

RECORDING REQUESTED

2004

04 3130413

AND WHEN RECORDED MAIL TO:

BARRY SHY
4371 WINNETKA AVENUE
WOODLAND HILLS, CA 91364

DECLARATION OF COVENANTS,
CONDITIONS, RESTRICTIONS AND
RESERVATION OF EASEMENTS
FOR
HIGGINS LOFT - TRACT NO. 53327
(A Condominium Conversion Project)

[C-Single Attached Mixed Use: 10-27-04]
[This Set:07-30-04]

Document Prepared By:

Timothy S. Murakami, Esq.
1990 So. Bundy Drive, Suite 540
Los Angeles, California 90025
Tel: (310)979-0325

330043804-2

TABLE OF CONTENTS

<u>Article</u>	<u>Description</u>	<u>Page</u>
	DECLARATION AND RECITALS	R-1
I	DEFINITIONS	I-1
II	DIVISION, MAINTENANCE AND INSURANCE OF PROPERTY	II-1
	2.01 Units	II-1
	2.02 Common Area(s)	II-1
	2.03 Exclusive Use Common Area(s)	II-1
	2.04 Repair and Maintenance of the Property by Owner	II-1
	2.05 Repair and Maintenance of the Property by Association	II-3
	2.06 Association Insurance	II-3
	2.07 Owner Insurance	II-4
III	OWNERS GENERAL USE RESTRICTIONS	III-1
	3.01 Unit Use	III-1
	3.02 Common Area Use	III-1
	3.03 Nuisances	III-1
	3.04 Debris, Trash and Refuse	III-2
	3.05 Signs	III-2
	3.06 Use/Alteration Affecting Insurance Rates	III-2
	3.07 Parking / Vehicle Code Regulations	III-2
	3.08 Animal Regulations	III-2
	3.09 Exterior Apparatus Regulations	III-3
	3.10 Vine Coverage of Exterior Walls	III-3
IV	OWNERS GENERAL USE RESTRICTIONS OF COMMERCIAL UNITS	IV-1
	4.01 Commercial Unit Use	IV-1
	4.02 Leasing of a Commercial Unit	IV-1
	4.03 Hazardous Materials	IV-1
	4.04 Advertising	IV-1
	4.05 Customers, Guests, and Lessees; Insurance	IV-1
	4.06 Restrictions on Commercial Condominiums	IV-2
	4.07 Restaurant Use	IV-2
	4.08 Restrictions on Amendments	IV-2
	4.09 Use of Commercial Exclusive Use Areas	IV-2
	4.10 Hold Harmless and Indemnity	IV-2
	4.11 Restrictions Against Activities Which Impair Structure	IV-3
	4.12 Sign Control	IV-3
	4.13 Change in Commercial Status	IV-3
V	ASSOCIATION MEMBERSHIP AND VOTING RIGHTS	V-1
	5.01 Membership	V-1
	5.02 Membership Classes	V-1
	5.03 Voting Rights	V-1
	5.04 Transfer of Membership	V-2
VI	DUTIES AND POWERS OF THE ASSOCIATION	VI-1
	6.01 Commencement of Duties	VI-1
	6.02 Specific Association Duties and Powers	VI-1
	6.03 Board Powers and Limitations	VI-1
	6.04 Budget, Financial Statements and Governing Documents	VI-3
	6.05 Penalties for Non-Compliance	VI-4
	6.06 Right of Entry	VI-4

04 3130413

<u>Article</u>	<u>Description</u>	<u>Page</u>
VII	COVENANT FOR ASSESSMENT	VII-1
	7.01 Assessments	VII-1
	7.02 Commencement; Due Dates of Assessments	VII-1
	7.03 Assessment Rate	VII-1
	7.04 Assessment Duties of the Board of Directors	VII-1
	7.05 Effect of Nonpayment of Assessments; Delinquency and Remedies of the Association	VII-2
	7.06 Nonuse and Abandonment	VII-3
	7.07 Waiver of Exemptions	VII-3
VIII	ARCHITECTURAL CONTROL	VIII-1
	8.01 Approval by the Architectural Committee	VIII-1
	8.02 Certain Procedures for the Architectural Committee	VIII-1
	8.03 Review Standards	VIII-2
	8.04 Appeal	VIII-2
	8.05 Architectural Committee Hearings	VIII-2
IX	MORTGAGEE PROTECTION	IX-1
	9.01 Subordination of Lien and Foreclosure	IX-1
	9.02 Mortgagees Are Not Required to Cure Certain Breaches	IX-1
	9.03 Effect of Breach of Declaration	IX-1
	9.04 Exemption from Right of First Refusal	IX-1
	9.05 Restrictions on Certain Changes	IX-2
	9.06 Inspection of Association Books and Records	IX-3
	9.07 Condemnation Awards and Insurance Proceeds	IX-3
	9.08 Mortgagee's Right to Attend Meetings	IX-3
	9.09 Payments by Mortgagees	IX-3
	9.10 Loss Payable Endorsement	IX-3
	9.11 Notices to Mortgagees	IX-4
X	DESTRUCTION OF IMPROVEMENTS	X-1
	10.01 Restoration of the Property	X-1
	10.02 Sale of Property and Right to Partition	X-1
	10.03 Notice to Owners and Listed Mortgagees	X-1
XI	CONDEMNATION	XI-1
	11.01 Representation by Board in Condemnation Proceeding	XI-1
	11.02 Distribution of Award	XI-1
XII	COVENANT AGAINST PARTITION AND RESTRICTION ON SEVERABILITY OF CONDOMINIUM COMPONENT INTEREST	XII-1
	12.01 No Partition; Exceptions; Power of Attorney	XII-1
	12.02 Proceeds of Partition Sale	XII-1
	12.03 No Separate Conveyance of Condominium Components	XII-1

<u>Article</u>	<u>Description</u>	<u>Page</u>
XIII	EASEMENTS	XIII-1
	13.01 Certain Rights and Easements Reserved to Declarant	XIII-1
	13.02 Certain Easements for Owners	XIII-1
	13.03 Certain Easements for Association	XIII-1
	13.04 Encroachment	XIII-1
	13.05 Creation of Easements	XIII-2
	13.06 Utility Easements Granted by the Association	XIII-2
XIV	SPECIAL PROVISIONS RELATING TO ENFORCEMENT OF DECLARANT'S OBLIGATION TO COMPLETE COMMON AREA IMPROVEMENTS	XIV-1
	14.01 Special Provisions Relating to Enforcement of Declarant's Obligation to Complete Common Area Improvements	XIV-1
XV	AMENDMENT	XV-1
	15.01 Amendment	XV-1
XVI	DISPUTE NOTIFICATION AND RESOLUTION PROCEDURE (DECLARANT'S DISPUTES); WAIVERS	XV-1
	16.01 Enforcement and Nonwaiver	XVI-1
	16.02 Dispute Notification and Resolution Procedure (Declarant Disputes); Waivers	XVI-1
	16.03 Notice	XVI-2
	16.04 Right to Inspect and Right to Corrective Action	XVI-2
	16.05 Civil Code Sections 1368.4 and 1375	XVI-2
	16.06 Mediation	XVI-2
	16.07 Judicial Reference	XVI-4
	16.08 Binding Arbitration	XVI-6
	16.09 Agreement to Alternative Dispute Resolution; Waivers of Jury Trial and Award of Punitive Damages	XVI-7
	16.10 Application of Award	XVI-7
	16.11 Exceptions to Mediation and Reference; Statutes of Limitation	XVI-7
XVII	MISCELLANEOUS PROVISIONS	XVII-1
	17.01 Disclosures	XVII-1
	17.02 Term of Declaration	XVII-1
	17.03 Notices	XVII-1
	17.04 Partial Invalidity	XVII-1
	17.05 Number	XVII-1
	17.06 Attorneys' Fees	XVII-1

EXECUTION PAGE

SUBORDINATION BY LIENHOLDER

EXHIBIT A - PROPERTY

EXHIBIT B - ASSESSMENT ALLOCATION

12 0 0 8

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

THIS DECLARATION is dated this 8th day of November, 2004 (for reference purposes), by LADT LLC, a California limited liability company ("Declarant") and LA ABC, LLC, a California limited liability company ("Declarant").

RECITALS

- A. Declarant is the owner in fee of that certain real property ("Property") in the City of Los Angeles, County of Los Angeles, State of California, legally described in attached Exhibit "A".
- B. Declarant intends to develop the Property into a mixed use Condominium project ("Project") under the provisions of California Civil Code Section 1351(f), consisting of one-hundred thirty five (135) Residential Condominium Units and seven (7) Commercial Condominium Units.
- C. Declarant desires to impose a general plan for the development, maintenance, improvement, protection use, occupancy and enjoyment of the Project, and to establish, adopt and impose covenants, conditions, restrictions, easements, equitable servitudes, liens and charges upon the Project for the purpose of enforcing, protecting and preserving the value, desirability and attractiveness of the Project.

NOW, THEREFORE, Declarant hereby declares that the Property shall be held, conveyed, mortgaged, encumbered, leased, rented, used, occupied, sold, and improved, subject to the following declarations, limitations, covenants, conditions, restrictions, liens, charges and easements, all of which are for the purpose of enhancing and protecting the value and attractiveness of the Property, and every part thereof, in accordance with the plan for the improvement of the Property and division thereof into Condominiums. All of the limitations, covenants, conditions, restrictions, and easements shall constitute equitable servitudes in accordance with Civil Code Section 1354 and shall be binding upon Declarant and its successors and assignees, and all parties having or acquiring any right, title or interest in or to any part of the Property.

DEFINITIONS

The following definitions apply unless otherwise required by the context:

"Approval" - Prior written approval.

"Articles" - The Articles of Incorporation of the Association, including any amendments.

"Assessments" - All types of Association charges and Assessments levied against the Owners. The three (3) types of Assessments are Regular, Special, and Compliance Assessments.

"Association" - Higgins Loft, a California nonprofit mutual benefit corporation formed (or to be formed) to govern the Project. The term includes its agents, the Board or any committee as applicable.

"Beneficiary" - The lender on the security of a Promissory Note and Deed of Trust.

"Board" or "Board of Directors" - The Board of Directors of the Association.

"Bylaws" - The Bylaws of the Association, including any amendments.

"Code Section" - Refers to Codes of the State of California (e.g. "Civil Code", "Vehicle Code"). Reference to any specific Code Section shall include any future successor Code Sections.

"Commercial Condominium" - a Condominium identified in the Condominium Plan as a Condominium to be used for commercial and/or retail uses.

"Commercial Unit" - A Unit identified on the Condominium Plan as a unit to be used for commercial and/or retail.

"Common Area(s)" - The entire Property (including structures, land and improvements) other than the Units described in this Declaration and the Condominium Plan.

"Common Expenses" - The actual and estimated expenses of the Association in performing its duties as set forth in the Governing Documents.

"Compliance Assessment" - An Assessment imposed against a particular Owner in order to reimburse the Association for any costs incurred in connection with that Owner's violation of the Governing Documents, or a monetary penalty imposed by the Association as a disciplinary measure for failure to comply with the Governing Documents.

"Condominium" - An estate in real property (defined in Sections 783 and 1351(f) of the California Civil Code) consisting of both:

- (a) A separate interest in space called a "Unit"; and
- (b) An undivided interest in the Common Area.

"Condominium Plan" - The recorded diagrammatic drawings of the Units built or to be built on the Property which identifies each Unit and shows its dimensions pursuant to California Civil Code Section 1351(e).

"Declarant" - The person(s) or entity identified in the introductory paragraph of this Declaration; also, Declarant's successors to and assignees of special rights, preferences, or privileges designated herein, including any Mortgagees acquiring Declarant's interest in the Project by foreclosure or deed in lieu of foreclosure.

"Declaration" - This instrument and any amendments.

"Deed of Trust" - A three party security instrument conveying title to land as security for the repayment of a loan. Also called "Trust Deed". Reference to Deed of Trust includes a mortgage.

"DRE" - The California Department of Real Estate and any successors thereto.

"Eligible First Mortgagees" - Holders of First Mortgages who have requested the Association to notify them of specified proposals and changes to the Governing Documents and other Association matters.

"Exclusive Use Common Area" - Those portions of the Common Area designated by the Declaration, and/or Condominium Plan or by law for the exclusive or restricted use of the Owners of particular designated Units.

"FHA" - The Federal Housing Administration of the United States Department of Housing and Urban Development and any department or agency of the United States government which succeeds to the FHA's function of insuring notes secured by Mortgages on residential real estate.

"FHLMC" - The Federal Home Loan Mortgage Corporation (also known as The Mortgage Corporation) created by Title ii of the Emergency Home Finance Act of 1970, and any successors to such corporation.

"First Mortgage" or "First Mortgagee" - A Mortgage or Mortgagee that has priority over all other Mortgages or Mortgagees encumbering the same Condominium or any other portion of the Project, including a First Mortgagee's blanket Mortgage recorded prior to the recording of this Declaration.

"First Sale" - The date on which the first deed is recorded conveying fee title to a Condominium to the first Owner pursuant to a transaction requiring the issuance of a Final Subdivision Public Report by the Department of Real Estate.

"FNMA" - The Federal National Mortgage Association, a government-sponsored private corporation established pursuant to Title VIII of the Housing and Urban Development Act of 1968, and any successors to such corporation.

"Governing Documents" - All documents governing the Property, including this Declaration, the Articles, Bylaws, Condominium Plan and any Rules and Regulations.

"Grant Deed" - A written instrument transferring title to real property.

"Institutional Mortgagee" - Any bank, savings and loan association, insurance company, real estate investment trust, retirement fund trust, or other financial institution holding a recorded First Mortgage on any Condominium.

"Manager" or "Managing Agent" - The person(s), firm or corporation contractually engaged by the Association or Declarant and charged with the management of the Common Area(s) and the performance of other duties of the Association as provided for in this Declaration.

"Member" - Any person who is an Owner based upon the provisions of the Governing Documents.

"Mortgage" - A two party security instrument pledging land as security for the performance of an obligation. Reference to Mortgage includes the Deed of Trust.

"Mortgagee" - The party entitled to performance by a Mortgagor. Reference to Mortgagee includes any beneficiary under a Deed of Trust including a Deed of Trust on any portion of the Property, recorded prior to the recording of this Declaration.

"Mortgagor" - The party executing a Mortgage. Reference to Mortgagor includes the Trustor under the Deed of Trust.

"Notice and a Hearing" - A notice of time and an opportunity for a hearing as provided for in the Governing Documents.

"Occupant" - An Owner, resident, guest, invitee, tenant, lessee, sublessee, or other person residing in a Unit.

"Owner" or "Owners" - The person(s) or legal entity holding a recorded fee simple interest in a Condominium (including the Declarant), or the purchaser(s) of a Condominium under an installment land sales contract. "Owner" does not include any person or entity having an interest in a Condominium merely as security for the performance of an obligation.

"Person" - A person, partnership, corporation, trustee or other legal entity.

"Project" or "Property" - The real property described in Paragraph "A" of the Recitals to this Declaration. The Project is a "Condominium Project" as defined in Section 1351(f) of the California Civil Code. The Property is a "Common Interest Development" as defined in Section 1351(c) of the California Civil Code.

"Quorum" - Members entitled to vote (in person or by proxy) holding a majority of the total voting power of the Association constitute specifically, a quorum for business transactions at all Member meetings (except as otherwise specifically provided in this Declaration or the Bylaws of the Association).

"Regular Assessments" - Assessments used to meet the Association's normal operating expenses and to establish necessary reserves.

"Residential Condominium" - a Condominium identified on this Condominium Plan as a Condominium to be used for dwelling purposes.

"Residential Unit" - A Unit identified on the Condominium Plan as a dwelling unit to be used for residential purposes.

"Rules and Regulations" - The rules as established and adopted from time to time by the Board as provided for in this Declaration.

"Special Assessments" - Assessments levied on an as-needed basis to meet expenses of an extraordinary or capital nature.

"Total Voting Power" - One hundred percent (100%) of the votes by Owners which may potentially be cast. (Even if any Owner's voting rights have been suspended, the number of votes constituting the Total Voting Power would include any suspended vote(s).)

"Trustor" - The borrower from a Trust Deed lender, who deeds real property securing the loan to a Trustee to be held as security for the loan.

"Unit" - The elements of a Condominium not owned in common with other Owners as defined in California Civil Code Section 1351(f). Each Unit is designated as a Unit in the Condominium Plan for the Property and is separately identified.

"VA" - The Department of Veterans Affairs of the United States and any department or agency of the federal government which succeeds to VA's function of issuing guarantees of notes secured by Mortgages on residential real estate.

ARTICLE II

DIVISION, MAINTENANCE AND
INSURANCE OF PROPERTY

Ownership of each Condominium shall include a Residential or Commercial Unit, an undivided interest in the Common Area (or a portion of it), membership in the Association, and any Exclusive Use Common Area(s) appurtenant to such Unit.

2.01 Units.

Each Unit consists of all elements and areas identified as such on the Condominium Plan.

2.02 Common Area(s).

- (a) The Property not constituting the Units is the Common Area.
- (b) Each Owner of a Residential or Commercial Condominium in the Property will receive the following undivided interest in the Common Area in the Property: ~~one/one-~~ hundred forty second (1/142).

2.03 Exclusive Use Common Area(s).

- (a) As set forth in Civil Code Section 1351(i), "Exclusive Use Common Area(s)" are portions of the Common Area(s) for the exclusive use of the Owner(s) of the Residential or Commercial Unit to which the Exclusive Use Common Area is appurtenant.
- (b) As set forth in Civil Code Section 1351(i)(2), internal and external telephone wiring designed to serve a particular Unit, but located outside the boundaries of the Unit, are Exclusive Use Common Areas allocated exclusively to that Unit, whether or not they are designated and shown as such on the Condominium Plan.
- (c) Use of the Exclusive Use Common Area(s) are subject to reasonable restrictions contained in any Governing Documents.
- (d) Portions of the Common Area(s) designed to serve a particular Unit but located outside the boundaries of the Unit, are Exclusive Use Common Areas as set forth in Civil Code Section 1351(i)(1), if not shown and designated as such on the Condominium Plan.

2.04 Repair and Maintenance of the Property by Owner

- (a) In accordance with the Governing Documents, each Owner must maintain and repair all of the following, except as otherwise specifically stated herein:
 - (1) All of the Owner's Unit (see the Condominium Plan for a detailed description) in a clean, sanitary and attractive condition, including the following within the Unit's boundaries:
 - (A) Utility fixtures and equipment;
 - (B) Plumbing fixtures and pipes; and
 - (C) Electrical fixtures.

2. 0. 07
- (2) The Unit's Exclusive Use Common Area(s), as shown and designated on the Condominium Plan, if any, in a clean, sanitary and attractive condition;
 - (3) The following, whether located within or outside the Unit, that solely and exclusively serves the Unit:
 - (A) Air conditioning and heating equipment;
 - (B) Hot water heaters.
 - (4) Windows, exterior doors and related hardware, exterior door frames, balcony doors, and patio doors; and
 - (5) Any damage to any real or personal property in the Project caused by the negligence of an Owner or an Owner's Occupants or invitees, even if the damage is to an area otherwise maintained by the Association or another Owner. All the repairs shall be subject to prior approval of the Board.
- (b) Except as otherwise provided herein, each Owner has the exclusive right to paint, wallpaper or otherwise furnish and decorate the interior surfaces of the walls, partitions, ceilings, and doors within the Unit (including furniture and furnishings), without prior approval of the Board.
 - (c) An Owner shall notify the Association of any substantial improvements to the Unit and Exclusive Use Common Area(s), if any, in consideration of any effect of such improvements on the Association's insurance policy.
 - (d) Any change to the exterior appearance of a Unit must be approved by the Architectural Committee in accordance with the Governing Documents and applicable laws.
 - (e) Subject to this Declaration and California Civil Code Section 1360, an Owner may do the following:
 - (1) Make any improvement or alteration within the Unit and its Exclusive Use Common Area (if any) that does not impair the structural integrity or mechanical systems, or lessen the support of any portion of the Property.
 - (2) Modify a Unit and its Exclusive Use Common Area (if any) to eliminate hazards and facilitate access for disabled persons (including the route from the public way to the Unit door) subject to the following conditions:
 - (A) The modifications must be consistent with applicable building code requirements.
 - (B) The modifications must be consistent with applicable provisions of the Governing Documents regarding safety and aesthetics.
 - (C) External modifications to the Unit or its Exclusive Use Common Area may not prevent reasonable passage by other Owners, and must be removed by the Owner when the Unit is no longer occupied by the person(s) requiring the modifications.
 - (D) Plans and specifications must be submitted to the Board for review to determine compliance with the provisions of this paragraph.
 - (E) The Board may not deny approval of the proposed modifications without good cause.

- (F) An Owner may not do anything that unreasonably increases the level of noise emanating from within the Unit without obtaining the approval of the Board. If an Owner does anything within the Unit that may increase the level of noise or sound that can be heard outside the Unit during normal use and occupancy of the Unit (for example, replacing carpeting with tile or other hard surface), the Owner must first obtain approval from the Board, and upon approval, take all reasonable measures (at own expense) to deaden, insulate or otherwise decrease the level of such noise to the minimum level reasonably possible.

2.05 Repair and Maintenance of the Property by Association

- (a) Except as otherwise specifically stated, the Association (not individual Owners) is responsible for maintaining, repairing, modifying, and altering Common Areas (not including Exclusive Use Common Areas), including bearing walls (except for the finished surfaces thereof), plumbing and pipes in Common Area walls, window frames, balcony door frames, patio door frames, finished surfaces and structural components of balconies, balcony railings, patios, roof, and exterior paint (stucco) of the building.
- (b) The Association shall maintain an on-site recycling system.
- (c) The Association shall keep the Property clean and free of debris and rubbish. The Association is responsible for promptly removing any graffiti from the exterior walls of the Property.

2.06 Association Insurance

- (a) The Board shall obtain and maintain the following specified (or equivalent) insurance coverages, provided it is reasonably prudent to do so:
- (1) Fire insurance for one hundred percent (100%) of the full insurable value of all improvements in the Common Area(s), with a guarantee that the improvements are replaced without deduction for depreciation or coinsurance naming as insured the Owners, their Mortgagees, and/or the Association.
 - (2) Extended coverage for replacement costs of damage to the Common Area(s) that arises out of vandalism or malicious mischief.
 - (3) Comprehensive public liability insurance in a reasonably prudent amount that covers the Association, Board, Managing Agent, Owners, Occupants and any other agents or employees incident to the ownership or use of Common Area(s) against physical injury, death and property damage arising out of a single occurrence. The Board should consider maintaining insurance in the amount specified by Civil Code Sections 1365.7 and 1365.9 and the notification requirements of Section 1365.9.
 - (4) If available, an extended coverage endorsement clause known as "special form".
 - (5) Each hazard insurance policy must be written by a carrier who meets FNMA requirements for a "Best Rating".
 - (6) At the option of the Board, a fidelity bond that insures the Association for the estimated maximum amount (or at least three (3) months aggregate Assessments on all Condominiums and reserve funds) that could be affected by the dishonest act of any Member of the Association or Board, managing agent, employee, or Occupant, who handles funds for the Owners' benefit.

- 4 0 0 *
- (7) Workers' compensation insurance, in compliance with all applicable laws (if there are any employees or any workers hired to work in the Common Areas).
 - (8) If contractors are utilized, the Association should require evidence of Workers Compensation insurance and a certificate of insurance verifying Comprehensive General Liability insurance in a minimum amount of \$1,000,000.00, naming the Association as additional insured. The contractor's policy shall have a minimum 30 day notice of cancellation provision.
 - (b) Association insurance policies must contain the following provisions, ("Special Condominium Endorsements") as appropriate and if available:
 - (1) Inflation Guard Endorsement, if obtainable at a reasonable cost; and
 - (2) Standard Mortgage clause and name Mortgagee, holder of First Mortgage, FNMA or servicers (if applicable), or Mortgagees under any first deeds of trust, as their interests may appear.
 - (c) All fire insurance proceeds payable for losses to real property and improvements, and all casualty insurance proceeds, may be paid to a trustee, to be held and expended for the benefit of the Owners, the Association, Mortgagees, and others, as their respective interests shall appear. The trustee shall be a commercial bank or other financial institution with trust powers in the County in which the Project is located that agrees in writing to accept such trust. If repair or reconstruction is authorized, the Association shall have the duty to contract for such work as provided for in this Declaration.
 - (d) The Board shall consider including in the Association policy, coverage for flood insurance available under the appropriate programs for the National Flood Insurance Agency, or any other such agency.
 - (e) The Board shall consider including in the Association policy coverage for earthquake insurance.
 - (f) Insurance and fidelity bonds must provide for a ten (10) day written notice of modification or termination to any insurance trustee, and to each FNMA servicer who has filed a written request with the carrier for such notice, and to First Mortgagee.
 - (g) At least annually, the Board must review the Association's insurance policies.
 - (h) If economically feasible, prior to each annual review the Board shall obtain a current appraisal of the full replacement value of improvements on the Property, including foundations and footings, without deduction for depreciation.

2.07 Owner Insurance.

- (a) It is each Owner's responsibility, if desired, to obtain insurance for the following:
 - (1) Insurance for the personal property or potential liability occurring within a Unit;
 - (2) Loss assessment coverage for certain future special assessments; and
 - (3) Any other available insurance;
- (b) An Owner shall consider including in the policy coverage for earthquake insurance.

ARTICLE III

OWNERS GENERAL USE RESTRICTIONS

3.01 Unit Use.

- (a) Each Residential Unit shall be used solely as a private residential dwelling and for no other purpose.
- (b) An Owner may rent a Unit for residential purposes provided:
 - (1) There is a written agreement;
 - (2) The lease states it is subject to all the provisions of the Governing Documents;
 - (3) Owners must give the Board the names and telephone numbers of all Occupants, tenants, and their roommates; and
 - (4) The Association and each Owner shall have a right of action directly against any tenant/Occupant for any breach of any provision of the Governing Documents.
- (c) Subject to Declarant's rights pursuant to the Article entitled "Easements" herein, occupations and businesses that do not interfere with the residential nature or character of the Property or quiet enjoyment by other Owners may be carried on within a Unit, provided that all applicable laws, ordinances, zoning regulations and rules are satisfied and that there is no external evidence of any such occupation, such as an unreasonable increase in visitors, or an increase in the sound or smell emanating from the Unit.
- (d) Exterior walls and/or doors covered with clinging vines, oleander, or similar vegetation may not cover windows nor signs and may not exceed a height of nine feet.

3.02 Common Area Use.

- (a) Common Area(s) and Exclusive Use Common Area(s), if any, may only be used for purposes which are compatible with usages customarily associated with common areas located within residential developments in California, and subject to the limitations described in this Declaration and other Governing Documents.
- (b) Any Residential Unit Owner may delegate his/her rights of use and enjoyment of any Common Area facilities to the members of his/her immediate family, and guests and invitees. If a Residential Unit Owner has rented or leased his/her Condominium, such rights shall be automatically delegated to the tenants or lessees for the duration of their tenancy, and the Residential Unit Owner shall forfeit any rights to use and enjoy any such facilities for the duration of such tenancy. With respect to an installment land sales contract, the seller under the contract shall be deemed to have delegated his/her rights to use and enjoy any such facilities to the purchaser under the contract.

3.03 Nuisances.

- (a) Illegal, offensive, obnoxious actions, or noxious odors emanating from Residential Units that interfere with any Occupant's quiet enjoyment are not permitted anywhere on the Property.
- (b) An Occupant may not cause the level of noise or sound from the Residential Unit to interfere with the quiet enjoyment of an Occupant of another Residential Unit (i.e., loud music or television, shouting, slamming of doors, and other such actions.)

04 3130413

- 12 3 04
- (c) The Board shall have the right to determine if any unreasonable action, odor, noise or other conduct constitutes a nuisance, and to appropriately deal with the situation.

3.04 Debris, Trash and Refuse

Weeds, rubbish, debris, objects or materials of any kind that are unsanitary, unsightly, or offensive may not be placed or permitted to accumulate in any Unit or the Common Area(s).

3.05 Signs

- (a) For up to five (5) years from the First Sale in the Project, Declarant may erect and maintain any signs, advertising devices or structures to conduct development, improvement, subdivision, sale or leasing operations on the Property, as long as the activities do not unreasonably interfere with any Owner's use of the Property.
- (b) Subject to Civil Code Sections 712 and 713, and any local ordinance, an Owner may advertise a Condominium for sale or lease with sign(s) with a size, format, and location previously approved by the Board.
- (c) No other sign, poster, display, or advertising device may be displayed anywhere on the Property visible outside a Unit without the prior written consent of the Board, unless pursuant to 4.12 below such sign is within the rights of Commercial Unit Owners, their assignees or lessees.

3.06 Use/Alteration Affecting Insurance Rates

- (a) Acts that threaten cancellation or an increase of insurance rates for the Property may not be committed without Board approval.
- (b) If a particular Owner's use or activity is the cause of increased insurance rates, the responsible Owner is personally liable for the additional insurance premiums.

3.07 Parking / Vehicle Code Regulations

All applicable provisions of the California Vehicle Code Section 22658.2 (regarding illegally parked cars) shall be enforced.

3.08 Animal Regulations

- (a) A maximum of two (2) domesticated cats and/or dogs may be kept in a Unit, unless a greater number is authorized by the Board and provided they are not kept, bred or raised for commercial purposes and they are kept under reasonable control at all times.
- (b) In addition, small domesticated animals (e.g., birds, hamsters, fish, turtles) may be kept in a contained environment (cage or aquarium), provided they are not kept, bred or raised for commercial purposes, and subject to the following sub-paragraphs of this Section.
- (c) Animals that bother or annoy other Owners or residents (e.g., excessively barking dogs, chirping birds, or noisy aquarium filters) may not be kept on the Property or in a Unit.
- (d) An animal may only enter the Common Area(s) while on a leash which is held by a person capable of controlling it.
- (e) Owners must prevent their pets from soiling the Common Area(s), and are solely responsible for any required clean-up.

- 21004
- 10
- (f) The Board shall determine whether specific pets are a nuisance and should be removed from any Unit.
 - (g) Each Owner shall defend, indemnify and hold harmless all other Owners, the management company, the Association and the Board of Directors from any and all losses, costs, and liability arising from having any pet on the Property.

3.09 Exterior Apparatus Regulations

- (a) No television or radio poles, antennae, satellite dishes, or technological evolutions of the foregoing, flag poles, or other external fixtures other than those originally installed by the Declarant or approved in accordance with this Declaration shall be constructed, erected or maintained on or within the Project; provided, however, that the foregoing restriction shall not be construed to limit the installation or use of video or television antennas within the Project, including a satellite dish (collectively "Antenna"), except as otherwise permitted by law, that is of a size and type consistent with the provisions of Civil Code Section 1376, and with the provisions of Section 207 of the Telecommunications Act of 1996 (47 U.S.C. Section 303) or the regulations promulgated thereunder.
- (b) No wiring insulation, air conditioning, or other machinery or equipment other than that original installed by Declarant or approved in accordance with the requirements of this Declaration, and their replacements shall be constructed, erected or maintained on or within the Common Area including any structures on it.
- (c) Electrical or telephone wiring, antennae, satellite dishes (or any other electronic receiving or broadcasting device), etc., are not permitted on balconies or roof decks.

3.10 Vine Coverage of Exterior Walls.

Clinging vines, climbers, creeping plants, trailing plants and all similar vegetation may cover exterior non-glass walls, provided however that such plant life, flora, or foliage does not cover windows nor signs and does not exceed nine (9) feet.

ARTICLE IV

OWNERS GENERAL USE RESTRICTIONS
FOR COMMERCIAL UNITS

4.01 Commercial Unit Use.

A Commercial Unit shall not be occupied and used unless for commercial purposes by the Owner or his or her lessee. For purposes of this Article, "commercial purposes" shall include retail, wholesale and/or other sales, services and/or businesses, professional and other offices and/or services and/or sales, and, with respect to a particular Commercial Unit, the use allowed pursuant to the Section below entitled "Restaurant Use". All uses must comply with applicable federal, state and local laws and regulations. Any and all adjoining and/or appurtenant Commercial Limited/Exclusive Use Common Areas shall also be subject to the foregoing provisions.

4.02 Leasing of a Commercial Unit

Except for the restrictions contained in Section 3.01 above, there shall be no restriction on the right of an Owner to lease his or her Commercial Condominium Unit. An Owner may lease his or her Commercial Condominium Unit for the uses allowed by this Article. Any lease shall provide that it is subject, in all respects, to the provisions of this Declaration, the Articles, the Bylaws of the Association, and any Rules and Regulations made by the Board, promulgated in writing to such Owner and made expressly applicable to such Commercial Unit.

4.03 Hazardous Materials.

An Owner shall not use or keep in any Commercial Unit or Common Area, any kerosene, gasoline or other inflammable or combustible fluid or material or other hazardous materials, other than those required or necessary to operate the business for which the Commercial Unit is used and for normal cleaning, maintenance, repairs, waste disposal, and landscaping work.

4.04 Advertising.

No Owner or lessee shall employ an advertising medium which can be heard or experienced outside of the Commercial Unit, including, without limiting the generality of the foregoing, flashing lights, searchlights, loudspeakers, phonographs, compact disk players, radios or televisions, other than incidental or nominal sounds, light, odors and/or similar experiences occasioned by the same which may emanate from inside the Commercial Condominium Unit, and which shall in no event constitute a nuisance or materially disturbing or offensive situation. Identification and other signage shall be governed by Section 4.12 below. No Owner or lessee shall distribute, or cause to be distributed, any handbill or other advertising device in the Common Areas or on the public sidewalks or streets adjacent to the Project, excepting only within its own Commercial Unit or in any walkways, hallways or other reasonably limited portion of the Common Areas immediately outside and adjoining such Unit.

4.05 Customers, Guests, and Lessees; Insurance.

An Owner of a Commercial Condominium Unit shall be responsible for material and substantial compliance by his or her customers, guests and lessees, and his or her lessees' customers and guests, with the provisions of this Declaration, the Bylaws and any Rules and Regulations. The Owner of a Commercial Condominium or such owner's lessee shall maintain a policy or policies of public liability insurance in an amount which is reasonable for the use, and shall demonstrate proof of such insurance to the Board upon request.

4.06 Restrictions on Commercial Condominiums.

Except as otherwise stated herein, the Board may not by any amendment to any Governing Documents, Rule, Regulation, Policy or other publication either prohibit, limit, condition or restrict the reasonable use of a Commercial Condominium Unit as provided for herein. All uses shall be in conformity with the then-applicable zoning ordinances of the City. Commercial uses by their nature create a variety of impacts that would not occur, or would occur to a lesser degree, in a project with only residential uses. Such impacts include, without limitation, vehicular and pedestrian traffic, sounds, lighting, light noise, odors and pests. The benefits of living in a mixed-use project with commercial uses are deemed to outweigh the additional impacts from such uses upon Residential Units and their Owners and Occupants.

4.07 Restaurant Use.

Commercial Condominiums used for restaurant use are subject to the following additional restrictions:

- (a) Noise and odors caused from the operation of the restaurant shall be sufficiently controlled such that neither would cause an unreasonable nuisance to the other owners or occupants, or unreasonably disturb any occupant's right to the quiet enjoyment of their premises, subject to the Section entitled "Restrictions on Commercial Condominiums".
- (b) All utilities serving the restaurant shall be provided independent from the Project utilities, except for the sprinkler system and life-safety systems.

4.08 Restrictions on Amendments.

No amendments or addenda to this Declaration which either prohibit, limit, condition or further restrict the ownership, enjoyment or use of a Commercial Condominium Unit or which lengthen, make more onerous or increase the nature, method or rate of assessments on a Commercial Condominium Unit, as compared to the Residential Units, shall be effective unless the Owner of such Commercial Condominium has given its written consent to such amendment or addenda, which consent shall be given or withheld in such Owner's sole discretion.

4.09 Use of Commercial Exclusive Use Areas.

Each Owner of a Commercial Condominium shall be entitled to use, repair, maintain, operate, enjoy and improve any Commercial Exclusive Use Area appurtenant to the Owner's Commercial Condominium for usual and ordinary commercial purposes for which such area was designed and/or as permitted or authorized herein.

4.10 Hold Harmless and Indemnity.

Each Owner of a Commercial Condominium Unit assumes all risks which may result from repairs and/or improvements he or she makes to his or her Commercial Unit or Commercial Exclusive Use Area and each Owner indemnifies and holds harmless the Association, Declarant, and each other Owner from any claim, demands, liabilities, judgments, attorneys' fees and other obligations which arise out of or are incurred in connection with the installation, existence or removal of improvements, excepting such matters as are caused or permitted directly by the Association, Declarant, such other Owner or its/his/her respective employee, contractor, agent, representative, heir, successor, assign or transferee.

4.11 Restrictions Against Activities That Impair Structure.

The Board shall have the right to restrict those activities and improvements which it believes would have materially adverse structural impacts to the Project.

4.12 Sign Control.

Identification and other signs may be placed or displayed by Owners, tenant, or lessees of Commercial Condominiums on or in such Condominium only in accordance with all applicable federal, state and local laws and regulations. All identification and other signs for Commercial Condominiums (and any changes thereto) are subject to the prior written approval of Declarant, given or withheld in its reasonable judgment; after Declarant no longer owns any interest in the Project, Declarant shall have the right, but not the obligation, to transfer this approval right to the Board. Unless such right is so transferred, identification and sign rights shall be governed by these provisions. Notwithstanding the foregoing, an Owner of a Commercial Condominium may place one (1) sign of reasonable and customary dimensions in the place designated by the Board to advertise the Condominium for sale or rent. The Board may adopt reasonable Rules and Regulations regarding the size and location of "for sale" and "for rent" signs, but unless the foregoing sign/identification "right" is so transferred thereto, the Board shall have no power or prerogative to govern or regulate the same. Anything contained in this Declaration to the contrary notwithstanding, Declarant shall have the right to install and maintain signs in any Condominium owned or leased by it, and on the Common Area prior to the sale of all the Condominiums in the Project.

4.13 Change in Commercial Status.

No change, elimination, reduction or impairment of or in the commercial status of a Commercial Condominium shall be effective unless approved by a unanimous vote of all Owners of Commercial Condominiums and permitted by all applicable federal, state and local laws and regulations.

ARTICLE V

ASSOCIATION MEMBERSHIP AND VOTING RIGHTS

5.01 Membership.

Every Owner is automatically an Association member.

5.02 Membership Classes.

(a) The Association has two (2) classes of voting membership:

(1) Class A Members - All Owners (other than Declarant).

(2) Class B Member - Declarant, entitled to three (3) votes for each Condominium owned by Declarant.

(b) Class B Membership irreversibly ceases and converts to Class A Membership on the first to occur of the following:

(1) The total outstanding votes held by Class A Membership equals the total outstanding votes held by Class B Membership (tripled); or

(2) Two (2) years after the First Sale of a Condominium in the Project.

5.03 Voting Rights and Requirements

(a) Voting rights shall commence for each Condominium within the Project when Assessments against the Condominium have been levied by the Association.

(1) Each Co-Owner has an indivisible interest in a single Membership.

(2) If Co-Owners cannot unanimously agree how to cast their vote, they forfeit their right to vote on the matter in question.

(3) If a Co-Owner casts a vote representing a certain Condominium, it will be presumed for all purposes to be a vote with the authority and consent of all other Co-Owners of the Condominium.

(b) After Notice and Hearing as provided herein, the Board has the right to suspend the voting rights of any Owner delinquent more than forty-five (45) days in the payment of Assessments.

(c) Unless otherwise specifically required, Membership approval requires the affirmative vote of a majority of a quorum of each class of Membership (and after conversion, approval of Class A only).

(d) If Membership approval of a specified prescribed majority (e.g. 67%) of the voting power (other than Declarant) is required, the following rules apply:

(1) If both Class A and Class B Members exist, the required vote is a bare majority of Class B voting power, and the prescribed majority of Class A voting power; or

(2) After conversion to all Class A memberships, the required vote is a bare majority of the Total Voting Power of the Association, and the prescribed majority of the Total Voting Power of Members other than Declarant.

- (e) With the exception of the provisions of the Article herein entitled '*Special Provisions Relating to Enforcement of Declarant's Obligation to Complete Common Area Improvements*', no provision which requires the approval of a prescribed majority of the voting power of Members of the Association other than the Declarant for action to be taken by the Association is intended to preclude the Declarant from casting votes attributable to Condominiums which Declarant owns.

5.04 Transfer of Membership.

- (a) Membership of each Owner shall be appurtenant to the Condominium owned, and may only be (and is automatically) transferred upon conveyance of title to a Condominium to the new Owner.
- (b) In connection with any transfer or change of ownership of any Condominium, the Association and each Owner must comply with Civil Code Section 1368.

22

ARTICLE VI

DUTIES AND POWERS OF THE ASSOCIATION

6.01 Commencement of Duties.

The Association's responsibility for the management, maintenance and administration of the Property in accordance with the Governing Documents commences upon First Sale of a Condominium.

6.02 Specific Association Duties and Powers

The duties and powers of the Association are those set forth in the Governing Documents, together with its general and implied powers as a nonprofit mutual benefit corporation, generally to do all things which are necessary or proper for the peace, health, comfort, safety and general welfare of its Owners, including the following:

- (a) Enforce the applicable provisions of the Governing Documents and other instruments for the ownership, management and control of the Project.
- (b) Contract for goods and/or services for the Common Areas (not including Exclusive Use Common Areas), facilities, and interests, or for the Association subject to the limitations set forth below.
- (c) Borrow money with the assent of sixty-seven percent (67%) of the voting power and/or to mortgage, pledge, or otherwise hypothecate any of its real or personal property as security for money borrowed or debts incurred.
- (d) Exercise any powers normally exercised by residential homeowner associations under the laws of the State of California.
- (e) Have the authority, through the Board, to enter into a maintenance agreement, as approved by DRE, with Declarant for temporary suspension of a portion of Regular Assessments.

6.03 Board Powers and Limitations

The powers and duties of the Board shall normally include, but shall not be limited to, the following:

- (a) Enforcement of applicable provisions of the Covenants, Conditions and Restrictions, Articles, Bylaws and other instruments for the ownership, management and control of the Project.
- (b) Contracting for casualty, liability and other insurance on behalf of the Association.
- (c) Delegating its powers to committees, officers or employees of the Association as expressly authorized by the Governing Documents.
- (d) Preparation of budgets and financial statements for the Association as prescribed in the Governing Documents.
- (e) Formulation of rules of operation of the common areas and facilities owned or controlled by the Association.
- (f) Election of officers of the Board of Directors.
- (g) Filling of vacancies on the Board of Directors, except for vacancies created by removal of a director.

- (h) The Board is authorized to:
- (1) Adopt and enforce reasonable Rules and Regulations not inconsistent with the Governing Documents concerning the Property;
 - (2) Pay taxes and assessments which are, or could become, a lien on the Common Area or a portion thereof;
 - (3) Contract for goods and/or services for the Common Area(s) and facilities for the Association subject to the limitations set forth below;
 - (4) Delegate its powers to committees, officers or employees of the Association or outside companies or persons hired by the Association as expressly authorized by the Governing Documents;
 - (5) Formulate rules of operation of the Common Area(s) and facilities owned or controlled by the Association;
 - (6) Commence disciplinary proceedings against members of the Association for violations of provisions of the Governing Documents in accordance with procedures set forth in the governing instruments; and
 - (7) Enter upon any privately owned Unit as necessary in connection with construction, maintenance or emergency repair for the benefit of the Common Area(s) or the Owners in common.
- (i) The Board is authorized to institute, defend, settle or intervene on behalf of the Association in litigation, arbitration, mediation, or administrative proceedings in matters pertaining to:
- (1) Enforcement of the Governing Documents;
 - (2) Damage to the Common Area(s);
 - (3) Damage to the separate interests which the Association is obligated to maintain or repair; or
 - (4) Damage to the separate interests which arises out of, or is integrally related to, damage to the Common Area(s) or separate interests that the Association is obligated to maintain or repair.
- (j) The Board may not ordinarily take any of the following actions unless approved by a majority of Members (other than Declarant) constituting a quorum, at a meeting or by written ballot without a meeting, pursuant to Corporations Code Section 7513:
- (1) Enter into a contract for a term longer than one (1) year with a third person who furnishes goods or services for the Common Area(s) or the Association, with the following exceptions:
 - (A) A management contract with terms approved by the FHA or VA;
 - (B) A contract with a public utility company if the Public Utilities Commission regulates rates charged for materials or services, provided that the contract term does not exceed the shortest term for which the supplier will contract at the regulated rate;
 - (C) Prepaid casualty and/or liability insurance policies not to exceed three (3) years' duration, provided that the policy permits short-rate cancellation by the insured;

- 7
- (D) Lease agreements for laundry room fixtures and equipment not to exceed five years duration, provided that Declarant's ownership interest in the lessor under the agreement does not exceed ten percent (10%);
 - (E) Agreements for satellite dishes or cable television services and equipment, not to exceed five (5) years duration, provided that the Declarant's ownership interest in the entity does not exceed ten percent (10%);
 - (F) Agreements for sale, lease, installation or services of burglar and fire alarm equipment, not to exceed five (5) years duration, provided that Declarant's ownership interest in any entity involved does not exceed ten percent (10%); and
 - (G) A management contract for a term not to exceed three (3) years that is terminable by the Association after no longer than one (1) year without cause, penalty or other obligation upon ninety (90) days written notice of termination to the other party.
- (2) Incur aggregate expenditures for capital improvements to the Common Area in any fiscal year in excess of five percent (5%) of the budgeted gross expenses of the Association for that fiscal year.
 - (3) Sell during any fiscal year property of the Association having an aggregate fair market value greater than five percent (5%) of the budgeted gross expenses of the Association for that fiscal year.
 - (4) Pay compensation to members of the Board or to officers of the Association for services performed in the conduct of the Association's business provided, however, that the Board may cause a member or officer to be reimbursed for expenses incurred in carrying on the business of the Association.
 - (5) Except with the vote or written assent of the Members holding more than two-thirds (2/3) of the voting rights of each class of Members, if two classes exist, or, if only one class exists, more than two-thirds (2/3) of the voting rights of all Members and more than two-thirds of the voting rights of all Members other than Declarant, the Board shall not initiate any claim under California Civil code Section 895 et seq. and Declarant, and its representatives on the Board, shall have no control over the issue to decide whether to initiate a claim under such statutory provisions.

6.04 Budget, Financial Statements and Governing Documents

- (a) The Board of Directors of the Association must comply with all current requirements of California Civil Code Sections 1365 and 1365.5, or successor statutes pertaining to financial records, and Governing Documents.
- (b) In addition to the requirements of California Civil Code Sections 1365 and 1365.5, the Association shall make the following documents available for inspection and copying by a Member or the Member's duly appointed representative at the office of the Association upon request during normal business hours or under other reasonable circumstances:
 - (1) Current copies of all Governing Documents, books, records, and financial statements of the Association for lenders, holders, insurers and guarantors of a First Mortgage on any Condominium; and
 - (2) Copies of relevant California Code Sections referenced in any Governing Documents.

- 7
- (c) Owners shall annually be provided a summary of the provisions of Section 1354, which must include the following language: "Failure by any member of the association to comply with the pre-filing requirements of Section 1354 of the Civil Code may result in the loss of your rights to sue the association or another member of the association regarding enforcement of the Governing Documents." This summary shall be provided either at the time the pro forma budget required by Section 1365 is distributed, or in the manner specified in Section 5016 of the Corporations Code.
 - (d) The Association may charge a fee to the requesting party for this service which may not exceed the reasonable cost to prepare and reproduce any requested documents.

6.05 Penalties for Non-Compliance

- (a) In recognition of the need for a reasonable means of encouraging and insisting upon compliance with the provisions of the Governing Documents without resorting to suits for injunctive relief, the Board is authorized to do the following:
 - (1) Establish a reasonable policy of reasonable penalties, including monetary penalties (which specifies the amounts of potential monetary penalties);
 - (2) Assess such penalties against any Owner found to be in violation of any provision of the Governing Documents; and
 - (3) Temporarily suspend an Owner's voting rights as a Member of the Association and/or rights to use Common Area facilities for as long as the violation continues.
- (b) Notice and Hearing relating to the imposition of any penalties in this Section must be made in the following manner and at a minimum:
 - (1) Notice must be given to the relevant Owner's most recent address in the Association's records at least fifteen (15) days before the proposed effective date of the penalty;
 - (2) Notice must set forth details of the violation itself, the proposed penalty, and the date, time and place of the Hearing;
 - (3) The Owner may be heard (either orally or in writing) at a Hearing held at least five (5) days before the effective date of the proposed penalty;
 - (4) Hearing will be held by the Board of Directors, and their decision is final and binding upon the Owner;
 - (5) The Board shall meet in executive session if requested by the Owner being disciplined, and the Owner shall be entitled to attend the executive session.
 - (6) Following the Hearing, the Board must decide whether or not the Owner should in fact be penalized, and the nature of the penalty.
- (c) If the Board establishes a policy imposing any monetary penalty, including any fee on any member for a violation of the Governing Documents or rules of the Association, including any monetary penalty relating to the activities of a guest or invitee of a member, the Board shall adopt and distribute to each member by personal delivery or first-class mail, a schedule of the monetary penalties that may be assessed for those violations, which shall be in accordance with authorization for member discipline contained in the Governing Documents. (The Board shall not be required to distribute any additional schedules of monetary penalties unless there are changes from the schedule that was adopted and distributed to the members.)

04 3130413

- (d) If an Owner fails to comply with a penalty imposed pursuant to the provisions of this Section, the Board may seek judicial enforcement of the penalty in any court of competent jurisdiction, with the Owner liable for all costs (collection costs, court costs, attorney's fees, etc.). However, such penalties and costs shall not be treated as an assessment that may become a prejudgment lien enforceable by Civil Code Section 2924.
- (e) Notwithstanding the foregoing, the Owner shall be given, at a minimum, the rights set forth in Corporations Code Section 7341 or any successor statute.

6.06 Right of Entry.

- (a) The Association has the right to enter any Unit or Exclusive Use Common Area(s) to determine compliance with the Governing Documents and to perform its duties.
- (b) In case of emergency, or by Court order, a Unit may be entered immediately. Otherwise, a Unit or its Exclusive use Common Area(s) may only be entered at reasonable hours after the Owner has received three (3) days notice, and if the entry will not result in a breach of the peace.
- (c) Entry must be made with as little inconvenience as possible to the Owner/Occupant.

ARTICLE VII

COVENANTS FOR ASSESSMENT

7.01 Assessments.

- (a) Assessments may be levied by the Association for improvement and maintenance of the Common Area(s), administration of the Property, and to promote the recreation, safety, and welfare for the common good of all the Owners.
- (b) Each Owner, by acceptance of a deed to a Condominium, whether or not it shall be so expressed in any deed, covenants and agrees to pay all Assessments to the Association.
- (c) Assessments and related interest, collection costs, and reasonable attorneys' fees are the personal obligations of the Owner, but are not the personal obligation of successors in title unless expressly assumed by them. The Condominium remains subject to any Assessment liens of record, except upon foreclosure of a First Mortgage, as stated in the Article entitled "Mortgagee Protection".
- (d) Pursuant to Civil Code Section 1366.1, the Association may not collect an assessment or fee that exceeds the amount necessary to defray the costs for which it is levied.

7.02 Commencement; Due Dates of Assessments

- (a) Regular Assessments for all Condominiums in the Project commence on the first day of the month following the First Sale within the Project.
- (b) Regular Assessments shall be due and payable in any reasonable manner established by the Board.

7.03 Assessment Rate.

- (a) All Assessments, both Regular and Special, shall be variable and charged to and divided among the Condominiums as set forth in attached Exhibit "B" except where stated herein.
- (b) Units 102, 105, and 106 shall each be assessed one percent (1%) of the total domestic water and gas and shall not be assessed for elevator and/or janitorial services. These Units have separate gas meters and will not use the elevator and the janitorial services.
- (c) Unit 103, the building's parking garage, which has no gas, water, or sewer, shall be assessed only eight (8) percent of the total Budget for Commercial Units (Commercial Budget).
- (d) Units 104, 107, and 108 shall each be assessed one-half percent (0.5%) of the total domestic water and gas and shall not be assessed for janitorial and/or elevator service. These Units will not use the elevator and the janitorial services and are Commercial units.

7.04 Assessment Duties of the Board of Directors

- (a) The Board must levy Regular and Special Assessments in compliance with Civil Code Section 1366.
- (b) The Board must establish separate bank accounts for operating monies and reserve monies.

7.05 Effect of Nonpayment of Assessments: Delinquency and Remedies of the Association

- (a) An Assessment is delinquent ("Delinquent Assessment") if not paid within fifteen (15) days after the due date. A Delinquent Assessment includes:
- (1) A late charge imposed by the Board to the maximum amount in accordance with California Civil Code Section 1366 (or any successor statutes);
 - (2) Reasonable collection costs and attorney's fees; and
 - (3) Interest on all costs and charges at the maximum permissible rate, commencing thirty (30) days after the Assessment is due.
- (b) Delinquent Assessments and related costs will be a continuing lien on the relevant Condominium when a "Notice of Delinquent Assessment" is recorded against an Owner's fee interest in a Condominium.
- (c) Notwithstanding the foregoing, a Compliance Assessment imposed by the Board as a disciplinary measure for failure of an Owner to comply with the Governing Documents or as a means of reimbursing the Association for costs incurred by the Association in the repair of damage to common areas and facilities for which the Owner was allegedly responsible or in bringing the Owner and his/her Unit into compliance with the Governing Documents, may not become a lien against the Owner's Unit enforceable by a sale of the interest in accordance with the provisions of Sections 2924, 2924(b) and 2924(c) of the Civil Code. However, this does not apply to charges imposed against an Owner consisting of reasonable late payment penalties for delinquent assessments and/or charges to reimburse the Association for the loss of interest or for costs reasonably incurred including attorney's fees in its efforts to collect other delinquent assessments.
- (d) In addition to all other legal rights and remedies, the Association may:
- (1) Bring legal action against an Owner who is personally obligated to pay the Assessment and charges (without foreclosing or waiving any lien security);
 - (2) Judicially foreclose the lien against the Condominium, including the Assessment, interest, collection costs and late charges;
 - (3) Foreclose the lien by power of sale in accordance with California Civil Code Sections 2924-2924h, or any other lawful manner;
 - (4) Bid on the Condominium through authorized agents at the foreclosure sale, to acquire and thereafter to hold, lease, Mortgage or convey; or
 - (5) Temporarily suspend the voting rights of the Owner in accordance with the provisions of this Declaration.
- (e) Foreclosure action may not proceed until thirty (30) days after a Notice of Delinquent Assessment is duly recorded with the relevant County Recorder that meets the requirements of Civil Code Section 1367.
- (f) A copy of the Notice of Delinquent Assessment must be sent by certified or registered prepaid United States mail, addressed to the Owner or the Owner's designated agent previously given in writing to the Association at the Condominium (or an address that the Owner has previously given in writing to the Association which address must be within the United States).
- (g) Upon an Owner's timely payment of a default and all related fees, Association officers may prepare and record (at the Owner's cost) a release of the Notice of Delinquent Assessment.

04 3130413

- (h) No transfer of an Owner's interest in a Condominium as a result of a foreclosure or exercise of a power of sale shall relieve the new Owner whether it be the former beneficiary of the First Mortgage or another person, from liability for any assessment thereafter becoming due or from the lien thereof.

7.06 Nonuse and Abandonment

An Owner does not waive or otherwise avoid liability for Assessments by nonuse of the Common Area(s) or abandonment of a Unit.

7.07 Waiver of Exemptions

With respect to Assessment liens, each Owner waives (to the extent permitted by law) the benefit of any California homestead or exemption laws in effect when any Assessment or installment becomes delinquent or a lien is imposed.

ARTICLE VIII

ARCHITECTURAL CONTROL

8.01 Approval by the Architectural Committee

- (a) An Architectural Committee composed of three(3) to five (5) Members (the exact number shall be determined by the Board) for the control of structural, and landscaping architecture, and design within the Property is hereby established as set forth below.
- (1) The Declarant shall appoint all of the original members of the Architectural Committee and all replacements until the first anniversary of the First Sale. The Declarant reserves to himself the power to appoint a majority of the members of the Architectural Committee until ninety percent (90%) of all the Condominiums in the Project have been sold or until the fifth anniversary of the First Sale of a Condominium in the Project, whichever first occurs.
 - (2) After one year from the date of the First Sale, the Board shall have the power to appoint one member to the Architectural Committee until ninety percent (90%) of all of the Condominiums in the Project have been sold or until the fifth anniversary date of the First Sale of a Condominium in the Project, whichever first occurs. Thereafter, the Board shall have the power to appoint all of the members of the Architectural Committee.
 - (3) Members appointed to the Architectural Committee by the Board shall be from the membership of the Association and may be members of the Board.
- (b) Any exterior alteration or improvement or change to the exterior of a Unit anywhere on the Property (and any Common Area) must first be approved in writing by the Architectural Committee.
- (c) Complete plans and specifications must be submitted in writing to the Architectural Committee showing plot layout, materials, sizes, color, design and landscaping, and with the signature of the Owner.
- (d) The Association may charge an Owner for reasonable costs incurred for review of any proposals submitted (e.g., an Architect's fee).

8.02 Certain Procedures for the Architectural Committee

- (a) The Architectural Committee shall meet from time to time as necessary.
- (b) If any Member is unable (or unwilling) to serve on the Architectural Committee, the remaining Member(s) will have authority to approve or reject any proposed construction or alteration.
- (c) If the Architectural Committee fails to rule on a proposal within thirty (30) days after complete plans and specifications have been submitted as outlined below, the plans will be considered automatically approved.
- (d) Complete plans and specifications must be either:
- (1) Personally delivered to an Architectural Committee Member; or
 - (2) Mailed postage prepaid, certified mail, return receipt requested to the Architectural Committee at its current address.

8.03 Review Standards.

- (a) The Architectural Committee must approve or reject plans and specifications submitted for proposed construction or alteration based on:
 - (1) Aesthetic aspects of design, placement, landscaping, color, finish, materials, and harmony with existing structures; and
 - (2) Overall benefit or detriment to the Property and the area immediately surrounding the Unit involved.
- (b) The Architectural Committee is not responsible for approval of plans from the standpoint of structural safety or conformance with building codes.

8.04 Appeal.

- (a) After the Declarant has lost the right to appoint a majority of Members of the Architectural Committee, all decisions of the Architectural Committee are subject to review by the Board.
- (b) Unless the composition of the Membership of the Architectural Committee is identical to the Board, the Board must review and decide upon the proposal within forty-five (45) days after the decision by the Architectural Committee, otherwise the proposal will be deemed approved.

8.05 Architectural Committee Meetings.

Meetings of the Architectural Architectural Committee shall be held from time to time as necessitated by action to be taken. Notice, hearing and conduct of the meetings must be in accordance with the Bylaws of the Association and general corporation laws regarding committee meetings.

ARTICLE IX

MORTGAGEE PROTECTION

9.01 Subordination of Lien and Foreclosure

- (a) Any lien for Regular or Special Assessments created or claimed in this Declaration:
 - (1) Is subject and subordinate to the rights of any First Deed of Trust that encumbers any part of the Property made for value in good faith; and
 - (2) May not in any way impair or invalidate the obligation or priority of a First Mortgage unless expressly subordinated in writing by the Mortgagee. The signing of any Mortgagee to the Subordination by Lienholder included in this Declaration shall not constitute said lienholder's subordination to any future Assessment lien.
- (b) No breach of any provision of this Declaration shall invalidate the lien of any Mortgage made in good faith and for value; but all of the covenants, conditions and restrictions shall be binding on any Owner whose title is derived through foreclosure sale, trustee's sale, or otherwise.
- (c) Upon foreclosure of a First Mortgage, the purchaser:
 - (1) Will take the Condominium title free of any Assessment lien accrued up to the time of the foreclosure sale (provided that nothing herein is intended to impair the rights of the Association to receive payment on any Assessment lien in the event the net sale proceeds are in excess of what is owed on all encumbrances prior to the Assessment lien); and
 - (2) Is only obligated to pay Assessments or other Association charges accruing after the title to the Condominium is acquired.
- (d) If the Mortgagee obtains title with a deed in lieu of foreclosure, any Assessment lien shall not be extinguished upon recordation of the deed.

9.02 Mortgagees Are Not Required to Cure Certain Breaches

A First Mortgagee who acquires title by foreclosure or by a deed in lieu of foreclosure or assignment in lieu of foreclosure shall not be obligated to cure an existing breach of this Declaration that is non-curable or of a type that is not practical or feasible to cure.

9.03 Effect of Breach of Declaration

No breach of any provision of this Declaration shall invalidate the lien of any Mortgage made in good faith and for value; but all of the covenants, conditions and restrictions shall be binding on any Owner whose title is derived through foreclosure sale, trustee's sale, or otherwise.

9.04 Exemption From Right of First Refusal

- (a) No right of first refusal or similar restriction may be placed on an Owner's right to sell, transfer, or otherwise convey a Condominium, unless a Mortgagee of the Property grants written consent to the Association.

(b) Any right of first refusal or option to purchase a Condominium that may be granted to the Association (or other party) may not impair the rights of a First Mortgagee to do any of the following:

- (1) Foreclose or take title to a Condominium, pursuant to the remedies provided in the Mortgage;
- (2) Accept a deed (or assignment) in lieu of foreclosure in the event of default under the Mortgage; or
- (3) Sell or lease a Condominium acquired by the Mortgagee.

9.05 Restrictions on Certain Changes

(a) In addition to the requirements of Article XIV, and unless a greater percentage is expressly required by law, approval by Owners who represent at least sixty-six and two-thirds percent (66 2/3%) of the total allocated votes in the Owners Association and by Eligible First Mortgagees who represent at least fifty-one percent (51%) of the votes of Condominiums that are subject to Mortgages held by Eligible First Mortgagees must be obtained prior to adoption of any amendment of any Governing Documents of a material nature affecting any of the following matters:

- (1) Voting rights;
- (2) Reductions in reserves for maintenance, repair, or replacement of the Common Area improvements;
- (3) Responsibility for maintenance and repairs ;
- (4) Reallocation of interests in the Common Area or Exclusive Use Common Area or rights to their use;
- (5) Redefinition of any Unit boundary;
- (6) Convertibility of Units into Common Area or Common Area into Units;
- (7) Expansion or contraction of the Project or the addition, annexation, or withdrawal of property to or from the Project;
- (8) Hazard or fidelity insurance requirements;
- (9) Imposition of any restrictions on the leasing of Units except as provided herein;
- (10) Imposition of any restrictions on a Unit Owner's right to sell or transfer his or her Unit;
- (11) Restoration or repair of the Project (after damage or partial condemnation) in a manner other than that specified in this Declaration;
- (12) Any provisions that expressly benefit mortgage holders, insurers, or guarantors;
- (13) Any action to terminate the legal status of the Project after substantial destruction or condemnation occurs; or

- (b) If Owners are considering termination of the legal status of the Project for reasons other than substantial destruction or condemnation of the Property, Eligible First Mortgagees who represent at least sixty-six and two-thirds percent (66 2/3%) of the votes of the mortgaged Condominiums must agree. If any Eligible First Mortgagee fails to submit a response to any written proposal for an amendment within thirty (30) days after it receives proper notice of the proposal, provided the notice was delivered by certified or registered mail with a return receipt requested, the Eligible First Mortgagee shall be considered to have granted approval.

9.06 Inspection of Association Books and Records

Any First Mortgage holder has the right to examine the books and records of the Association after notice to the Association and only during business hours.

9.07 Condemnation Awards and Insurance Proceeds

First Mortgagees have priority over any other party (including the Owner) pursuant to their Mortgage in a case of a distribution to Owners of insurance proceeds or condemnation awards for losses to or taking of Units or Common Areas. Any provision to the contrary in this Declaration, the Bylaws, or other Governing Documents is to such extent void.

9.08 Mortgagee's Right to Attend Meetings

Any Mortgagee may appear at Association and Board meetings, but is not eligible to vote.

9.09 Payments by Mortgagees.

- (a) First Mortgagees may pay the following jointly or severally:
- (1) Taxes or other charges in default which may be a charge against any part of the Common Area(s); and
 - (2) Overdue premiums on hazard insurance policies, or to secure new hazard insurance coverage on the lapse of a policy for the Common Area(s).
- (b) Upon making such payments, the Association:
- (1) Owes immediate reimbursement to First Mortgagees making such payments; and
 - (2) Must, upon Mortgagee's request, execute an agreement that reflects the First Mortgagees' entitlement to such reimbursement.

9.10 Loss Payable Endorsement

All applicable fire, physical loss or extended coverage insurance policies must contain loss payable clauses naming the Mortgagees who encumber the Condominiums.

9.11 Notices to Mortgagees.

- (a) Each Eligible First Mortgage Holder is entitled to timely written notice of:
- (1) Any condemnation or casualty loss that affects a material portion of the Project or the Unit securing its Mortgage;
 - (2) Any sixty-day delinquency in the payment of Assessments or charges owed by the Owner of any Condominium on which it holds the Mortgage;
 - (3) A lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association; and
 - (4) Any proposed action that requires the consent of a specified percentage of Eligible First Mortgage Holders.
- (b) To obtain the information above, the Mortgage holder, insurer or guarantor must send a written request to the Association, stating both its name and address and the Condominium number or address of the Condominium for which it has the Mortgage.

ARTICLE X

DESTRUCTION OF IMPROVEMENTS

10.01 Restoration of the Property.

If there is damage to or destruction of any improvements on the Property for which the Association is responsible:

- (a) If insurance proceeds cover at least eighty-five percent (85%) of restoration costs, the Association shall cause Common Area damage to be repaired unless sixty-six and two-thirds percent (66 2/3%) of the Total Voting Power elect not to reinvestment or repair.
- (b) If insurance proceeds cover less than eighty-five percent (85%) of restoration costs, then the vote (or written assent) of sixty-six and two-thirds percent (66 2/3%) of the Owners and First Mortgagees must approve proceeding with restoration. A Special Assessment shall be levied by the Board against each Condominium, to pay for the difference between insurance proceeds and the actual costs.
- (c) If the estimated cost of repair does not exceed ten thousand dollars (\$10,000.00), the Board must cause the repair to occur without the consent of Members irrespective of the available amount of insurance proceeds. The Board is empowered to levy a Special Assessment if necessary as described herein.
- (d) If the Owners and Mortgagees determine that restoration costs would be substantial and reconstruction would not be in their best interests, the Owners may proceed as provided below.

10.02 Sale of Property and Right to Partition.

If the Association elects not to rebuild, an independent M.A.I. (Member Appraisal Institute) appraiser (or an appraiser of comparable experience) shall determine the relative fair market values of all condominiums as of a date immediately prior to any damage or destruction and the proceeds of insurance shall be apportioned among all Owners, and their respective Mortgagees, in proportion to such values.

10.03 Notice to Owners and Listed Mortgagees

Immediately upon learning of any material damage or destruction to the Common Area or any Unit, the Board must notify all Owners, and First Mortgagees, insurers or guarantors of any relevant Mortgagees who have filed a written request for Board notice (see "Mortgagee Protection" Article).

ARTICLE XI

CONDEMNATION

11.01 Representation by the Board in Condemnation Proceedings

In case any portion of the Common Area is taken by condemnation or sale by eminent domain, the Board will be the representative of all Owners in any action to recover awards and all aspects of condemnation proceedings.

11.02 Distribution of Award.

- (a) In case of condemnation or sale by eminent domain, the Board must distribute any award according to these provisions (after deducting fees and expenses related to the condemnation proceedings).
- (b) Any award must first be applied toward payment of any balance due on any Mortgages of record, in order of priority.
- (c) If condemnation judgment apportions the award among the Owners and Mortgagees, the Board will distribute the remaining amount (after deductions above) according to the terms of the judgment allocation.
- (d) If by sale under threat of condemnation (or if the judgment of condemnation fails to apportion the award), the Board will distribute the award based upon relative values of the affected Condominiums as determined by an independent M.A.I. appraiser(s) hired by the Board and approved by fifty-one percent (51%) of the Mortgagees. If said percentage of Mortgagees do not approve, then any Mortgagee may hire an M.A.I. appraiser at their own cost, and the award amount will be calculated based upon the average of all appraisals obtained.
- (e) The determination of the appraiser(s) of each Condominium's value and degree of affect by the proceedings will be final and binding on all Owners and Mortgagees.

ARTICLE XII

COVENANT AGAINST PARTITION AND RESTRICTION
ON SEVERABILITY OF CONDOMINIUM COMPONENT INTEREST

12.01 No Partition; Exceptions; Power of Attorney.

- (a) An Owner may not bring an action for partition of the Common Area by sale except as provided in California Civil Code Section 1359 (or any similar statute in effect at the time).
- (b) These provisions do not prevent a judicial partition between co-tenants of a Condominium.
- (c) Subject to obtaining the prior approval by vote or written consent of seventy-five percent (75%) of the Owners and seventy-five percent (75%) of all First Mortgagees, the Association (through its Board) has irrevocable power of attorney to sell the Property for the benefit of Owners and Mortgagees when partition takes place under California Civil Code Section 1359.

12.02 Proceeds of Partition Sale.

- (a) Whenever an action is brought for partition by sale, the Owners of Residential and Commercial Units will share the proceeds in the same proportion as the relative values of each Condominium, determined by comparing its fair market value on partition date (established by an M.A.I. Appraiser selected by the Association) to the fair market value of all Condominiums in the Property on that date.
- (b) If applicable, distribution of partition sale proceeds must be adjusted to reflect prior condemnation awards or insurance proceeds paid to Owners and Mortgagees.

12.03 No Separate Conveyance of Condominium Components

- (a) An Owner may not sever, sell, convey or encumber a Condominium's component interests, such as the undivided interest in the Common Area from the Unit.
- (b) The provisions of the Section terminate when a partition is decreed, either judicial or in accordance with this Article.

ARTICLE XIII

EASEMENTS

13.01 Certain Rights and Easements Reserved to Declarant

For as long as five (5) years from the date of the First Sale in the Project (and without unreasonably interfering with other Owners) the Declarant and its representatives reserve easements and rights for the following purposes without the need to seek or obtain Board approval:

- (a) To complete excavation, alteration, grading and construction of improvements;
- (b) To construct, alter or make additional improvements Declarant deems advisable in the course of Property development;
- (c) To use any Unit owned by Declarant as an office for construction, decoration, real estate sales and leasing; and
- (d) To make reasonable use of any Common Areas for ingress, egress, development, sales and construction purposes.

13.02 Certain Easements for Owners

Declarant grants nonexclusive easements for enjoyment, ingress, egress, pedestrian walkway and general recreation purposes over and upon the Common Area (except Exclusive Use Common Areas) to all Owners, subject to Governing Documents.

13.03 Certain Easements for Association

Declarant grants to the Association nonexclusive easements over the Common Areas and Units as reasonably necessary to discharge its obligations as described in this Declaration.

13.04 Encroachment

- (a) Easement rights are hereby created, established and granted to Declarant, the Association and Owners of any Unit or Common Area, originally constructed by Declarant, or as reconstructed in substantial conformance with the Condominium Plan, with improvements encroaching on, over and across any portion of a contiguous Unit or Common Area, as shown in the Condominium Plan, resulting from engineering errors, errors or adjustments in original construction, reconstruction, repair, settling, shifting, or any other movement.
- (b) If a portion of a Unit encroaches on, over and across any portion of a contiguous Unit or Common Area, the encroaching Unit Owner's easement rights shall be exclusive.
- (c) If a portion of the Common Area encroaches on, over and across any portion of a contiguous Unit, the Association's easement rights shall be non-exclusive.
- (d) Declarant, the Association and Owners of the encroaching improvements shall have the right to maintain, repair or replace the encroaching improvements.
- (e) In interpreting this Declaration, the Condominium Plan and all instruments of conveyance, the existing physical boundaries of Unit(s), including any encroachment as defined in (a) above, shall be the actual boundaries, rather than any description and/or depiction set forth in this Declaration, the Condominium Plan, or instrument of conveyance.

13.05 Creation of Easements.

- (a) Easements referred to herein are established upon the First Sale in the Project, and the provisions hereof with respect to such easements shall be covenants for the use and benefit of Condominiums and Property superior to all other encumbrances.
- (b) Individual grant deeds to Condominiums shall state that the grant is made subject to the provisions of this Declaration, and may set forth reference to these easements, but are not required to do so.

13.06 Utility Easements.

The Association may grant easements and rights of way through the Common Area(s) and Units for water, sewer, telephone and cable lines, gas and other utilities, storm drains, underground conduits, sprinkler systems, and other purposes intended to maintain the health, safety, convenience and enjoyment of the Units and Common Area(s).

ARTICLE XIV

SPECIAL PROVISIONS RELATING TO ENFORCEMENT OF
DECLARANT'S OBLIGATION TO COMPLETE COMMON AREA IMPROVEMENTS

14.01 Special Provisions Relating to Enforcement of Declarant's Obligation
to Complete Common Area Improvements.

- (a) The Board must consider and vote on Association action to enforce bond obligations regarding any Common Area improvement if the following factors apply:
 - (1) Declarant has not completed Common Area improvements before the First Sale;
 - (2) The Association is the obligee under a bond or other arrangement securing completion; and
 - (3) A Notice of Completion has not been filed within sixty (60) days of the completion date specified in the planned construction statement appended to the bond.
- (b) The Association may grant a written extension for a Common Area completion.
- (c) If a notice of completion has not been filed within thirty (30) days after the extension expires, the Board will meet and vote on enforcement options.
- (d) Owners may submit a petition signed by at least five percent (5%) of Total Voting Power calling for a Special Meeting to be held between thirty-five (35) and forty-five (45) days after the Board receives the petition.
- (e) At the Special Meeting, a majority vote of Owners (other than Declarant) overrides the Board's decision and causes the Board to enforce bond obligations through appropriate action in the name of the Association.

42

ARTICLE XV

AMENDMENT

15.01 Amendment.

- (a) Before the First Sale, and subject to the consent of the First Mortgagee, if any, Declarant may unilaterally amend this Declaration (subject to the Article entitled "*Mortgagee Protection*") by recording an instrument of amendment in the relevant County Recorder's Office.
- (b) After the First Sale, this Declaration may only be amended in the following ways (and subject to the Article entitled "*Mortgagee Protection*"):
 - (1) If there is only one Membership Class, approval by at least sixty-seven percent (67%) of Members other than Declarant, and by at least sixty-seven percent (67%) of the total voting power, including Declarant; and an instrument signed by two (2) Association officers certifying that the amendment was approved by at least sixty-seven percent (67%) of Members other than Declarant, and also approved by at least sixty-seven percent (67%) of the total voting power, including Declarant.
 - (2) If Class B Membership exists, approval by at least sixty-seven percent (67%) of the Members of each Class, and an instrument signed by two (2) Association officers certifying that the amendment was approved by sixty-seven percent (67%) of the Members of each Class.
- (c) Any amendment must be properly recorded in the County Recorder's Office.
- (d) The percentage of Owners needed to amend this Declaration may not be less than the percentage of affirmative votes prescribed for action to be taken under the relevant provision.
- (e) An Owner or the Association may petition the Superior Court for an order reducing the percentage of affirmative votes needed to amend this Declaration (pursuant to Civil Code Section 1356, or any successor statutes).
- (f) While the Declarant holds or directly controls at least twenty-five percent (25%) of the votes, any proposed amendment to any Governing Documents must comply with Business and Professions Code Section 11018.7.
- (g) No amendments to any provisions in this Declaration or other Governing Documents which specifically benefit the Declarant as Developer, shall be made without the written consent of the Declarant.

ARTICLE XVI

DISPUTE NOTIFICATION AND RESOLUTION
PROCEDURE (DECLARANT DISPUTES); WAIVERS

16.01 Enforcement and Nonwaiver.

- (a) Rights of Enforcement of Governing Documents The Association or any Owner shall have a right of action against any Owner, and any Owner shall have a right of action against the Association, to enforce by proceedings at law or in equity, all restrictions, conditions, covenants and reservations, now or hereafter imposed by the provisions of the Governing Documents or any amendment thereto, including the right to prevent the violation of such restrictions, conditions, covenants, or reservations and the right to recover damages or other dues for such violation except that Owners shall not have any right of enforcement concerning assessment liens. The Association shall have the exclusive right to the enforcement of provisions relating to architectural control and the Rules and Regulations, unless the Association refuses or is unable to effectuate such enforcement; in which case any Owner who otherwise has standing shall have the right to undertake such enforcement. Failure of the Association, Declarant or any Owner to enforce any covenants or restrictions herein contained shall in no event be deemed a waiver of the right to do so thereafter.
- (b) Procedure for Enforcement In enforcing any action under the Governing Documents for monetary damages, the parties shall comply with the provisions of California Civil Code Section 1354 and any successor statutes or laws. The Board shall annually provide to the Owners a summary of the provisions of California Civil Code Section 1354 and any successor statutes or laws, which shall include the language required and shall be delivered in the manner provided in Civil Code Section 1365. The exception for disputes related to Association assessments set forth in Section 1354 shall not apply to disputes between an Owner and the Association regarding assessments imposed by the Association, if the Owner chooses to pay in full the Association all of the assessments as specified in California Civil Code Section 1366.3 and any successor statutes or laws.
- (c) Notice of Actions Against Declarant The Association shall comply with the provisions of Section 1368.4 of the Civil Code or any successor statute or law, prior to the filing of any civil action by the Association against Declarant or other developer of the Project for either alleged damage to the Common Area or other property within the Project that the Association is obligated to maintain or repair, or alleged damage to any other portion of the Project that arises out of, or is integrally related to, such damage to the Common Area or other property within the Project that the Association is obligated to maintain or repair. Such notice shall specify all of the matters set forth in Section 1368.4 or any successor statute or law.

16.02 Dispute Notification and Resolution Procedure (Declarant Disputes); Waivers

Notwithstanding any provisions of this Declaration to the contrary, any action, claim or dispute by, between or among Declarant, as the builder of the Project or any director, officer, partner, member, employee or agent of Declarant, or any contractor, subcontractor, design professional, engineer or supplier who provided labor, services or materials to the Project and who is bound or has agreed to be bound to the following dispute notification and resolution procedure (collectively, the "Declarant Parties") and either the Association or any Owner, relating to or arising out of the Project, this Declaration or other Governing Documents for the Association (except for other agreements which expressly provide for another form of dispute resolution) any other agreements between the Declarant Parties and an Owner or the Association, the sale of the Property, the use or condition of the Property or the design or construction of or any condition on or affecting the Project, including, but not limited to, construction defects, surveys, soils conditions, grading, specifications, installation of improvements or disputes which allege fraud, misrepresentation, non-disclosure, or breach of implied or express warranties as to the condition of the Property or Project.

16.03 Notice.

Any person with a Dispute claim shall notify Declarant in writing of the claim, which writing shall describe the nature of the claim and any proposed remedy (the "Claim Notice").

16.04 Right to inspect and Right to Corrective Action

- (a) Within a reasonable period after receipt of the Claim Notice, which period shall not exceed sixty (60) days, Declarant and the claimant shall meet at a mutually acceptable place within or near the Project to discuss the claim. At such meeting or at such other mutually agreeable time, Declarant and the Declarant's representatives shall have full access to the property that is subject to the Dispute claim and shall have the right to conduct inspections, testing and/or destructive or invasive testing of the same in a manner deemed appropriate by Declarant, which right shall continue until such time as the Dispute is resolved as provided in this Article.
- (b) The parties of the Dispute shall negotiate in good faith in an attempt to resolve the claim. If the Declarant elects to take any corrective action, Declarant and the Declarant's representatives and agents shall be provided full access to the Project to take and complete corrective action.

16.05 Civil Code Sections 1368.4 and 1375.

Nothing contained herein shall be deemed a waiver or limitation of the provisions of California Civil Code Section 1368.4, referenced in Section 16.01(c). If the claim is subject to the provisions of Civil Code Section 1375, as it may be amended from time to time, compliance with the procedures of Civil Code Sections 1375(b), (d), and (e) shall satisfy the requirements of Sections 16.03 and 16.04.

16.06 Mediation.

- (a) If the parties to the Dispute cannot resolve the claim pursuant to the procedures described in above (including, if applicable, Civil Code Section 1375 procedures), the matter shall be submitted to mediation pursuant to the mediation procedures adopted by the American Arbitration Association (except as such procedures are modified by the provisions of this Section) or any successor thereto or to any other entity offering mediation services that is acceptable to such parties.
- (b) No person shall serve as a mediator in any Dispute in which the person has any financial or personal interest in the result of the mediation, except by the written consent of all parties to the Dispute participating in the mediation.
- (c) Prior to accepting any appointment, the prospective mediator shall disclose any circumstances likely to create a presumption of bias or to prevent a prompt commencement of the mediation process.
- (d) Except as provided in the Section entitled "*Exceptions to Mediation and Reference; Statutes of Limitation*" below, the Association and each Owner covenants that each shall not commence any litigation against the Declarant Parties without complying with the procedures described in this Section.

- 40
- (1) Position Memoranda; Pre-Mediation Conference Within ten (10) days of the selection of the mediator, each party to the Dispute participating in the mediation shall submit a brief memorandum setting forth its position with regard to the issues that need to be resolved. The mediator shall have the right to schedule a pre-mediation conference and all parties to the Dispute participating in the mediation shall attend unless otherwise agreed. The mediation shall be commenced within ten (10) days following the submittal of the memoranda and shall be concluded within fifteen (15) days from the commencement of the mediation unless the parties to the Dispute participating in the mediation mutually agree to extend the mediation period. The mediation shall be held in the county in which the Project is located or such other place as is mutually acceptable to the parties to the Dispute participating in the mediation.
 - (2) Conduct of Mediation. The mediator has discretion to conduct the mediation in the manner in which the mediator believes is most appropriate for reaching a settlement of the Dispute. The mediator is authorized to conduct joint and separate meetings with the parties to the Dispute participating in the mediation and to make oral and written recommendations for settlement. Whenever necessary, the mediator may also obtain expert advice concerning technical aspects of the Dispute, provided the parties to the Dispute participating in the mediation agree and assume the expenses of obtaining such advice. The mediator does not have the authority to impose a settlement on the parties to the Dispute participating in the mediation.
 - (3) Exclusion Agreement. Prior to the commencement of the mediation session, the mediator and all parties to the Dispute participating in the mediation shall execute an agreement pursuant to California Evidence Code Section 1115 et seq. and any successor statutes or laws in order to exclude the use of any testimony or evidence produced at the mediation in any subsequent dispute resolution forum, including, but not limited to, court proceedings, reference proceedings or arbitration hearings. Pursuant to California Evidence Code Section 1115 et seq., the agreement shall specifically state that evidence of anything said or of any admission made in the course of the mediation is not admissible evidence, and disclosure of any such evidence shall not be compelled in any civil action in which, pursuant to law, testimony can be compelled to be given. Unless the document provides otherwise, no document prepared for the purpose of, or in the course of, or pursuant to, the mediation, or copy thereof, is admissible in evidence; and disclosure of any such document shall not be compelled in any civil action in which, pursuant to law, testimony can be compelled to be given. The provisions of California Evidence Code Section 1115 through 1128 shall also be applicable to such mediation process.
 - (4) Parties Permitted at Sessions. Persons other than the parties to the Dispute participating in the mediation, representatives and the mediator may attend mediation sessions only with the permission of the parties to the Dispute participating in the mediation and the consent of the mediator. Confidential information disclosed to a mediator by the parties to the Dispute participating in the mediation or by witnesses in the course of the mediation while serving in such capacity shall be confidential. There shall be no stenographic record of the mediation process.
 - (5) Expenses. All expenses of the mediation, including, but not limited to, the fees to initiate mediation, fees and costs charged by the mediator and the expenses of any witnesses or the cost of any proof of expert advice produced at the direct request of the mediator, shall be borne equally by the parties to the Dispute participating in the mediation unless they agree otherwise. The expenses of witnesses for either side shall be paid by the party producing such witnesses. Each party to the mediation shall bear their own attorney's fees and costs in connection with such mediation.

16.07 Judicial Reference.

- (a) Should mediation not be successful in resolving any Dispute, such Dispute shall be resolved by general judicial reference pursuant to Code of Civil Procedure Sections 638 and 641 through 645.1, and as modified or as otherwise provided in this Section.
- (b) The parties to the Dispute shall cooperate in good faith to ensure that all necessary and appropriate parties are included in the judicial reference proceeding. Declarant shall not be required to participate in the judicial reference proceeding if:
- (1) All parties against whom Declarant would have necessary or permissive cross-claims or counterclaims cannot be joined in the judicial reference proceeding, including, but not limited to, the Declarant Parties; or
 - (2) Any insurer of a Declarant Party that would be liable to provide insurance coverage to a Declarant Party for any claim arising out of the Dispute is entitled to consent to the judicial reference procedure as a condition of providing such coverage and refuses to do so.
- (c) Subject to the limitations set forth in this Section, the general referee shall have the authority to try all issues, whether of fact or law, and to report a statement of decision to the court. The judicial referee shall be the only trier of fact or law in the reference proceedings and shall have no authority to further refer any issues of fact or law to any other party, without the mutual consent of all parties to the judicial reference proceeding.
- (d) Place. The proceedings shall be heard in the county in which the Project is located.
- (e) Referee. The referee shall be an attorney or retired judge with experience in relevant real estate matters. The referee shall not have any relationship to the parties to the Dispute or interest in the Project. The parties to the Dispute participating in the judicial reference shall meet to select the referee within ten (10) days after service of the initial complaint on all defendants named therein. Any dispute regarding the selection of the referee shall be promptly resolved by the judge to whom the matter is assigned, or if there is none, to the presiding judge of the Superior Court of the County in which the Project is located, who shall select the referee.
- (f) Commencement and Timing of Proceeding. The referee shall promptly commence the proceeding at the earliest convenient date in light of all of the facts and circumstances and shall conduct the proceeding without undue delay.
- (g) Pre-hearing Conferences. The referee may require one or more pre-hearing conferences.
- (h) Discovery. The parties to the judicial reference proceeding shall be entitled only to limited discovery, consisting of the exchange between such parties of only the following matters:
- (1) Witness lists;
 - (2) Expert Witness Designations;
 - (3) Expert Witness Reports;
 - (4) Exhibits;
 - (5) Reports of testing or inspections of the property subject to the Dispute, including but not limited to, destructive or invasive testing; and
 - (6) Trial Briefs.

47

Such parties shall also be entitled to conduct further tests and inspections as provided above. Any other discovery provided for in the California Code of Civil Procedure shall be permitted by the referee upon a showing of good cause or based on the mutual agreement of the parties to the judicial reference proceeding. The referee shall oversee discovery and may enforce all discovery orders in the same manner as any trial court judge.

- (i) Limitation on Remedies. The measure of damages related in any way to alleged patent and/or latent construction defects and/or alleged failure to disclose claims shall not exceed the lesser of the actual costs of repair thereof or diminution in value. Declarant shall not be liable for punitive damages. Furthermore, the parties hereto agree that the referee shall be entitled to make a determination as to whether such repair(s) or correction(s) has been satisfactorily performed. The referee shall have the power to grant all legal and equitable remedies, not otherwise limited herein, and award compensatory damages in the judicial reference proceeding.
- (j) Motions. The referee shall have the power to hear and dispose of motions, including motions relating to provisional remedies, demurrers, motions to dismiss, motions for judgment on the pleadings and summary adjudication motions, in the same manner as a trial court judge, except the referee shall also have the power to adjudicate summary issues of fact or law including the availability of remedies, whether or not the issue adjudicated could dispose of an entire cause of action or defense. Notwithstanding the foregoing, if prior to the selection of the referee, as provided herein, any provisional remedies are sought by the parties to the Dispute, such relief may be sought in the Superior Court of the County in which the Project is located.
- (k) Rules of Law. The referee shall apply the laws of the State of California except as expressly provided herein including the rules of evidence, unless expressly waived by all parties to the judicial reference proceeding.
- (l) Record. A stenographic record of the hearing shall be made, provided that the record shall remain confidential except as may be necessary for post-hearing motions and any appeals.
- (m) Statement of Decision. The referee's statement of decision shall contain findings of fact and conclusions of law to the extent required by law if the case were tried to a judge. The decision of the referee shall stand as the decision of the court, and upon filing of the statement of decision with the clerk of the court, judgment may be entered thereon in the same manner as if the Dispute had been tried by the court.
- (n) Post-Hearing Motions. The referee shall have the authority to rule on all post-hearing motions in the same manner as a trial judge.
- (o) Appeals. The decision of the referee shall be subject to appeal in the same manner as if the Dispute had been tried by the court.
- (p) Expenses. All fees and costs of any judicial reference proceeding hereunder shall be equally shared by the parties to the judicial reference proceeding. Each party to the judicial reference proceeding shall bear its own attorneys' fees and costs in connection with such proceeding.

16.08 Binding Arbitration.

- (a) If for any reason the judicial reference procedures in Section 16.07 are legally unenforceable at the time a dispute would otherwise be referred to judicial reference, then any such dispute shall be submitted to Binding Arbitration.
- (b) Such disputes shall be arbitrated by the Judicial Arbitration and Mediation Services ("JAMS"). Any such dispute involving allegations of patent or latent construction defects shall be administered in accordance with the Streamlined Arbitration Rules and Procedures, or (if applicable) the Comprehensive Arbitration Rules of JAMS. If JAMS is unavailable, then the dispute shall be submitted to the American Arbitration Association ("AAA"), and administered in accordance with AAA's Construction Industry Arbitration Rules and Supplementary Procedures for Residential Construction Disputes in effect on the date of submission.
- (1) Place. The arbitration will be conducted by JAMS in the County where the Property is located and in accordance with the JAMS Rules ("JAMS Rules") applicable to the claim presented.
 - (2) Arbitrator. The arbitrator shall be neutral and impartial and either a retired judge or a member or former member of the California State Bar with at least fifteen (15) years experience as a practicing lawyer.
 - (3) Selecting the Arbitrator. The arbitrator shall be selected in accordance with the JAMS Rules, but no later than sixty (60) days after a notice of claim is filed. In selecting the arbitrator, the provisions of Section 1297.121 of the Code of Civil Procedure shall apply. An arbitrator may be challenged for any of the grounds listed therein or in Section 1297.124 of the Code of Civil Procedure.
 - (4) Expenses. All fees charged by JAMS and the arbitrator shall be advanced by Declarant. If Declarant is the prevailing party in the arbitration, the arbitrator may direct Owner, as applicable, to reimburse Declarant for up to fifty percent (50%) of the JAMS fee and the arbitrator's fee advanced by Declarant, within sixty (60) days after the final arbitration award.
 - (5) Procedural Steps. If state or federal law requires Declarant or Owner to take steps or procedures before commencing an action in court, then Declarant or Owner must take such steps or follow such procedures, as the case may be, before commencing the arbitration. In addition, nothing contained herein shall be deemed a waiver or limitation of the provisions of California Civil Code Sections 1368.4, 1375, 1375.05 or 1375.1.
 - (6) Necessary Parties. To the extent either such party is defending a claim in the arbitration, the party may, if it chooses, have all necessary and appropriate parties included as parties to the arbitration.
 - (7) Rules of Law. The arbitrator must follow California substantive law (including statutes of limitations) but may receive hearsay evidence. The arbitrator shall be authorized to provide all recognized remedies available at law or equity for any cause of action, however there shall be no award of punitive damages.
 - (8) Commencement and Timing of Proceeding The arbitration shall commence in a prompt and timely manner in accordance with (a) the rules of the arbitration, or if the rules do not specify a date by which the arbitration must commence, then (b) a date as agreed to by the parties, and if they cannot agree, (c) a date determined by the arbitrator(s); shall be conducted in accordance with rules and procedures that are reasonable and fair to the parties; and shall conclude in a prompt and timely manner.
 - (9) Attorneys' Fees. Each party shall bear its own attorneys' fees and costs (including expert witness costs) in the arbitration.

16.09 Agreement to Alternative Dispute Resolution;
Waivers of Jury Trial and Award of Punitive Damages

- (a) Declarant, and by accepting a Deed for the Common Area or a residential Unit, as the case may be; the Association and each Owner agree to have any Dispute resolved according to the provisions of this Article and waive their respective rights to pursue any Dispute in any manner other than as provided in this Article.
- (b) Such parties acknowledge that by agreeing to resolve all Disputes as provided in this Article, they are giving up their respective rights to have such Disputes tried before a jury and further waive their respective rights to an award of punitive damages relating to such disputes, thereby giving up any rights such parties may possess to such remedies.
- (c) This Article shall not be amended without Declarant's prior written consent.

16.10 Application of Award.

The net proceeds of any judgment against, or settlement entered into with Declarant, after payment of costs of litigation, including attorney's fees, may be used only for the purposes of repairing, replacing, or mitigating the defects with respect to which the judgment was entered or the settlement made.

16.11 Exceptions to Mediation and Reference; Statutes of Limitation

- (a) The procedures set forth in this Article shall apply only to Disputes and shall not apply to any action taken by the Association against Declarant or any Owner for delinquent assessments, or in any action involving any bond covered by the provisions of the Article entitled *Special Provisions Relating to Enforcement of Declarant's Obligation to Complete Common Area Improvements*.
- (b) Furthermore, nothing in this Article shall be considered to toll, stay, reduce or extend any applicable statutes of limitation; provided, however, that the Declarant Parties, the Association or any Owner shall be entitled to commence a legal action which in the good faith determination of any Declarant Party, the Association or Owner is necessary to preserve the Declarant Parties', the Association's or Owner's rights under any applicable statute of limitations, provided that the Declarant Party, Association or Owner shall take no further steps in prosecuting the action until it has complied with the procedures described above.

ARTICLE XVII

MISCELLANEOUS PROVISIONS

17.01 Disclosures.

Declarant does not in any manner guarantee or warrant that the Property will be soundproof or insulated to any particular degree from noise or sound emanating from within or without the Property, including noise or sound emanating from Units, heating, ventilation air conditioning systems, plumbing, Common Area(s), garages, etc.

17.02 Term of Declaration.

- (a) This Declaration is binding upon all parties for sixty (60) years after the recording date.
- (b) After sixty (60) years, the Declaration will automatically be extended for successive ten (10) year periods, unless the Owners (heirs, successors, representatives) of a majority of subject Condominiums record a signed, written instrument:
 - (1) At least one (1) year before the beginning of any ten (10) year period; and
 - (2) Agreeing to change or terminate this Declaration.

17.03 Notices.

Any required notice must be given in writing by:

- (a) Personal delivery to the location of the address of the recipient of the Notice; or
- (b) Mailing by first-class, registered or certified pre-paid U.S. mail (deemed given five (5) days after deposit in the mail);
- (c) Delivery by a reputable overnight courier service such as Federal Express, United Parcel Service, etc. (deemed given upon delivery to the location of the address of the recipient of the Notice); or
- (d) Facsimile transmission (deemed given upon date of transmission upon confirmation of receipt).

17.04 Partial Invalidity.

If any of this Declaration is declared invalid or in conflict with any relevant law, the validity of the remainder of this Declaration will remain in full force and effect.

17.05 Number.

As required by the context of this Declaration, a singular grammatical reference includes the plural application.

17.06 Attorneys' Fees.

In the event of any controversy or claim respecting this Declaration, or in connection with the enforcement of this Declaration, the prevailing parties shall be entitled, in addition to all expenses, costs, and damages, to reasonable attorneys' fees.

IN WITNESS WHEREOF, the undersigned, being the Declarant has executed this Declaration for Tract No. 53327 on the day and year first written above.

"Declarant"

LA ABC, LLC,
a California limited liability company

X Barry Shy
By: _____
its: _____

X _____
By: _____
its: _____

STATE OF CALIFORNIA)
COUNTY OF _____) ss.

On November 3, 2004, before me, the undersigned, a Notary Public in and for said State, personally appeared:

Barry Shy

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

WITNESS my hand and official seal.

(SEAL)

Diane Welch
Notary Public



04 3130413

IN WITNESS WHEREOF, the undersigned, being the Declarant, has executed this Declaration for Tract No. 53327 on the day and year first written above.

"Declarant"

LADT L.L.C.,
a California limited liability company

X _____
By:
its:

X _____
By:
its:

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) ss.

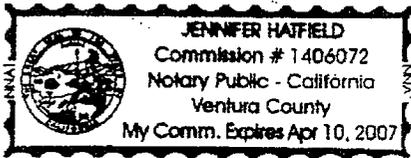
On April 2, 2004, before me, the undersigned, a Notary Public in and for said State, personally appeared:

BRITA BAY
[] Personally known to me - OR - [] Proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) ~~is/are~~ subscribed to the within instrument and acknowledged to me that ~~he/she/they~~ executed the same in ~~his/her/their~~ authorized capacity(ies), and that by ~~his/her/their~~ signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

(SEAL)

Jennifer Hatfield
Notary Public



SUBORDINATION BY LIENHOLDER

East West Bank, as Beneficiary under the following Deed(s) of Trust which cover(s) the real property described in the Declaration of Covenants, Conditions, Restrictions and Easements for Tract No. 53327 ("Declaration") to which this instrument is attached, hereby subordinates the lien of said Deed of Trust to the recording of this Declaration, and agrees that the lien(s) of said Deed(s) of Trust shall be subordinated to and subject to each and every provision of the Declaration and any future amendments not affecting the beneficial interest. The signing of this Subordination by Lienholder by any Mortgagee shall not constitute said Lienholder's subordination to any future Assessment liens.

Deed of Trust recorded on **November 20, 2003** as Instrument No. **03-3507510** of the Official Records of the **Los Angeles County Recorder**.

EAST WEST BANK

X Linda Lam
By: Linda Lam
its: FVP

X Philip Ma
By: Philip Ma
its: SVPT

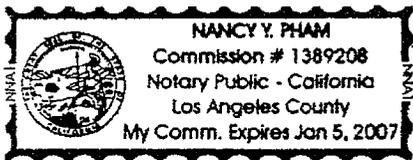
STATE OF CALIFORNIA)
COUNTY OF Los Angeles ss.

On April 12, 2004, before me, the undersigned, a Notary Public in and for said State, personally appeared:

Linda Lam and Philip Ma
[X] Personally known to me - OR - [] Proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

(SEAL)



Nancy Y. Pham
Notary Public

04 3130413

SUBORDINATION BY LIENHOLDER

LABAR, LLC, as Beneficiary under the following Deed(s) of Trust which cover(s) the real property described in the Declaration of Covenants, Conditions, Restrictions and Easements for Tract No. 53327 ("Declaration") to which this instrument is attached, hereby subordinates the lien of said Deed of Trust to the recording of this Declaration, and agrees that the lien(s) of said Deed(s) of Trust shall be subordinated to and subject to each and every provision of the Declaration and any future amendments not affecting the beneficial interest. The signing of this Subordination by Lienholder by any Mortgagee shall not constitute said Lienholder's subordination to any future Assessment liens.

Deed of Trust recorded on June 12, 1998 as Instrument No. 98-1001084 of the Official Records of the Los Angeles County Recorder.

LABAR, LLC

X [Signature]
By: _____
its: _____

X [Signature]
By: _____
its: _____

STATE OF CALIFORNIA)
COUNTY OF Los Angeles) ss.

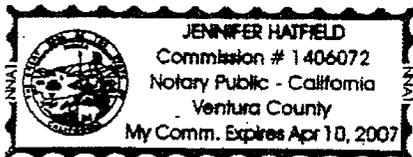
On April 3, 2004, before me, the undersigned, a Notary Public in and for said State, personally appeared:

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

WITNESS my hand and official seal.

(SEAL)

[Signature]
Notary Public



04 3130413

EXHIBIT "A"
PROPERTY

Lot 1 of Tract No. 53327, in the City of Los Angeles, as per Map
recorded in Book 1247, Pages 83 to 84,
inclusive, of Maps, in the Office of the County Recorder of Los
Angeles County.

04 3130413

EXHIBIT "B"
ASSESSMENT ALLOCATION

All Assessments shall be charged to each Condominium as follows, except where stated herein:

- A. Variable Costs items shall be the following budget items only: insurance, domestic water and gas (if common), hot water heater (if common), paint and roof.
- B. The amount of the Total Monthly Variable Costs divided by the total square footage of all Units (128,139 sq. ft) shall equal the Variable Factor. Total Monthly Equal Costs shall be the Total Monthly Budget less Total Monthly Variable Costs.
- C. Monthly Base Assessment shall equal the Total Monthly Equal Costs divided by the one-hundred forty-two (142) number of Units in the project.
- D. The following are the square footages for calculating the budget. Any variance from the actual square footages shall not alter the assessment allocation without an amendment to this Declaration:

<u>Unit</u>	<u>Square Footage</u>
102	2970
103	10,000
104	2231
105	6647
106	5180
107	2779
108	2594
201	801
202	1016
203	793
204	785
205	653
206	1195
207	1250
208	1250
209	1250
210	1250
211	1250
212	1250

ca

EXHIBIT "B"
ASSESSMENT ALLOCATION (CONTINUED)

<u>Unit</u>	<u>Square Footage</u>
213	1250
214	1250
215	1250
301	1250
302	1250
303	1250
304	1250
305	1250
306	1250
307	1250
308	1250
309	1250
310	1250
311	1250
312	1250
313	1250
314	1250
315	1250
401	1250
402	1250
403	1250
404	1250
405	1250
406	1250
407	1250
408	1250
409	1250
410	1250
411	1250
412	1250
413	1250
414	1250

17

EXHIBIT "B"
ASSESSMENT ALLOCATION (CONTINUED)

<u>Unit</u>	<u>Square Footage</u>
415	1250
501	1250
502	1250
503	1250
504	1250
505	1250
506	1250
507	1250
508	1250
509	1250
510	1250
511	1250
512	1250
513	1250
514	1250
515	1250
601	1250
602	1250
603	1250
604	1250
605	1250
606	1250
607	1250
608	1250
609	1250
610	1250
611	1250
612	1250
613	1250
614	1250
615	1250

04 3130413

01

EXHIBIT "B"
ASSESSMENT ALLOCATION (CONTINUED)

<u>Unit</u>	<u>Square Footage</u>
701	1250
702	1250
703	1250
704	1250
705	1250
706	1250
707	1250
708	1250
709	1250
710	1250
711	1250
712	1250
713	1250
714	1250
715	1250
801	1250
802	1250
803	1250
804	1250
805	1250
806	1250
807	1250
808	1250
809	1250
810	1250
811	1250
812	1250
813	1250
814	1250
815	1250
901	1250

04 3130413

EXHIBIT "B"
ASSESSMENT ALLOCATION (CONTINUED)

<u>Unit</u>	<u>Square Footage</u>
902	1250
903	1250
904	1250
905	1250
906	1250
907	1250
908	909
909	748
910	615
911	750
912	1036
913	1048
914	759
915	726
1001	1000
1002	1250
1003	993
1004	997
1005	920
1006	1440
1007	1700
1008	1350
1009	948
1010	930
1011	1000
1012	1286
1013	1320
1014	1000
1015	906

EXHIBIT "B"
ASSESSMENT ALLOCATION (CONTINUED)

- E. The Monthly Variable Assessment for each Unit is calculated by multiplying the Variable Factor by the Unit square footage size.
- F. The Total Monthly Assessment for each Unit shall equal the Monthly Variable Assessment plus Monthly Base Assessment.

04 3130413

Recording Requested By:

STEWART TITLE

04 3360616

And When Recorded Mail to:

Berry Shy
4371 Winnetka Avenue
Woodland Hills, CA 90364

SPACE ABOVE FOR RECORDER'S USE

**FIRST AMENDMENT TO THE
DECLARATION OF COVENANTS, CONDITIONS
RESTRICTIONS AND RESERVATION OF EASEMENTS
FOR
HIGGINS LOFT - TRACT NO. 53327**

THIS FIRST AMENDMENT to the Declaration of Covenants, Conditions, Restrictions and Easements for Higgins Loft ("First Amendment") is made and executed this 22nd of DECEMBER, 2004 by LAPT LLC, a California limited liability company ("Declarant"), being the owners of that certain real property subject to this First Amendment.

RECITALS

WHEREAS, a Declaration of Covenants, Conditions, Restrictions and Easements for Higgins Loft ("Declaration") was recorded December 3, 2004 as Instrument No. 04-3130413, Official Records of Los Angeles County affecting that certain real property in the City of Los Angeles of said County, State of California described as:

Lot 1 of Tract No. 53327 as per Map recorded in Book 1297,
Pages 82 and 84, inclusive of Maps, in the office of the county
recorder of said county.

WHEREAS, no Condominiums have been conveyed in the property.

WHEREAS, pursuant to Article XV, Section 15.01 of the Declaration, the Declarant desires to amend the Declaration.

NOW, THEREFORE, the Declaration is hereby amended as follows:

Exhibit "B" to the Declaration is deleted in its entirety and replaced with the attached Exhibit "B."

1533271Amend.CCR 12-13-04

330043504-2

12/28/04

EXCEPT AS SO AMENDED, the Declaration shall be and remain in full force and effect.

IN WITNESS WHEREOF, the undersigned has executed the foregoing First Amendment to the Declaration of Covenants, Conditions, Restrictions and Reservation of Easements for Higgins Loft, Tract No. 53927.

"Declarant:"

LADT LLC, a California limited liability company.

x Barry Shy
By: _____
its: member

X _____
By: _____
its: _____

STATE OF CALIFORNIA)
COUNTY OF _____) ss.

On December 23, 2004, before me, the undersigned, a Notary Public in and for said State, personally appeared:

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

WITNESS my hand and official seal.

(SEAL)

Deane Welch
Notary Public

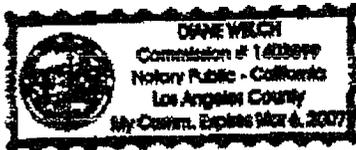


EXHIBIT "B"
ASSESSMENT ALLOCATION

All Assessments shall be charged to each Condominium as follows, except where stated herein:

- A. Variable Costs items shall be the following budget items only: insurance, domestic water and gas (if common), hot water heater (if common), paint and roof.
- B. The amount of the Total Monthly Variable Costs divided by the total square footage of all Units (153,316 sq. ft) shall equal the Variable Factor. Total Monthly Equal Costs shall be the Total Monthly Budget less Total Monthly Variable Costs.
- C. Monthly Base Assessment shall equal the Total Monthly Equal Costs divided by the one-hundred forty-two (142) number of Units in the project.
- D. The following are the square footages for calculating the budget. Any variance from the actual square footages shall not alter the assessment allocation without an amendment to this Declaration:

<u>Unit</u>	<u>Square Footage</u>
102	2277
103	8950
104	2250
105	4759
106	9280
107	1750
108	2368
201	805
202	1016
203	793
204	786
205	653
206	1195
207	1195
208	761

04 3360616

12/28/04

EXHIBIT "B"

ASSESSMENT ALLOCATION (CONTINUED)

<u>Unit</u>	<u>Square Footage</u>
209	704
210	815
211	750
212	1038
213	1048
214	759
215	726
301	805
302	1016
303	783
304	785
305	653
306	1195
307	1195
308	909
309	748
310	730
311	750
312	1038
313	1048
314	759
315	726
401	805
402	1016
403	793

04 3360616

12/28/04

EXHIBIT "B"
ASSESSMENT ALLOCATION (CONTINUED)

<u>Unit</u>	<u>Square Footage</u>
404	785
405	853
406	1195
407	1195
408	909
409	748
410	730
411	750
412	1036
413	1048
414	759
415	726
501	805
502	1016
503	793
504	786
505	853
506	1195
507	1195
508	909
509	748
510	815
511	750
512	1036
513	1048

04 3360616

12/28/04

EXHIBIT "B"

ASSESSMENT ALLOCATION (CONTINUED)

<u>Unit</u>	<u>Square Footage</u>
514	759
515	726
601	805
602	1016
603	793
604	785
605	653
606	1195
607	1195
608	908
609	748
610	730
611	750
612	1036
613	1048
614	759
615	726
701	805
702	1016
703	793
704	785
705	653
706	1195
707	1195

04 3360616

12/28/04

EXHIBIT "B"
ASSESSMENT ALLOCATION (CONTINUED)

<u>Unit</u>	<u>Square Footage</u>
708	909
709	748
710	730
711	750
712	1036
713	1048
714	759
715	726
801	805
802	1016
803	793
804	785
805	853
806	1195
807	1195
808	909
809	748
810	730
811	750
812	1036
813	1048
814	759
815	726
901	805
902	1016

04 3360616

EXHIBIT "B"
ASSESSMENT ALLOCATION (CONTINUED)

<u>Unit</u>	<u>Square Feet</u>
903	793
904	785
905	653
906	1195
907	1195
908	909
909	748
910	615
911	750
912	1036
913	1048
914	759
915	726
1001	1025
1002	1258
1003	1030
1004	977
1005	845
1006	1452
1007	1649
1008	1370
1009	991
1010	930
1011	987
1012	1291

04 3360610

EXHIBIT "B"

ASSESSMENT ALLOCATION (CONTINUED)

<u>Unit</u>	<u>Square Footage</u>
1013	1323
1014	1007
1015	900

- E. The Monthly Variable Assessment for each Unit is calculated by multiplying the Variable Factor by the Unit square footage size.
- F. The Total Monthly Assessment for each Unit shall equal the Monthly Variable Assessment plus Monthly Base Assessment.

04 3380616