable.

[14.4] **Section 4. Cumulative Remedies.** The respective rights and remedies provided by this Declaration or by law shall be cumulative, and the exercise of any one or more of such rights or remedies shall not preclude or affect the exercise, at the same or at different times, of any other such rights or remedies for the same or any different default or breach or for the same or any different failure of any Owner or others to perform or observe any provision of this Declaration.

[14.5] **Section 5. Failure Not a Waiver.** The failure of any Owner, the Board of Directors, the Association or its officers or agents to enforce any of the covenants, conditions, restrictions, limitations, reservations, grants or easements, rights, rights-of-way, liens, charges or equitable servitudes contained in this Declaration shall not constitute a waiver of the right to enforce the same thereafter, nor shall such failure result in or impose any liability upon the Association or the Board, or any of its officers or agents.

[14.6] **Section 6. Rights and Remedies of the Association.**

(a) Rights Generally. In the event of a breach or violation of any Association Rule or of any of the restrictions contained in any Governing Document by an Owner, his or her family, or the Owner's guests, employees, invitees, licensees, or tenants, the Board, for and on behalf of all other Owners, may enforce the obligations of each Owner to obey such Rules, covenants, or restrictions through the use of such remedies as are deemed appropriate by the Board and available in law or in equity, including but not limited to the hiring of legal counsel, the imposition of fines and monetary penalties, the pursuit of legal action, or the suspension of the Owner's right to use Common Facilities or suspension of the Owner's voting rights as a Member of the Association; provided that the Association's right to undertake disciplinary action against its Members shall be subject to the conditions set forth in this section 6.

The initiation of legal action shall be subject to section 8, below.

(b) Schedule of Fines. The Board may implement a schedule of reasonable fines and penalties for particular offenses that are common or recurring; in nature and for which a uniform fine

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schedule is appropriate (such as fines for late payment of Assessments or illegally parked vehicles). Once imposed, a fine or penalty may be collected as a Special Individual Assessment.

(c) Definition of "Violation." A violation of the Governing Documents shall be defined as a single act or omission occurring on a single day. If the detrimental effect of a violation continues for additional days, discipline imposed by the Board may include one component for the violation and, according to the Board's discretion, a per diem component for so long as the detrimental effect continues. Similar violations on different days shall justify cumulative imposition of disciplinary measures. The Association shall take reasonable and prompt action to repair or avoid the continuing damaging effects of a violation or nuisance occurring within the Common Area at the cost of the responsible Owner.

(d) Limitations of Disciplinary Rights.

(i) Loss of Rights: Forfeitures. The Association shall have no power to cause a forfeiture or abridgment of an Owner's right to the full use and enjoyment of his or her Condominium due to the failure by the Owner (or his or her family members, tenants, guests or invitees) to comply with any provision of the Governing Documents or of any duly enacted Association Rule except where the loss or forfeiture is the result of the judgment of a court of competent jurisdiction, a decision arising out of arbitration or a foreclosure or sale under a power of sale for failure of the Owner to pay Assessments levied by the Association, or where the loss or forfeiture is limited to a temporary suspension of an Owner's rights as a Member of the Association or the imposition of monetary penalties for failure to pay Assessments or otherwise comply with any Governing Documents so long as the Association's actions satisfy the due process requirements of subparagraph below.

(e) Hearings. No penalty or temporary suspension of rights shall be imposed pursuant to this article unless the Owner alleged to be in violation is given at least 15 days prior notice of the proposed penalty or temporary suspension and is given an opportunity to be heard before the Board of Directors or appropriate committee established by the Board with respect to the alleged violation(s) at a hearing conducted at least 5 days before the effective date of the proposed disciplinary action.

Notwithstanding the foregoing, under circumstances involving conduct that constitutes (i) an immediate and unreasonable infringement of, or threat to, the safety or quiet enjoyment of neighboring Owners; (ii) a traffic or fire hazard; (iii) a threat

of material damage to, or destruction of, the Common Area or Common Facilities; or (iv) a violation of the Governing Documents that is of such a nature that there is no material question regarding the identity of the violator or whether a violation has occurred (such as late payment of Assessments or parking violations), the Board of Directors or its duly authorized agents may undertake immediate corrective or disciplinary action and, upon request of the offending Owner (which request must be received by the Association, in writing, within five days following the Association's disciplinary action), or on its own initiative, conduct a hearing as soon thereafter as reasonably possible.

If the Association acts on its own initiative to schedule a hearing, notice of the date, time and location of the hearing shall accompany the notice of disciplinary action. If the accused Owner desires a hearing, a written request therefor shall be delivered to the Association no later than five days following the date when the fine is levied. The hearing shall be held no more than 15 days following the date of the disciplinary action or 15 days following receipt of the accused Owner's request for a hearing, whichever is later. Under such circumstances, any fine or other disciplinary action shall be held in abeyance and shall only become effective if affirmed at the hearing.

(f) Notices. Any notice required by this article shall, at a minimum, set forth the date and time for the hearing, a brief description of the action or inaction constituting the alleged violation of the Governing Documents and a reference to the specific Governing Document provision alleged to have been violated. The notice shall be in writing and may be given by any method reasonably calculated to give actual notice, provided that if notice is given by mail it shall be sent by first-class or certified mail sent to the last address of the Member shown on the records of the Association.

(g) Rules Regarding Disciplinary Proceedings. The Board shall be entitled to adopt rules that further elaborate and refine the procedures for conducting disciplinary proceedings. Such rules, when approved and adopted by the Board, shall become a part of the Association Rules and shall provide for notices and procedures satisfying the alternative dispute resolution requirements of Civil Code section 1354 or comparable superseding statute.

**[14.7] Section 7. Court Actions; Mediation.**

(a) Court actions to enforce the Governing Documents may only be initiated on behalf of the Association upon approval of the

Board. Before initiating any court action seeking declaratory or injunctive relief to interpret or enforce the governing documents (including either of those actions coupled with a claim for monetary damages not in excess of \$5000), the Association shall first comply with the provisions of Civil Code section 1354, or comparable superseding statute, relating to alternative dispute resolution. 66

The mediation procedures described in paragraph (b), below, are intended to satisfy the Civil Code alternative dispute resolution requirements and all notices issued and procedures followed in the mediation process shall comply with the specific requirements imposed by Civil Code section 1354.

(b) Before instituting any judicial action, arbitration, or other proceeding arising out of any Owner's or resident's failure or alleged failure to comply with any provision of section 2.4 (Delegation of Use), Article V (Architectural Control), or Article VI (Use of Properties and Restrictions), the Association or Owner who desires to initiate such action ("Complaining Party") must make a good faith attempt to mediate the dispute pursuant to this paragraph. The Complaining Party shall send the other party (the "Responding Party") written notice of the nature of the dispute, the facts giving rise to its claim and its desire to mediate (the "Mediation Notice"). Should either party commence a judicial action, arbitration, or other proceeding without sending a Mediation Notice, the Responding Party shall be entitled to stay the action and request a Mediation Notice from the Complaining Party. The Mediation Notice shall name a mediator. Seller shall be obligated to pay any fee to initiate mediation, but the cost of mediation, including any attorneys' fees, shall ultimately be borne as determined by the parties if the mediation results in a settlement of the dispute. If the Responding Party does not agree with the complaining Party's choice of a mediator, the parties shall ask that the American Arbitration Association pick a mediator from its panel within ten (10) days from the Responding Party's receipt of the Mediation Notice. Within thirty (30) days after the mediator is chosen, the parties shall schedule and attend a mediation and attempt in good faith to resolve their dispute. If the mediation does not resolve the dispute or if the Responding Party refuses to attend, the Complaining Party shall be free to commence litigation. The requirements of this paragraph shall not apply under circumstances where the Complaining Party is entitled to a temporary restraining order or preliminary injunction in order to avoid irreparable harm or injury.

## ARTICLE XV

## Notices

[15.1] **Section 1. Mailing Addresses.** Any communication or notice of any kind permitted or required herein shall be in writing and may be served, as an alternative to personal service, by mailing the same as follows:

If to any Owner: To the street address of his or her Condominium or to such other address as he or she may from time to time designate in writing to the Association.

If to the Association: **Barcelona of Pasadena Condominium Association** at the principal office of the Association (or to such other address as the Association may from time to time designate in writing to the Owners).

[15.2] **Section 2. Personal Service Upon Co-Owners and Others.** Personal service of a notice or demand to one of the co-Owners of any Condominium, to any general partner of a partnership which is the Owner of Record of the Condominium, or to any officer or agent for service of process of a corporation which is the Owner of Record of the Condominium, shall be deemed delivered to all such co-owners, to such partnership, or to such corporation, as the case may be.

[15.3] **Section 3. Deposit in United States Mails.** All notices and demands served by mail shall be by first-class or certified mail, with postage prepaid, and shall be deemed delivered four days after deposit in the United States mail in Los Angeles County, California.

## ARTICLE XVI

## No Public Rights in the Properties

[16.1] **Section 1. No Gift or Dedication of Properties.** Nothing contained in this Declaration shall be deemed to be a gift or a dedication of all or any portion of the Properties to the general public or for any public use or purpose whatsoever.

**ARTICLE XVII****Amendment of Declaration**

**[17.1] Section 1. Amendment in General.** This Declaration may be amended or revoked in any respect by the vote or assent by written ballot of the Owners entitled to vote and holding at least 50 percent of the voting power of the Association. Notwithstanding the foregoing, the percentage of the voting power necessary to amend a specific clause or provision of this Declaration shall not be less than the percentage of affirmative votes prescribed for action to be taken under that clause.

With respect to any vote hereunder the Association shall be entitled to accept the vote of any Owner of Record of a Condominium as the vote of all Owners of Record of such Condominium unless the Association receives more than one vote from said co-Owners, in which case the vote of a majority of the co-owners shall bind all.

**[17.2] Section 2. Effective Date of Amendment.** The amendment will be effective upon the recording in the Office of the Recorder of Los Angeles County a Certificate of Amendment, duly executed and certified by the president and secretary of the Association setting forth in full the amendment so approved and that the approval requirements of section 1, above, have been duly met. Notwithstanding anything to the contrary herein contained, no such amendment shall affect the rights of the holder of any first deed of trust or Mortgage recorded prior to the recording of such amendment. If the consent or approval of any Mortgagee or other entity is required under this Declaration to amend or revoke any provision of this Declaration, no such amendment or revocation shall become effective unless such consent or approval is obtained.

**[17.3] Section 3. Reliance on Amendments.** Any amendments made in accordance with the terms of this Declaration shall be presumed valid by anyone relying on them in good faith.

**ARTICLE XVIII****General Provisions**

**[18.1] Section 1. Term.** The covenants, conditions, restrictions, limitations, reservations, grants of easement, rights, rights-of-way, liens, charges and equitable servitudes

contained in this Declaration shall run with, and shall benefit and burden the Condominiums and the Common Area as herein provided, and shall inure to the benefit of and be binding upon the Owners, the Association, its Board of Directors, and its officers and agents, and their respective successors in interest, for the term of 60 years from the date of the recording of this Declaration, after which time the same shall be automatically extended for successive periods of 10 years each unless, within 6 months prior to the expiration of the initial 60-year term or any such 10-year extension period, a recordable written instrument, approved by Owners entitled to vote and holding at least 50 percent of the voting power of the Association terminating the effectiveness of this Declaration shall be filed for recording in the Office of the County Recorder of Los Angeles County, California.

**[18.2] Section 2. Construction of Declaration.**

(a) Restrictions Construed Together. All of the covenants, conditions, and restrictions of this Declaration shall be liberally construed together to promote and effectuate the fundamental concepts of the development of the Properties as set forth in the Recitals of this Declaration. Failure to enforce any provision hereof shall not constitute a waiver of the right to enforce that provision in a subsequent application or any other provision hereof.

(b) Restrictions Severable. Notwithstanding the provisions of subparagraph (a) above, the covenants, conditions, and restrictions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision.

(c) Singular Includes Plural. The singular shall include the plural and the plural the singular unless the context requires the contrary, and the masculine, feminine or neuter shall each include the masculine, feminine and neuter, as the context requires.

(d) Captions. All captions or titles used in this Declaration are intended solely for convenience of reference and shall not affect the interpretation or application of that which is set forth in any of the terms or provisions of the Declaration.

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(e) Exhibits. All exhibits to which reference is made herein are deemed to be incorporated herein by reference, whether or not actually attached.

Dated: January 21, 2004

BARCELONA OF PASADENA CONDOMINIUM ASSOCIATION

By Dennis I. VanderWerff  
Dennis VanderWerff, President

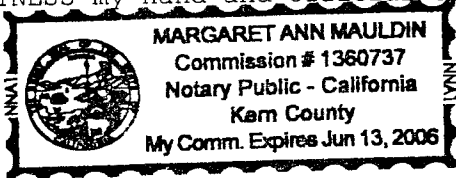
By Sally Eiwur  
, Secretary

State of California

County of ~~Los Angeles~~ Kern

On 28th, January, 2004, before me Margaret Ann Mauldin, a Notary Public, personally appeared, Dennis I. VanderWerff, personally known to me ~~(or proved to me on the basis of satisfactory evidence)~~ to be the person whose name is subscribed to the within instrument and acknowledged to me that he/~~she~~ executed the same in his/~~her~~ authorized capacity, and that by his/~~her~~ signature on the instrument he/~~she~~, or the entity on behalf of which he/~~she~~ acted, executed the instrument.

WITNESS my hand and official seal.



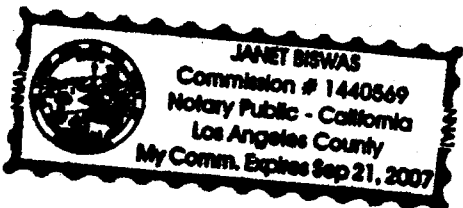
Margaret Ann Mauldin  
Margaret Ann Mauldin, Notary Public

State of California

County of Los Angeles

On February 4<sup>th</sup>, 2004, before me JANET BISWAS a Notary Public, personally appeared, Sally Eiwur, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/~~she~~ executed the same in his/~~her~~ authorized capacity, and that by his/~~her~~ signature on the instrument he/~~she~~, or the entity on behalf of which he/~~she~~ acted, executed the instrument.

WITNESS my hand and official seal.



Janet Biswas  
, Notary Public



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EXHIBIT "A"

UNIT TYPES

<u>UNIT NUMBER</u>	<u>UNIT TYPE</u>
1	1 BEDROOM*
3	SINGLE
4	SINGLE
5	1 BEDROOM
6	1 BEDROOM
21	SINGLE
22	SINGLE
23	SINGLE
24	SINGLE
25	1 BEDROOM
26	1 BEDROOM
27	1 BEDROOM
28	1 BEDROOM
31	SINGLE
32	SINGLE
33	SINGLE
34	SINGLE
35	1 BEDROOM
36	1 BEDROOM
37	1 BEDROOM
38	1 BEDROOM
41	SINGLE
42	SINGLE
43	SINGLE
44	SINGLE
45	1 BEDROOM
46	1 BEDROOM
47	SINGLE
48	1 BEDROOM

\*Commercial, Office or Residential

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EXHIBIT ``B''

VARIABLE AND FIXED ASSESSMENT COMPONENT SCHEDULE

The following expenses are assessed as the variable component of the Common Expenses in accordance with the Shares to Proportion Calculation set out in Exhibit ``C'':

- Boiler Insurance
- Fire Insurance
- General Liability Insurance
- Utilities
  - Electricity
  - Water
  - Gas
  - Trash Disposal

All other expenses are assessed as the fixed component of the Common Expenses.

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EXHIBIT "C"

SHARES TO PROPORTION CALCULATION

UNIT	SHARES	PROPORTION
1	4,646	0.04697
3	2,557	0.02585
4	2,386	0.02412
5	4,521	0.04570
6	4,859	0.04912
21	2,808	0.02839
22	1,759	0.01778
23	2,506	0.02533
24	2,409	0.02435
25	4,698	0.04749
26	4,317	0.04364
27	3,083	0.03117
28	4,481	0.04530
31	2,746	0.02776
32	1,906	0.01927
33	2,554	0.02582
34	2,466	0.02493
35	4,681	0.04732
36	4,502	0.04551
37	3,216	0.03251
38	4,602	0.04652
41	2,795	0.02826
42	1,963	0.01984
43	2,602	0.02630
44	2,409	0.02435
45	4,915	0.04969
46	6,439	0.06509
47	1,445	0.01461
48	4,647	0.04698
	98,918	1.00000