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DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS, AND
RESERVATION OF EASEMENTS FOR
133 PROMENADE WALK

A Residential Condominium Project

NOTE: AS MORE FULLY DESCRIBED IN THIS DECLARATION OR OTHERWISE PROVIDED BY DECLARANT, IN THE EVENT OF ANY DISPUTE(S) ARISING HEREUNDER, OR RELATING TO THE DESIGN AND/OR CONSTRUCTION OF THE PROJECT, SUCH DISPUTE(S) SHALL BE SUBMITTED TO A NONADVERSARIAL PROCEDURE AND IF NOT RESOLVED, SUBMITTED THEREAFTER TO AN ALTERNATIVE DISPUTE RESOLUTION PROCEDURE (E.G., BINDING ARBITRATION), AND AS A RESULT THEREOF, SUCH DISPUTE(S) WILL NOT BE LITIGATED IN A COURT OR BEFORE A JURY. ANY PERSON PURCHASING IN THIS DEVELOPMENT KNOWINGLY AND VOLUNTARILY AGREES TO BE BOUND BY A PROCEDURE WHICH DOES NOT INCLUDE A RIGHT TO A JURY.

IF THIS PROCEDURE IS UNACCEPTABLE, AN INDIVIDUAL OR ENTITY SHOULD NOT PURCHASE IN THIS PROJECT.

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DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS, AND
RESERVATION OF EASEMENTS FOR
133 PROMENADE WALK

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS, AND RESERVATION OF EASEMENTS is made this 31st day of October, 2006, by OLSON 737-LONG BEACH 2, LLC, a California limited liability company (hereinafter referred to as the "Declarant").

W I T N E S S E T H:

A. Declarant owns, and this Declaration is being recorded against, that certain real property located in the City of Long Beach, County of Los Angeles, State of California, more particularly described as all of Tract 61304, as per map filed in Book 1326, Pages 60 to 62, inclusive, in the Office of the County Recorder of Los Angeles County, California. The three "DRE" (defined below) marketing phases of development for such property are more generally described on Exhibit "A" attached hereto. "Phase 1" is described on Exhibit "A" as noted therein.

B. Declarant desires to subdivide Lot 1 of Tract 61304, into "condominiums," as defined in Section 783 of the California Civil Code, and to develop same as a common interest development, more particularly described in Section 1351(f) of the California Civil Code as a "condominium project" (hereinafter referred to as the "Project"), as more particularly described below. Development of the Project, however, shall be consistent with the overall plan of development submitted to and approved by the Veterans Administration and/or the Federal Housing Administration (hereinafter referred to as the "VA/FHA"), if applicable.

C. Declarant deems it desirable 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 (hereinafter referred to as the "Protective Covenants") upon the Project for the purpose of enforcing, protecting and preserving the value, desirability and attractiveness of the Project.

D. Declarant deems it desirable for the efficient enforcement, protection and preservation of the value, desirability and attractiveness of the Project to create a corporation which

shall be delegated and assigned the powers of administering and enforcing the Protective Covenants.

E. 133 PROMENADE WALK CORPORATION, a California nonprofit, mutual benefit corporation, has been or will be incorporated under the laws of the State of California for the purpose of exercising the aforesaid powers.

F. Declarant intends to convey Phase 1, and any and all real property associated with Lot 1, subject to the protective covenants set forth hereinbelow.

NOW, THEREFORE, pursuant to Sections 1350, et seq., of the California Civil Code, Declarant declares that it does hereby establish a general plan for the development, maintenance, care, improvement, protection, use, occupancy, management and enjoyment of the Project, and that all or any portion of the Project shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and improved, subject to the protective covenants set forth herein ("Protective Covenants"). Each and all of the Protective Covenants shall run with the Project, and shall be binding upon all persons having any right, title or interest in the Project, or any portion thereof, their heirs, successors and assigns, and shall inure to the benefit of and be binding upon Declarant, its successors and assigns, all subsequent owners of all or any portion of the Project, together with their grantees, heirs, executors, administrators, devisees, successors and assigns.

ARTICLE I

DEFINITIONS

Section 1. "Agency" shall mean and refer to the Redevelopment Agency of the City of Long Beach, California and its various departments, divisions, employees and representatives.

Section 2. "Architectural Guidelines" shall mean and refer to those certain architectural standards, landscape standards and other general policies, procedures and criteria which may be adopted by the Board pursuant to this Declaration for use by the Architectural Review Committee in reviewing plans and specifications for proposed Improvements to an Owner's Condominium Unit. The Architectural Guidelines are general guidelines and may be amended from time to time by a majority of the Board. A copy of the Architectural Guidelines may be obtained from the Architectural Review Committee or Board. Since the Corporation owns the condominium buildings, Owners have very limited rights for exterior architectural changes and/or Improvements (e.g., certain items within the Exclusive Use Corporation Property).

Section 3. "Architectural Review Committee" shall mean and refer to the committee created pursuant to the Article herein entitled "Architectural Review - Approval."

Section 4. "Articles" shall mean and refer to the Articles of Incorporation of 133 Promenade Walk Corporation, as filed in the Office of the Secretary of State of the State of California, as such Articles may be amended, from time to time.

Section 5. "Assessments" shall be used as a generic term which shall mean and refer to the following:

(a) "Regular Assessment" shall mean and refer to the annual charge against each Owner and his respective Condominium representing a portion of the Common Expenses of the Corporation;

(1) "General Assessment Component." The General Assessment Component (or base assessment component as may be referred to in the DRE approved Budget) consists of the Common Expenses of the Corporation, exclusive of all Variable Expenses and expenses covered by the Parking Assessment Component and the Retail Assessment Component budgeted to the Condominiums, if applicable (i.e., the Parking Condominium Units and the Retail Condominium Units will not pay the General Assessment Component). The General Assessment Component shall be allocated equally among the Owners and their respective Condominium (except for the Retail Condominiums and Parking Condominiums) based upon the number of Condominiums owned.

(2) "Variable Assessment Component." The Variable Expenses budgeted exclusively to a Variable Element ("Variable Assessment Component"), if applicable, shall be assessed solely to the Owners of Residential Condominiums to which the exclusive or disproportionate maintenance or cost of such Variable Element has been allocated (e.g., differences in maintenance and other expenses due to the varying square footages of the Residential Condominium Units). It is anticipated that the Variable Assessment Component will be allocated on a pro-rata basis among those Residential Condominiums which are subject thereto. The Parking Condominium Units and the Retail Condominium Units will not pay the Variable Assessment Component.

(3) "Parking Assessment Component." The Board shall allocate to the Owners of the Parking Condominium Units the cost of maintaining the parking spaces in the Project, as set forth in the initial Corporation budget approved by the DRE and subject to annual increases as determined by the Board in accordance with the limitations on such increases set forth herein (i.e., an amount equal to the greater of a twenty percent (20%) increase to the Parking Assessment Component or a twenty percent increase to each budget allocation line item identified in the DRE approved budget).

(4) "Retail Assessment Component." The Board shall allocate to the Owners of the Retail Condominium Units an equitably proportionate share of the cost of the common services furnished to the Retail Condominium Units, as set forth in the initial Corporation budget approved by the DRE and subject to annual increases as determined by the Board in accordance with the limitations on such increases set forth herein (i.e., an amount equal to the greater of a twenty percent (20%) increase to the Retail Assessment Component or a twenty percent increase to each budget allocation line item identified in the DRE approved budget).

(b) "Compliance Assessment" shall mean and refer to the personal charge against an Owner representing the costs incurred by the Corporation to repair any damage to the Common Property (as defined below) for which such Owner (or any member of his family, or his guests, invitees, tenants or lessees) was responsible, the costs incurred by the Corporation to bring such Owner and his Condominium into compliance with this Declaration, and/or any amount due the Corporation based upon disciplinary proceedings against an Owner in accordance with this Declaration, or any amount due the Corporation to reimburse the Corporation for administrative costs attributable to an Owner as provided herein;

(c) "Special Assessment" shall mean and refer to the charge against an Owner and his respective Condominium representing a portion of the cost of reconstructing any damaged or destroyed portion or portions of the Common Property, of constructing or installing any capital improvements to the Common Property, or of taking any extraordinary action for the benefit of the Common Property or the membership of the Corporation, pursuant to the provisions of this Declaration. In addition, Special Assessment shall mean and refer to a reasonable fine or penalty assessed by the Board, plus interest and other charges on such Special Assessment as provided for herein; and

(d) "Special Benefit Assessment" shall mean and refer to a charge levied by the Corporation against an Owner and his respective Condominium to cover the expenses incurred by the corporation in the operation, maintenance, repair and/or funding of reserves for a portion of the Project designated by Declarant or the Corporation as a "Special Benefit Area," which expenses are allocable only to the Owners and their Condominium within such an Area.

Section 6. "Best Management Practices" shall mean and refer to those certain structural, treatment control, and non-structural water quality management practices set forth in, or otherwise required pursuant to, the Water Quality Management Plans approved for or applicable to the Project. The structural and treatment control Best Management Practices may include, without limitation, landscape planning, hillside planning, roof runoff controls, efficient irrigation technology, slope and channel protection measures, storm drain signage, trash storage areas, litter control requirements, in-flow based treatment control BMPs (e.g., vegetated buffer strips, vegetated swales, multiple systems, bioretentions, and hydrodynamic separation systems), volume based treatment control BMPs (e.g., wet ponds, constructed wetlands, extended detention basins, water quality inlets, retention/irrigation, infiltration basins, infiltration trenches, media filters,

and manufactured proprietary devices), detention basins, retention basins, debris basins, "V" ditches, bench drains, catch basins, catch basin media filters, inlet trash racks, drainpacs and other storm drain filtration devices, energy dissipaters, culverts, pipes, and related storm drain and water quality facilities constructed in the Project. The non-structural Best Management Practices generally require the Corporation and the Owners and other residents within the Project to be aware of the sensitive natural environment surrounding the Project and to take appropriate actions to control runoff from the Project. With respect to the Corporation, the non-structural Best Management Practices may include, among other things, (i) providing informational materials to the Owners and other residents within the Project regarding general good housekeeping practices for protection of storm water quality; (ii) restricting certain activities addressed in the informational materials to protect the quality of water entering the storm drain system; (iii) managing the landscaping on the Corporation Property, including, without limitation, using fertilizers and pesticides in accordance with the "Management Guidelines for Use of Fertilizers and Pesticides" which is included, if applicable, in the appendix to the Water Quality Management Plans; (iv) performing on a regularly scheduled basis maintenance consisting, at a minimum, of litter control, emptying of common trash receptacles and sweeping of dumpster enclosures; (v) inspecting and cleaning as needed on a monthly basis (and more frequently during the rainy season [i.e., October 15 through April 15]) the catch basins located on the Corporation Property; and (vi) sweeping any on-site private paved areas on a regular basis and prior to the rainy season (i.e., no later than October 15 of each year). With respect to the Owners and other residents within the Project, the non-structural Best Management Practices may include, among other things, restricting certain activities to protect the quality of water entering the storm drain system (e.g., prohibiting the disposal of motor oil, paint products, car detergents and other pollutants into the storm drains in the Project). The Best Management Practices are designed and intended to control runoff and must be implemented by the Corporation, and the Owners and other residents within the Project. The Best Management Practices may vary from within the Project. The Best Management Practices may be modified from time to time by the Declarant or any Public Agency having jurisdiction regarding water quality for runoff waters from the Project in order to control runoff as the Project develops and runoff conditions change. Compliance by the Corporation and the Owners with the Best Management Practices, as they may be modified from time to time, may be monitored and enforced by any Public Agency having jurisdiction regarding water quality for runoff waters from the Project. including, without limitation, the City, County, Regional Water Quality Control Board, and the State Water Resources Board.

Section 7. "Board" shall mean and refer to the Board of Directors of the Corporation, elected in accordance with the By-Laws of the Corporation and this Declaration.

Section 8. "By-Laws" shall mean and refer to the By-Laws of the Corporation which have been, or will be, adopted by the Board, as such By-Laws may be amended, from time to time.

Section 9. "CAS" shall mean and refer to Construction Arbitration Services, Inc., including any successors thereto.

Section 10. "City" shall mean and refer to the City of Long Beach, California, and its various departments, divisions, employees and representatives.

Section 11. "Common Area" shall mean and refer to Module B described and/or depicted on a Condominium Plan, as defined in Section 1351(b) of the California Civil Code and as more particularly described hereinbelow, which is to be conveyed along with the respective Condominium Units (i.e., a 1/97th undivided interest in Module B described and/or depicted on the Condominium Plan for the Residential Condominium Units shall be conveyed with each Residential Condominium Unit; a 1/2 undivided interest in Module B described and/or depicted on the Condominium Plan for the Retail Condominium Units shall be conveyed with each Retail Condominium Unit; and a 1/2 undivided interest in Module B described and/or depicted on the Condominium Plan for the Parking Condominium Units shall be conveyed with each Parking Condominium Unit).

Section 12. "Common Expenses" shall mean and refer to the actual and estimated costs to be paid by the Corporation for the common benefit of all Owners of Condominiums in the Project. Except as otherwise provided in this Declaration, the Common Expenses shall include all costs and expenses incurred by the Corporation in connection with the following: (a) owning, maintaining, managing, operating, repairing and replacing the Corporation Property; (b) managing and administering the Corporation, including, but not limited to, compensation paid by the Corporation to managers, accountants, attorneys, budget preparers, and other consultants, and any Corporation employees; (c) all general office and administrative expenses incurred by the Architectural Review Committee; (d) providing utilities and other services to the Corporation Property, and, if not separately metered, to the Condominium Units (e.g., water and trash); (e) maintaining insurance coverage and fidelity bonds (and paying deductibles) as provided for herein; (f) paying that portion of any Assessment attributable to Common Expenses not paid by the Owner responsible for payment; (g) paying taxes for the Corporation and all assessments required under the recorded Agreement Containing Covenants

Affecting Real Property, as amended, including, without limitation, all assessments levied by the Agency or its assignee for the maintenance and repair of that portion of the public right of way known as the Promenade in the City of Long Beach between Ocean Avenue and 3rd Street and all of the Improvements thereon; (h) paying all reasonable out-of-pocket expenses actually incurred by the members of the Board of Directors and officers of the Corporation in performing their duties as provided herein (e.g., postage and photocopying); (i) enforcing the provisions of the Declaration, Articles, By-Laws and Rules and Regulations; and (j) paying for all other goods and services as reasonably required by the Corporation to perform its powers and duties as set forth herein. Additionally, the Common Expenses shall include adequate reserves, as the Board shall determine to be appropriate, for the repair and replacement of those elements of the Corporation Property which must be repaired or replaced on a periodic basis, rather than on a regular annual basis. The Common Expenses do not include any actual or estimated costs to be paid by the Corporation for those Improvements to the Corporation Property which constitute Special Benefit Improvements and which are allocable as Special Benefit Expenses to the Owners of Condominiums within a Special Benefit Area.

Section 13. "Common Property" as used herein shall mean and refer collectively to all Common Area and to all Corporation Property in the Project.

Section 14. "Condominium" shall mean an estate in real property, as defined in California Civil Code Sections 1351(f) and (1)(2), as same may be amended from time to time, consisting of a separate interest in a Condominium Unit, an undivided fractional fee interest in the Common Area of the Project, as more particularly shown and described in a Condominium Plan recorded in the Office of the County Recorder, together with all exclusive and nonexclusive easements appurtenant thereto. Condominiums in the Project are more particularly described in Article III of this Declaration.

Section 15. "Condominium Plan" shall mean and refer to each instrument entitled "Condominium Plan," prepared in accordance with Section 1351(e) of the California Civil Code, as the same may be amended, from time to time, and recorded in the Office of the County Recorder, affecting the Project, and shall consist of (a) a description or survey map of the Project, which shall refer to or show monumentation on the ground; (b) a three-dimensional description of the Project, one or more dimensions of which may extend for an indefinite distance upwards or downwards in sufficient detail to identify the Common Area, each Condominium Unit and the Corporation Property; and (c) a certificate consenting to the recordation thereof signed and acknowledged by the record owner of fee title to the property included in the Condominium Plan, and by either the

trustee or the beneficiary of each recorded deed of trust and the Mortgagee of each recorded Mortgage encumbering the property included in the Condominium Plan. The Condominium Plans (i.e., separate Condominium Plans for the Residential Condominium Units, Retail Condominium Units, and Parking Condominium Units) shall be recorded prior to or concurrently with this Declaration.

Section 16. "Condominium Unit" shall mean and refer to the elements of a Condominium which are not owned in common with the Owners of other Condominiums in the particular Phase in which the Condominium is located. Condominium Units are more particularly described in the Article herein entitled "Description of the Condominiums" and in the Condominium Plan(s). For purposes of this Declaration, the term "Condominium Unit" is deemed to be a "separate interest," as defined in Sections 1351(f) and (1)(2) of the California Civil Code, as same may be amended from time to time. A Condominium Unit may be either a Retail Condominium Unit, a Residential Condominium Unit, or a Parking Condominium Unit.

Section 17. "Corporation" shall mean and refer to 133 Promenade Walk Corporation, a California nonprofit, mutual benefit corporation, in which all Owners shall have a membership interest as more particularly described hereinbelow, provided that membership shall be limited to Owners. In the event the Corporation as a corporate entity is dissolved, a nonprofit, unincorporated association shall forthwith and without further action or notice be formed to succeed to all of the rights and duties of said Corporation, as set forth herein. The affairs of such unincorporated association shall be governed by the By-Laws and this Declaration as if they were created for the purpose of governing the affairs of an unincorporated association.

Section 18. "Corporation Property" in the Project shall initially mean and refer to that portion of Lot 1 of Tract 61304 except the Common Area and the Condominium Units shown and described on the Condominium Plans as Corporation Property. The Corporation Property depicted on the Condominium Plan will be conveyed to the Corporation prior to or simultaneously with the first close of escrow for the sale of a Condominium in Phase 1. The Corporation Property shall include, without limitation, the condominium buildings located thereon (excepting therefrom the Condominium Units), together with all improvements, including bearing walls, columns, beams, floors and slabs in the Residential Condominium Units (the floors and slabs in the Retail Condominium Units are not Corporation Property), roofs, slabs, foundations, chimneys, fences, exterior stairs and landings, reservoirs, tanks, pumps, private on-site main sewer lines, if any, common mailbox structures, irrigation equipment, fire escapes, fire sprinklers in the Residential Condominium Units, including sprinkler heads which protrude into the airspace of the Residential Condominium Units,

fire standpipes, fire alarm systems, fire extinguishers, and other fire prevention equipment and/or facilities located on Corporation Property (sprinkler heads and other fire prevention or suppression devices within the Retail Condominium Units are part of those Units and do not constitute Corporation Property), and other central services, pipes, ducts, flues, chutes, conduits, wires, exterior lighting and other utility installations wherever located (except all utility lines, installations and/or outlets thereof when located within or exclusively serving one Condominium Unit, including the internal and external telephone wiring designed to exclusively serve a Condominium Unit), sound walls, retaining walls, perimeter walls, the private storm drain and sewer system for the Project, common interior stairwells, elevator cabs and systems, recreational facilities (e.g., fitness club, lobby with kitchen), subterranean parking garage, air supply and exhaust systems and sensors servicing the garage, garage lighting, sump pumps servicing the garage, if any, garage access gates and access control systems (e.g., telephones and access card readers unless such are otherwise determined by the Board), common trash dumpsters and recycling bins designated solely for residential use, poles, signs (other than signs relating to the business uses of the Retail Condominium Units), Project monument signs, water features, if any, arbors, landscaping located on the Corporation Property, excepting therefrom landscaping and Improvements located in the Exclusive Use Corporation Property, and a nonexclusive easement to maintain the street trees along the public streets adjacent to the Project (e.g., see Exhibit "A-1").

Section 19. "County" shall mean and refer to the County of Los Angeles, California, and its various departments, divisions, employees, and representatives.

Section 20. "DDA" shall mean and refer to the Disposition and Development Agreement between the Agency and the Declarant and/or the Declarant's predecessor-in-interest, as well as all amendments thereto, that are applicable to the Project.

Section 21. "Declarant" shall mean and refer to Olson 737-Long Beach 2, LLC, a California limited liability company, and to any person or entity acquiring all or portion of Declarant's interest in the Project (including all of Declarant's rights and obligations as created and established herein) pursuant to a written assignment, deed or other instrument from Declarant which is recorded in the Office of the County Recorder. Any such instrument may include only certain specific rights and/or obligations of the Declarant and may be subject to such conditions as Declarant may impose in its sole discretion.

Section 22. "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions, and Reser-

vation of Easements, and to all amendments to this Declaration as may be recorded, from time to time, in the Office of the County Recorder, in accordance with Section 1351(h) and Section 1353 of the California Civil Code.

Section 23. "Designated Loading Easement Area" shall mean those portions of the Project reserved for temporary loading and emergency access purposes depicted on Exhibit "F" attached hereto and incorporated by reference. The Designated Loading Easement Area shall also include the areas that are reasonably necessary to travel from the public street to the loading zone and to and from the Condominium Units to the loading zone (e.g., see Exhibit "F-1").

Section 24. "Dispute" shall have the meaning set forth herein below.

Section 25. "DRE" shall mean and refer to the Department of Real Estate of the State of California, which administers the sale of subdivided lands pursuant to Sections 11000, et seq., of the California Business and Professions Code, or any similar California statute hereinafter enacted.

Section 26. "Exclusive Use Corporation Property" shall mean and refer to those portions of the Corporation Property over which exclusive easements are reserved for the benefit of certain Owners of Condominium Units, as described herein and shown on the Condominium Plan(s), subject to any encroachments (e.g., pipes, drains, etc.), easements (e.g., drainage), and other encumbrances and/or Improvements existing at the time of conveyance of such Exclusive Use Corporation Property from Declarant to an original Owner of a Condominium. Exclusive Use Corporation Property includes any retail use Corporation Property, parking use Corporation Property, and/or residential use Corporation Property depicted on the Condominium Plans.

Section 27. "FHLMC" shall mean and refer to the Federal Home Loan Mortgage Corporation (The Mortgage Corporation) created by Title III of the Emergency Home Finance Act of 1970, as same may be amended, from time to time, including any successors thereto.

Section 28. "FNMA" shall mean and refer to the Federal National Mortgage Association, a government-sponsored private corporation established pursuant to Title VIII of the Housing and Urban Development Act of 1968, as amended, from time to time, including any successors thereto.

Section 29. "GNMA" shall mean and refer to the Government National Mortgage Association administered by the United

States Department of Housing and Urban Development, including any successors thereto.

Section 30. "Improvements" shall mean and refer to all structures and appurtenances thereto of every kind, including, but not limited to, Condominium Units, open parking areas, swimming pools, spas, cabanas, private streets, street lights, pavement, sidewalks, drives, walls, fences, decorative or informative signs, retaining walls, mail kiosks, trellises, television and radio antenna, common trash receptacles, if any, screens, private utility line connections, poles, signs, all Corporation Property landscaping and irrigation systems. Improvements shall also mean and refer to all additions and/or modifications to the exterior of any Condominium (e.g., the Condominium buildings, patios, balconies, storage areas, parking spaces), including, but not limited to, (a) painting the exterior of any Condominium building or other structure, (b) changing the roofing material on the Condominium building(s), and/or (c) building, constructing, installing, altering or planting, as the case may be, any spas, deck covers, balconies, patios, decks, gazebos, stairs, screening walls or fences, shades, awnings, screen doors, exterior doors, skylights, solar heating panels, air conditioning and/or water softening or refining fixtures or systems, and all landscaping which left in its natural condition will grow to a height in excess of twenty feet (20').

Section 31. "Include, Including" (whether capitalized or not) shall mean "includes without limitation" and "including without limitation," respectively.

Section 32. "Limited Warranty" shall mean and refer to the express written limited warranty commonly known as the "Home Builder's Limited Warranty," which may be administered by "PWC" (as defined below) and provided to the initial Owners who acquire a Residential Condominium from the Declarant and the Corporation, as determined appropriate by the Declarant. A sample draft copy of the version currently available is attached hereto as Exhibit "p" and is provided for informational purposes only and is not incorporated herein by reference. Each Owner shall be responsible to ensure that the subsequent purchase of such Owner's Residential Condominium is aware of the Limited Warranty and the procedures and forms which must be followed and executed to transfer such Limited Warranty, if applicable, to said subsequent purchaser.

Section 33. "Local Government Agency" shall mean and refer to the City, the County, a public school district, a public water district, and any other local or municipal government entity or agency including, without limitation, any community service area, special assessment district, maintenance district or community facilities district.

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Section 34. "Lot" shall mean and refer to a plot of land which is separately described and numbered or lettered on a recorded tract map or parcel map as such plot of land may be modified or otherwise adjusted by a recorded lot line adjustment.

Section 35. "Maintain, Maintenance" (whether capitalized or not) shall mean "inspect, maintain, repair and replace" and "maintenance, repair and replacement," respectively; provided, however, that "maintain" or "maintenance" shall not include inspection, repair and replace(ment) where the context or specific language of this Declaration provides another meaning.

Section 36. "Maintenance Guidelines; Maintenance Manual; Maintenance Recommendations" shall mean and refer any current written guidelines, setting forth procedures and standards for the maintenance and operation of Corporation Property Improvements that may be provided to the Corporation by Declarant, or any governmental agency or for the maintenance of a Condominium and other Improvements Declarant has constructed on or in the Project. Maintenance Guidelines include any Maintenance Manual initially prepared at Declarant's direction, and recommended inspections and maintenance activities for components of the Corporation Property and any Maintenance Recommendations prepared by Declarant pertaining to a Condominium.

Section 37. "Member" shall mean and refer to every person or entity who holds membership in the Corporation, as more particularly set forth in the Article herein entitled "The Corporation," and shall be synonymous with the term "Owner."

Section 38. "Module" shall mean and refer to a separate three-dimensional volume of land and/or airspace shown and designated as a "Module" on a Condominium Plan. A Module may include Condominiums within its boundaries; however, the Condominiums are not and do not constitute Modules in and of themselves.

Section 39. "Mortgage" shall mean and include any mortgage or deed of trust, or other conveyance of a Condominium (or other portion of the Project) to secure the performance of an obligation, which conveyance will be reconveyed upon the completion of such performance, including an installment land sales contract (as described in Sections 2985 et seq. of the California Civil Code, as same may be amended, from time to time). The term "Deed of Trust," when used herein, shall be synonymous with the term "Mortgage."

Section 40. "Mortgagee" shall mean and refer to a person or entity to whom a Mortgage is made, and shall include the beneficiary of a Deed of Trust or the vendor under an installment land sales contract, as the case may be, and the assignees of a Mortgagee, beneficiary or vendor.

Section 41. "Mortgagor" shall mean and refer to a person or entity who mortgages his or its Condominium to another, i.e., the maker of a Mortgage, and shall include a trustor of a Deed of Trust and the vendee under an installment land sales contract.

Section 42. "Notice and Hearing" shall mean and refer to written notice and the opportunity for a hearing before the Board or the Architectural Review Committee of the Corporation, as applicable, or other tribunal appointed by the Board in the manner provided in the By-Laws, at which the affected Owner shall have an opportunity to be heard in the manner provided herein and in the By-Laws.

Section 43. "Owner" shall mean and refer to one or more persons or entities who alone or collectively are the record owner, or owners, of fee simple title to a Condominium, excluding those persons or entities having any such interest merely as security for the performance of an obligation. If a Condominium has been sold under a land sales contract (as described in Sections 2985 et seq. of the California Civil Code, as same may be amended, from time to time), in which the State of California is the vendor, then the vendee shall be deemed to be the Owner of such Condominium. If a Condominium is leased by Declarant for a term of ten (10) or more years, including renewal periods, and the lease or memorandum thereof is recorded, the lessee or transferee of the leasehold interest and not the Declarant shall be deemed the Owner. If fee title to a Condominium is owned other than by Declarant, the Owner of the fee title and not the lessee of such Condominium shall be deemed the Owner regardless of the term of the lease.

Section 44. "Parking Condominium Unit" shall mean and refer to a Condominium Unit which is designated for use as parking on a Condominium Plan and which may be used, subject to the provisions and conditions hereof, for parking purposes permitted hereunder and allowed under applicable zoning and other land use regulations which may exist from time to time with respect to the Project.

Section 45. "Phase" shall mean and refer to a Lot, or Lots or portions thereof, improved with Condominiums or other Improvements which is (are) subject to a separate Final Subdivision Public Report issued by the DRE.

Section 46. "Project" shall mean and refer to Lot 1 and to all Improvements, including the Condominium Units, constructed thereon.

Section 47. "PWC" shall mean and refer to Professional Warranty Service Corporation, including any successors thereto.

Section 48. "Redevelopment Plan" shall mean the Redevelopment Plan for the Downtown Redevelopment Project Area in the City of Long Beach, California.

Section 49. "Residential Condominium Unit" shall mean and refer to a Condominium Unit which is designated for residential use on a Condominium Plan and which shall be used, subject to the provisions and conditions hereof, for residential purposes as permitted hereunder and allowed under applicable zoning and other land use regulations which may exist from time to time with respect to the Project.

Section 50. "Residential Exclusive Use Corporation Property" shall mean those portions of the Corporation Property over which exclusive easements are reserved for the benefit of certain Owners of Residential Condominium Units, as described herein and shown on a Condominium Plan, including, without limitation, patios, balconies, storage areas, parking spaces, air conditioning pads, and internal and external telephone wiring designed to serve a single Condominium Unit but located outside the boundaries of the Condominium Unit, if applicable, in accordance with California Civil Code Section 1351(i), as same may be amended from time to time. The location of the Residential Exclusive Use Corporation Property and the Residential Exclusive Use Corporation Property patios, balconies, parking spaces, storage spaces, and air conditioning pads are generally depicted on the Condominium Plans and this Declaration. The Board has the power, in its sole discretion, to monitor, control, and limit access to the Residential Exclusive Use Corporation Property and the Exclusive Use Corporation Property.

Section 51. "Retail Condominium Unit" shall mean and refer to a Condominium Unit which is designated for commercial use on a Condominium Plan and which may be used, subject to the provisions and conditions hereof, for any commercial purpose permitted hereunder and allowed under applicable zoning and other land use regulations which may exist from time to time with respect to the Project.

Section 52. "Retail Exclusive Use Corporation Property" shall mean and refer to those portions of the Corporation Property over which exclusive easements are reserved for the benefit of certain Owners of Retail Condominium Units, as described herein and shown on a Condominium Plan, including, without limitation, trash areas, air conditioning pads, outdoor seating areas, and internal and external telephone wiring designed to serve a single Condominium Unit but located outside the boundaries of the Condominium Unit, if applicable, in accordance with California Civil Code Section 1351(i), as same may be amended from time to time. The Board has the power, in its reasonable discretion, to

monitor, control, and limit access to the Retail Exclusive Use Corporation Property.

Section 53. "Rules and Regulations" shall mean and refer to the Rules and Regulations adopted by the Board pursuant to the By-Laws or this Declaration, as they may be amended, from time to time.

Section 54. "Shopkeeper Spaces" shall mean and refer to those portions of the first floor of the seven (7) Residential Condominium Units facing The Promenade North and 1st Street that are authorized by the City and Agency for commercial use (e.g., see Exhibit "K").

Section 55. "Sign Program" shall mean the guidelines and requirements for all Signs in the Project, including all Signs located within an Owner's Condominium Unit or on the Exclusive Use Corporation Property (with the permission of the Corporation), which are visible from any other portion of the Condominium or any public street and which shall be adopted, amended or modified by the Architectural Review Committee pursuant to this Declaration.

Section 56. "VA/FHA" shall mean and refer to the United States Veterans Administration and/or Federal Housing Administration, including the department or agency of the United States government as shall succeed to the VA and/or FHA.

Section 57. "Variable Element" shall mean one (1) or more Improvements or maintenance areas, including, but not limited to, exterior building maintenance, Exclusive Use Corporation Property patio area and balcony area maintenance, termite inspections, insurance, parking, fire sprinkler systems, designated by the Declarant, Board, or described in the budget approved by the DRE or Board, and which the maintenance cost for such improvements or maintenance areas is restricted to certain Owners of Condominiums specified and/or described in this Declaration, or a budget approved by the DRE or the Board, and where the expense of operating, maintaining, repairing, and replacing such Improvements or maintenance areas is borne solely or disproportionately (e.g., based on the varying square footages of the Residential Condominium Units) by such specified Owners.

Section 58. "Variable Expenses" shall mean current expenses attributable to a Variable Element which are subject to maintenance by the Corporation and reserves for said Variable Element (e.g., differences in maintenance expenses due to the varying square footages of the Residential Condominium Units).

Section 59. "Water Quality Management Plans" shall mean and refer to all applicable plans and requirements for the management of storm water at the Project, including, without limitation, any applicable National Pollutant Discharge Elimination System ("NPDES") permit requirements, the NPDES requirements contained in Chapter 18.95 of the City's Municipal Code, Standard Urban Storm Water Mitigation Plan ("SUSMP"), Storm Water Pollution Prevention Plan ("SWPPP"), Water Quality Management Plan ("WQMP"), Drainage Area Management Plan ("DAMP"), Local Implementation Plan ("LIP"), and other storm water quality management plans that may be approved for or applicable to the Project. The Water Quality Management Plans address water runoff generated by the residential areas and other development Improvements within the Project and will be monitored by various Public Agencies (e.g., the Regional Water Quality Control Board and the City). The Water Quality Management Plans contain, among other things, certain Best Management Practices that must be followed by the Corporation, the Owners and/or other residents within the Project. The Water Quality Management Plans and the related Best Management Practices may be modified at any time by the Declarant and/or the Public Agencies having jurisdiction over such matters.

Section 60. Interpretation.

(a) General Rules. This Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for subdividing, maintaining, improving and selling the Condominiums. As used in this Declaration, the singular includes the plural and the plural the singular. The masculine, feminine and neuter each includes the other, unless the context dictates otherwise.

(b) Articles, Sections and Exhibits. The Article and Section headings are inserted for convenience only and may not be considered in resolving questions of interpretation or construction. Unless otherwise indicated, any references in this Declaration to articles, sections or exhibits are to Articles, Sections and Exhibits of this Declaration. All exhibits attached to this Declaration are incorporated in this Declaration by this reference except the Limited Warranty which is provided only for informational purposes as to the current sample and is expressly not incorporated by reference. The locations and dimensions of any Improvements depicted on the Exhibits attached hereto are approximate only, and the as-built location and dimension of any such Improvements shall control.

(c) Priorities and Inconsistencies. If there are conflicts or inconsistencies between this Declaration and the Articles, Bylaws, or Rules and Regulations, then the provisions of this Declaration shall prevail.

(d) Severability. The provisions of this Declaration are independent and severable. A determination of invalidity, partial invalidity or unenforceability of any one (1) provision of this Declaration by a court of competent jurisdiction does not affect the validity or enforceability of any other provisions of this Declaration.

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

Section 61. Application of Definitions. The aforesaid definitions shall be applicable throughout this Declaration, and to any supplements or amendments hereto filed or recorded pursuant to the provisions of this Declaration, unless otherwise indicated or the context shall prohibit such application.

ARTICLE II

INTRODUCTION TO 133 PROMENADE WALK

Section 1. General Plan of Development. 133 Promenade Walk is presently planned as a mixed commercial and residential condominium project, as defined in Section 1351(f) of the California Civil Code, which, if completed as planned, may consist of approximately ninety-seven (97) attached Residential Condominium Units, two (2) Retail Condominium Units, two (2) Parking Condominium Units, and various amenities. Nothing in this Declaration shall be interpreted, to constitute an "enhanced protection agreement" as defined in Section 901 of the California Civil Code. The Project will be developed in accordance with California Civil Code, Sections 1350, et seq., and in substantial conformance with the development plan and plans submitted to and approved by the City, Agency and DRE. The Corporation will maintain the Corporation Property and will be the management body for the Project, as provided herein. As presently planned, Phase 1 may be processed with the DRE and consist of approximately thirty-seven (37) Residential Condominium Units, and Common Property. Each Condominium Unit will be completed prior to the close of escrow for the sale of such Condominium. The Condominiums are more particularly described in the Article herein entitled "Description of the Condominiums." The Owners of Residential Condominium Units will receive title to their respective Condominium Units, various easements (exclusive and nonexclusive, as set forth in this Declara-

tion), an undivided one/ninety-seventh (1/97th) interest in the Common Area depicted on the Condominium Plan for the Residential Condominium Units, and a membership in the Corporation. The Owners of Retail Condominium Units will receive title to their respective Condominium Units, various easements (exclusive and nonexclusive, as set forth in this Declaration), an undivided one/half (1/2) interest in the Common Area depicted on the Condominium Plan for the Retail Condominium Units, and a membership in the Corporation. The Owners of Parking Condominium Units will receive title to their respective Condominium Units, various easements (exclusive and nonexclusive, as set forth in this Declaration), an undivided one/half (1/2) interest in the Common Area depicted on the Condominium Plan for the Parking Condominium Units, and a membership in the Corporation.

Section 2. Membership in Corporation. As more particularly set forth in this Declaration, each Owner of a Condominium in the Project shall automatically become a Member of the Corporation, and shall be obligated for the payment of Assessments to the Corporation. In addition, except as otherwise provided herein, each Owner, his family members, lessees, tenants, guests and invitees, will be entitled to the use and enjoyment of the Corporation Property within the Project, in accordance with this Declaration, the By-Laws and Rules and Regulations adopted by the Board.

Section 3. Declarant's Use of Project Garage and Utilities. Declarant hereby reserves, together with the right to grant and transfer all or a portion of the same, until the earlier of when Declarant no longer owns an interest in a portion of Lot 1 of Tract 61304 or five years from the recordation of this Declaration, easement rights to use the Corporation Property (including but not limited to the subterranean garage and private utilities within the Project, including, but not limited to, access and connection of utilities by Declarant for purposes of developing the real property comprising Lot 1 of Tract 61304).

Section 4. Post Tension Slabs. Each Owner hereby acknowledges that the concrete slab for an Owner's Condominium Unit MAY be reinforced with a grid of steel cables which were installed in the concrete and then tightened to create very high tension. This type of slab is commonly known as a "Post Tension Slab." Each Owner further acknowledges cutting into a Post Tension Slab for any reason (e.g., to install a floor safe, to remodel plumbing, etc.) is very hazardous and may result in serious damage to the Condominium Unit and/or personal injury. By accepting a grant deed to the Condominium, each Owner hereby specifically covenants and agrees that:

(a) He/she shall not cut into or otherwise tamper with the Post Tension Slab;

(b) He/she shall not knowingly permit any other person to cut into or tamper with the Post Tension Slab so long as Owner owns any interest in the Condominium;

(c) He/she shall disclose the existence of the Post Tension Slab to any tenant, lessee, or grantee of the Condominium; and

(d) He/she shall indemnify and hold Declarant, and its respective officers, employees, contractors and agents, free and harmless from and against any and all claims, damages, losses, or other liability (including attorneys' fees) arising from any breach of this Section.

Section 5. Development Control. Nothing in this Article or elsewhere in this Declaration shall limit, restrict, abridge or control, in any manner whatsoever, Declarant's right to complete the planning, development, grading, construction, advertising, marketing, leasing and sales of the Condominiums, and all other property within the Project, including, without limitation, the following specific rights, which may be exercised by Declarant, or by its agents and employees, in conjunction with such development and marketing of Condominiums in the Project. Therefore, Declarant shall have the right to: (a) complete construction of any Improvements in the Project; (b) redesign or otherwise alter the style, size, color or appearance of any Improvements in any portion of the Project owned by Declarant and implement an Assessment schedule thereon consistent with such development; (c) construct additional Improvements on any portion of the Project owned by Declarant; (d) subdivide, resubdivide, adjust Condominium and Lot lines, grade or re-grade any portion of the Project owned by Declarant; and (e) otherwise control all aspects of designing, constructing, and phasing the Improvements in the Project, and of marketing and conveying Condominiums in the Project. In furtherance thereof, Declarant hereby reserves, unto itself and its successors and assigns for so long as Declarant owns any interest in a portion of Lot 1 of Tract 61304, however, not to exceed five years from the recordation of this Declaration:

(a) A nonexclusive easement for ingress and egress on, over and across the Project as necessary to construct the Condominium Units and all other Improvements;

(b) The exclusive right to maintain one (1) or more sales office(s), model complex(es), construction trailer, interior design and decorator center(s) within property owned

by Declarant, and parking area for employees, agents and prospective buyers;

(c) The exclusive right to place reasonable signs, flags, banners, billboards or other forms of advertising on any portion of the Project owned or controlled by Declarant and/or Corporation Property (specifically including the Project entry area), as Declarant deems necessary, irrespective of size, color, shape or materials of such items as long as such use does not unreasonably interfere with the Owners' reasonable use of the Corporation Property;

(d) The right to determine, so long as Declarant owns an interest in the Project, the hours of any Project entry gates;

(e) A nonexclusive right to utilize the Corporation Property and any unassigned open parking spaces in connection with its program for the sale or leasing of Condominiums in the Project;

(f) The right to install, place, replace, construct, reconstruct, modify or remove any Improvement from any Condominium owned by Declarant, as Declarant may, in its sole discretion, deem appropriate;

(g) The right to conduct any commercial activity upon any Condominium owned by Declarant which reasonably relates to the development, marketing, leasing or sale of the Condominiums or other property in the Project; and

(h) The right to utilize the Corporation Property in the Project for marketing and promotional activities, however, if these activities could result in excluding an Owner from the reasonable use of the Corporation Property, the Declarant must first obtain approval from the Board, which approval may be withheld in the sole and absolute discretion of the Board.

Each Owner hereby grants, upon acceptance of his deed to his Condominium Unit, and the Corporation hereby grants, upon acceptance of a deed to the Corporation Property, an irrevocable special power of attorney to Declarant, for as long as Declarant has any ownership interest in the Project, to execute and record all documents and maps necessary to complete development of the Project as approved by the City, and to allow Declarant to exercise its rights under this Declaration.

Section 6. Non-Liability of Declarant. Nothing in this Section or elsewhere in this Declaration shall limit the right

of Declarant to complete construction of the Project, to alter same or to construct such additional Improvements as Declarant shall deem advisable prior to the completion and sale of all Condominium Units in the Project. Declarant may assign any or all of its rights under this Declaration to any successor to all or any part of Declarant's interest in the Project by an express written assignment recorded in the Office of the County Recorder.

Section 7. Irrevocable Limited Power of Attorney.

Each Owner of a Condominium in the Project, by accepting a deed to a Condominium, hereby irrevocably appoints Declarant as his attorney-in-fact, for himself and each of his Mortgagees, optionees, grantees, licensees, trustees, receivers, lessees, tenants, judgment creditors, heirs, legatees, devisees, administrators, executors, legal representatives, successors and assigns, whether voluntary or involuntary, and hereby grants to Declarant an irrevocable limited power of attorney coupled with an interest for Declarant to act as his attorney-in-fact in connection with any modification to the development plans of all or any portion of the Project. Each Owner hereby acknowledges and agrees that this irrevocable limited power of attorney is: (a) retained for the benefit of the Declarant and not the Owner; and (b) created by Owner's acceptance of a deed to a Condominium and as part of the consideration for the purchase and sale of a Condominium. Based on the foregoing, each Owner further acknowledges and agrees that this irrevocable limited power of attorney is "coupled with an interest" and, pursuant to Section 2356 of the California Civil Code, as same may be amended, from time to time, may not be terminated by: (a) the Owner's revocation of such limited power of attorney; (b) the Owner's death; or (c) the Owner's incapacity to contract. In furtherance thereof and subject to the limitations and restrictions set forth in this Article, Declarant shall have the right and power as a duly authorized attorney-in-fact to perform any of the following actions:

(a) To prepare, execute, acknowledge and record any map or record of survey affecting the Project required or permitted by the provisions of the Subdivision Map Act of the State of California in effect on the date of the recording of this Declaration, and as thereafter amended, and any ordinances, rules or regulations of the City, and any other governmental entities and authorities having jurisdiction over the Project, in effect on the date of the recording of this Declaration, and as thereafter enacted or amended, or which may be required or permitted by any title insurer, and, in connection therewith, to perform all conditions, undertake any obligations and execute all agreements and documentation required or permitted by any federal, State and local governmental entities and authorities; to appear before any such governmental entities and authorities; and to execute,

acknowledge and deliver any improvement agreements and bonds, and post deposits securing the performance of any such conditions and obligations;

(b) To prepare, execute, acknowledge and record any amendment to a Condominium Plan, including, without limitation, any amendments necessary to cause such Condominium Plan to conform with the Improvements as actually built, which may be required or permitted by the laws of the State of California as in effect on the date of the recording of this Declaration, as thereafter enacted or amended, and any ordinances, rules and regulations of the City, and any other governmental entities and authorities having jurisdiction over the Project, as in effect on the date of the recording of this Declaration, and as thereafter enacted or amended, or which may be required or permitted by any title insurer, and, in connection therewith, to perform all conditions, undertake any obligations and execute all agreements and documentation required or permitted by any federal, State and local governmental entities and authorities; and to execute, acknowledge and deliver any improvement agreements and bonds, and post deposits securing the performance of any such conditions and obligations;

(c) To prepare, execute, acknowledge and file for approval any application for zoning or setback changes or lot line or Condominium boundary adjustments, or variance or conditional use permits, or any other permits or reports required or permitted by the laws of the State of California as in effect on the date of the recording of this Declaration, as thereafter enacted or amended, and any ordinances, rules and regulations of the City, and any other governmental entities and authorities having jurisdiction over the Project, as in effect on the date of the recording of this Declaration, and as thereafter enacted or amended, or which may be required or permitted by any title insurer, and, in connection therewith, to perform all conditions, undertake any obligations and execute all agreements and documentation required or permitted by any federal, State and local governmental entities and authorities; and to execute, acknowledge and deliver any improvement agreements and bonds, and post deposits securing the performance of any such conditions and obligations;

(d) To make applications for any property reports or public reports, or amendments thereto, or exemption from the requirements therefor required or permitted by federal and State statutes, rules and regulations relating to the sale, lease, transfer or other disposition of subdivided lands, and, in connection therewith, to perform all conditions, undertake any obligations and execute all agreements and documentation required or permitted by any federal, State and local govern-

mental entities and authorities; and to execute, acknowledge and deliver any improvement agreements and bonds, and post deposits securing the performance of any such conditions and obligations;

(e) To deliver any public reports or property reports, or amendments thereto, obtain receipts and offer and administer rescission rights required by law;

(f) To prepare, execute, acknowledge and file for approval any registration or application for any permit, approval, exemption, ruling or entitlement, which registration or application is required or permitted pursuant to any law or regulation in effect as of the date of the recording of this Declaration, and as hereafter enacted or amended by any federal, State and local governmental entities and authorities, and, in connection therewith, to perform all conditions, undertake any obligations and execute all agreements and documentation required or permitted by such governmental body, and by any such laws and regulations; to appear before any such governmental bodies, and to execute and deliver any improvement agreements and bonds, and post deposits securing the performance of any such conditions and obligations; and do all other things now or thereafter permitted or required by any such governmental body and any such laws and regulations;

(g) To prepare, execute, acknowledge and record any deeds or waivers which may be permitted or required to clear title to any constructed or unconstructed Condominium Units in the Project; and

(h) To do any and all things necessary or desirable under the circumstances to effect and accomplish development of the Project.

Section 8. Mortgage Interest and Other Encumbrances to Take Subject to Power of Attorney. The acceptance or creation of any Mortgage or other encumbrance, whether or not voluntary, created in good faith or given for value, shall be deemed to be accepted or created subject to each of the terms and conditions of the power of attorney described hereinabove.

ARTICLE III

DESCRIPTION OF THE CONDOMINIUMS

Declarant, in order to establish a plan of Condominium ownership, does hereby declare that it has divided, and does hereby divide, Lot 1 into the following freehold estates:

Section 1. Retail Condominium Unit. Each Retail Condominium Unit shall be a separate interest, as defined in Sections 1351(f) and (1)(2) of the California Civil Code, as same may be amended from time to time, consisting of the following elements in accordance with the plans and specifications for each Retail Condominium Unit, as more particularly shown and described on the Condominium Plan:

(a) Retail Airspace Element. The retail airspace element is bound by and contained within the interior unfinished surfaces of the perimeter walls, below finished floors, ceilings, windows, and doors of said element, and the airspace encompassed thereby, identified on the applicable Condominium Plan. The lower and upper boundaries of each retail airspace element are horizontal or sloped planes, the elevations of which are indicated in the diagrams (e.g., vertical sections) and/or tables, if any, set forth in the Condominium Plan. The lateral boundaries of each retail airspace element are vertical planes at the limits of the horizontal dimensions shown in the Condominium Plan for each retail airspace element.

Each Retail Condominium Unit includes both the portion of the Condominium building so described and the airspace so encompassed, all windows and doors of said Condominium Unit (including all locks, handles, latches, screens, weatherstripping, and exterior doors), the forced air heating unit, the air conditioning compressor, if any, the hot water heater, all utility laterals, lines, and/or outlets when located within or exclusively serving said Condominium Unit (no matter where such are located), all built-in appliances and fixtures, floors, slabs, sprinkler heads and other fire prevention or suppression devices, signs relating to the business uses of the Retail Condominium Units, and the interior staircase, but the following are not a part of the Retail Condominium Unit: metal awnings, bearing walls, columns, beams, roofs, foundations, chimneys, fences, exterior stairs and landings, reservoirs, tanks, pumps, private on-site main sewer laterals and lines which do not exclusively serve a Condominium Unit, common mailbox structures, irrigation equipment, and other central services, pipes, ducts, flues, chutes, conduits, wires, exterior lighting, and other utility installations wherever located (except all utility installations and/or outlets thereof when located within or exclusively serving one Condominium Unit, including the

internal and external telephone wiring designed to exclusively serve a Condominium Unit, and/or as set forth above), sound walls, retaining walls, perimeter walls, the private storm drain system for the Project, elevator cabs and systems, common interior stairwells, recreational facilities (e.g., fitness club, lobby with kitchen), subterranean garage, air supply and exhaust systems and sensors servicing the garage, garage lighting, sump pumps servicing the garage, if any, garage gates and access control systems (e.g., telephones and access card readers), common trash dumpsters and recycling bins designated solely for residential use, poles, Project monument signs, water features, and all landscaping located on the Corporation Property (excluding the Exclusive Use Corporation Property).

Section 2. Residential Condominium Unit. Each Residential Condominium Unit shall be a separate interest, as defined in Sections 1351(f) and (1)(2) of the California Civil Code, as same may be amended from time to time, consisting of the following elements in accordance with the plans and specifications for each Residential Condominium Unit, as more particularly shown and described on the Condominium Plan:

(a) Residential Airspace Element. The residential airspace element is bound by and contained within the interior unfinished surfaces of the perimeter walls, floors, ceilings, windows, and doors of said element, and the airspace encompassed thereby, identified on the Condominium Plan by the letter "U" and its respective Condominium Unit number. The lower and upper boundaries of each residential airspace element are horizontal or sloped planes, the elevations of which are indicated in the diagrams (e.g., vertical sections) and/or tables, if any, set forth in the Condominium Plan. The lateral boundaries of each residential airspace element are vertical planes at the limits of the horizontal dimensions shown in the Condominium Plan for each residential airspace element.

Each Residential Condominium Unit includes both the portion of the condominium building so described and the airspace so encompassed, all windows and doors of said Condominium Unit (including all locks, handles, latches, screens, weatherstripping, and exterior doors), the forced air heating unit, the air conditioning compressor, if any, the hot water heater, all utility laterals, lines, pipes and/or outlets when located within or exclusively serving said Condominium Unit (no matter where such are located), all built-in appliances and fixtures, the chimney flue/vent and firebox portion of the fireplace in or servicing the Condominium Unit, if any, but the following are not a part of the Condominium Unit: bearing walls, columns, beams, floors, roofs, slabs, foundations, chimneys, fences, reservoirs, tanks, pumps, private on-site main sewer laterals and lines, common mailbox

structures, irrigation equipment, fire escapes, fire sprinklers, including sprinkler heads which protrude into the airspace of the Condominium Unit, if any, fire standpipes, fire alarm systems, fire extinguishers, and other fire prevention equipment and/or facilities located on Corporation Property, and other central services, pipes, ducts, flues, chutes, conduits, wires, exterior lighting, and other utility installations wherever located (except all utility installations and/or outlets thereof when located within or exclusively serving one Condominium Unit, including the internal and external telephone wiring designed to exclusively serve a Condominium Unit, and/or as set forth above), sound walls, retaining walls, perimeter walls, the private storm drain system for the Project, the elevator cabs and systems, common interior stairwells, recreational facilities (e.g., fitness club, lobby with kitchen), subterranean garage, air supply and exhaust systems and sensors servicing the garage, garage lighting, sump pumps servicing the garage, if any, garage access gates and access control systems (e.g., telephones and access card readers), common trash dumpsters and recycling bins designated for residential use, poles, Project monument signs, water features, and all landscaping located on the Corporation Property (excluding the Exclusive Use Corporation Property).

Section 3. Parking Condominium Unit. Each Parking Condominium Unit shall be a separate interest, as defined in Sections 1351(f) and (1)(2) of the California Civil Code, as same may be amended from time to time, consisting of the following elements in accordance with the plans and specifications for each Parking Condominium Unit, as more particularly shown and described on the Condominium Plan:

(a) Parking Airspace Element. The parking airspace element is bound by and contained within the dimension lines as shown on the Condominium Plan, and the airspace encompassed thereby, identified on the Condominium Plan by "P-1" for the commercial retail parking space and "P-2" for the public parking space. The lower and upper boundaries of each parking airspace element are horizontal or sloped planes, the elevations of which are indicated in the diagrams (e.g., vertical sections) and/or tables, if any, set forth in the Condominium Plan. The lateral boundaries of each parking airspace element are vertical planes at the limits of the horizontal dimensions shown in the Condominium Plan for each parking airspace element.

The Owner of a Parking Condominium Unit shall have the right to install a gate and/or other access control facilities within the Corporation Property in order to limit access to the parking spaces within the Parking Condominium Unit, even though the gate and/or other access control facilities may also limit access to the

Corporation Property, including, without limitation, guest parking spaces and Exclusive Use Corporation Property parking spaces (e.g., Owners and their guests may be required to go through the gate in order to access assigned parking spaces and guest parking spaces); provided, however, that the gate and/or other access control facilities shall be installed in accordance with the Board's requirements and written approvals, the Parking Condominium Unit Owner may not charge any Owner or Owner's guests for accessing the Exclusive Use Corporation Property parking spaces or guest parking spaces, and the Parking Condominium Unit Owner must, prior to installing the gate and/or other access control facilities, design and obtain the Board's written approval of, and thereafter must implement, a program for ensuring that Owners and their guests may access the Exclusive Use Corporation Property parking spaces or guest parking spaces at all times (e.g., parking pass, parking transponder, parking validation program, etc.). All Owners and their tenants and guests shall abide by the program adopted by the Board for accessing the Exclusive Use Corporation Property parking spaces and guest parking spaces and all Rules and Regulations adopted by the Corporation with respect thereto.

Section 4. Presumption of Boundaries of Condominium Units. In interpreting this Declaration, the Condominium Plan, and all instruments of conveyance, the existing physical boundaries of the Condominium Unit, or of a Condominium Unit reconstructed in substantial accordance with the original Condominium Plan thereof, shall be conclusively presumed to be its boundaries, rather than the metes and bounds (or other description) expressed in this Declaration, Condominium Plan, or instrument of conveyance, regardless of settling or lateral movement of the condominium building and regardless of minor variances between the boundaries shown in the Condominium Plan, in the deed and/or in this Declaration, and the actual boundaries of the Condominium building.

Section 5. Combining Condominium Units. Subject to all applicable laws, one or more Residential Condominium Units may be combined to comprise a single Residential Condominium Unit, and one or more Retail Condominium Units may be combined to comprise a single Retail Condominium Unit, provided the Owner wishing to do so gives written notice to the Corporation and the Corporation reasonably determines that the combination of Condominium Units will not diminish the structural integrity of the Condominium building and/or Corporation Property. The combination of Condominium Units shall not result in any reduction of regular assessments or voting rights which would have otherwise applied to the Condominium Units so combined. The area from which a Corporation Property wall or portion of a Corporation Property wall is removed by reason of the combining of Condominium Units shall be deemed a part of the combined Condominium Unit after such removal.

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Section 6. Common Area. The Common Area consists of that portion of Lot 1 of Tract 61304 described and depicted as Module B on the Condominium Plans, which is to be conveyed along with the Condominium Units, but does not include any of the Condominium Units or Corporation Property. The Common Area is comprised of a three-dimensional airspace volume, the dimensions of which are more particularly described in the Condominium Plans.

Section 7. Retail Exclusive Use Corporation Property. Retail Exclusive Use Corporation Property shall mean and refer to that portion of the Corporation Property which is reserved for the exclusive use of the Owners of particular Retail Condominium Units subject to the requirements of this Declaration. Retail Exclusive Use Corporation Property constitutes an exclusive easement appurtenant to its assigned Condominium Unit, subject to the exclusive uses and purposes set forth herein. Each Retail Exclusive Use Corporation Property area and the Retail Condominium Unit to which such area is appurtenant is identified in the Condominium Plan as follows:

(a) Trash Area. The trash area bound by and contained within the interior finished surfaces of the trash perimeter walls identified in the Condominium Plan is hereby assigned to both Retail Condominium Units. The location of the Exclusive Use Corporation Property trash areas shall be those locations as originally constructed by Declarant. Each Retail Condominium Unit Owner is obligated to allow the Outside Businesses set forth on Exhibit "I" to maintain and use trash receptacles in the trash area in accordance with the requirements set forth in this Declaration.

(b) Air Conditioning Pads. The location of the Retail Exclusive Use Corporation Property air conditioning pads shall be those locations as originally constructed by Declarant. The general location of the air conditioning pads is depicted on Exhibit "O" attached hereto and incorporated by this reference.

(c) Outdoor Seating Areas. The Retail Exclusive Use Corporation Property outdoor seating areas are depicted on Exhibit "Q" attached hereto and incorporated by this reference.

The Exclusive Use Corporation Property trash area shall be used solely for the disposal of trash generated by the retail use of the Retail Condominium Units and the Outside Businesses specified on Exhibit "I" hereto. Both Retail Condominium Unit Owners shall have equal right to use the Exclusive Use Corporation Property trash area and shall both be jointly and severally responsible for keeping the Exclusive Use Corporation Property trash area, as well as the corridor leading to the trash area, in

a neat, clean, safe and attractive condition at all times and in compliance with the Rules and Regulations. In the event the Retail Condominium Unit Owners fail to maintain the Exclusive Use Corporation Property trash area as required by the Rules and Regulations and this Declaration (as determined by the Corporation in its reasonable discretion), the Corporation may perform, and levy a Special Assessment against the Retail Condominium Unit Owners for the cost of, such maintenance.

Except as otherwise provided herein, it shall be the obligation of each Retail Condominium Unit Owner to keep his Retail Exclusive Use Corporation Property in a neat, clean, safe and attractive condition at all times. Each Owner assumes all risks which may result from Improvements he or she makes to his or her Retail Exclusive Use Corporation Property or Condominium Unit and each Owner indemnifies and hold harmless the Corporation, the Architectural Review Committee, Declarant and each other Owner from any claims, demands, liabilities, judgments, attorney's fees and other obligations which arise out of or are incurred in connection with the installation, existence or removal of such Improvements, or related to or arising out of such Owner's activities.

Section 8. Residential Exclusive Use Corporation Property. Residential Exclusive Use Corporation Property shall mean and refer to that portion of the Corporation Property which is reserved for the exclusive use of the Owners of particular Residential Condominium Units. A Residential Exclusive Use Corporation Property constitutes an exclusive easement appurtenant to its assigned Condominium Unit, subject to the exclusive uses and purposes set forth herein. Each Residential Exclusive Use Corporation Property area and the Condominium Unit to which such area is appurtenant is identified in the Condominium Plan as follows:

(a) Patios. The patio area bound by and contained within the exterior finished surfaces of the perimeter walls, doors and/or windows of the adjoining commercial and/or residential element, and the interior finished surfaces of the patio perimeter walls and/or fences and doors, identified in the Condominium Plan by the letter "P" and its respective Condominium Unit number, is hereby assigned to such Condominium Unit as shown on the Condominium Plan.

(b) Balcony Area. The balcony area, if any, bound by and contained within the exterior finished surfaces of the perimeter walls, doors, and/or windows of the adjoining commercial and/or residential element, and the interior finished surfaces of the balcony perimeter walls, the balcony railings, walls, and doors, identified in the Condominium Plan by the letter "B" and its respective Condominium Unit number is assigned to such Condominium Unit as shown on the Condominium Plan.

(c) Storage Areas. The storage areas described and depicted on Exhibits "E" and "E-1" attached hereto and incorporated by reference are hereby assigned to the Condominium Units shown on such exhibits.

(d) Parking Spaces. The location of the Exclusive Use Corporation Property parking spaces are described and depicted on Exhibit "E" attached hereto and incorporated by reference. All Exclusive Use Corporation Property parking spaces are subject to any encroachments (e.g., pipes, drains, etc.), easements (e.g., drainage), and other encumbrances and/or Improvements existing at the time of conveyance of such Exclusive Use Corporation Property from Declarant to an original Owner.

(e) Air Conditioning Pads. The location of the Exclusive Use Corporation Property air conditioning pads shall be those locations as originally constructed by Declarant. The general location of the air conditioning pads is depicted on Exhibit "O" attached hereto and incorporated by this reference.

Subject to the provisions herein, including the Article entitled "Repair and Maintenance," it shall be the obligation of each and every Owner to keep his respective Residential Exclusive Use Corporation Property in a neat, clean, safe and attractive condition at all times, except for the structural integrity of the Residential Exclusive Use Corporation Property patio, balcony and parking spaces in the subterranean garage. The Corporation shall be responsible for painting and performing all routine maintenance of all structural components of the Residential Exclusive Use Corporation Property patio, balcony and parking spaces, including, but not limited to, resurfacing the balcony areas, and for making all structural repairs to the patios, balconies, and parking spaces; provided, however, if any maintenance or repairs are required due to the willful or negligent acts or omissions of any Owner, his family, lessees, tenants, guests, or invitees, the Corporation shall levy a Compliance Assessment against the Owner for such costs. The Owner is responsible for periodically inspecting, repairing and otherwise maintaining his/her Residential Exclusive Use Corporation Property storage area. Should landscaping be placed on a patio or balcony, the Owner must take adequate steps to capture water from such plants and to prevent any damage to the Project or unsightly conditions as determined by the Board in its sole discretion. The Board shall have the right to limit the weight of pots and other items placed on the patios and balconies, to restrict pots or other items from being placed on top of any fence or railing, and to prohibit or restrict the growth of potted plants grow on the exterior of a patio or balcony wall or all or portions of a condominium building or within the Project. Each Owner shall be responsible to pay for the repairs of any damage

which may be caused (e.g., landscaping, including potted plants) by his or her activities or instructions or direction. No Owner shall make any improvements to his or her patio, balcony, storage area or other Residential Exclusive Use Corporation Property unless and until the Architectural Review Committee has approved plans of such improvements showing such detail as the Architectural Review Committee or its consultant deems appropriate. The Architectural Review Committee shall have the right to restrict or prohibit any items from being placed within a storage space, or on a patio or balcony which are within view of other Owners and/or which the Architectural Review Committee deems to be unattractive, unsafe, or inconsistent with any Rules and Regulations of the Corporation. Each Owner assumes all risks which may result from Improvements he or she makes to his or her Residential Exclusive Use Corporation Property or Condominium Unit and each Owner indemnifies and hold harmless the Corporation, the Architectural Review Committee, Declarant and each other Owner from any claims, demands, liabilities, judgments, attorney's fees and other obligations which arise out of or are incurred in connection with the installation, existence or removal of such Improvements, or related to or arising out of such Owner's activities. As required by the City, the Exclusive Use Corporation Property storage areas are for the sole use of the residents of the Project and may not be assigned or sold to, or retained in the ownership of, any person not an Owner, and no Exclusive Use Corporation Property storage area may be rented or leased to a non-Owner except in connection with the rental or lease of a Condominium.

Section 9. Reservation of Rights Regarding Exclusive Use Corporation Property Parking Spaces. Notwithstanding any other provision in this Declaration, for as long as Declarant owns any interest in the Project, Declarant shall be entitled, without notifying or obtaining the approval or signature of an Owner ("Initial Owner") or the Corporation, to unilaterally record an amendment to this Declaration reassigning to an Owner who has or obtains a legally issued and valid handicapped parking permit ("Qualifying Owner") any Exclusive Use Corporation Property parking space as a handicapped parking space ("Handicapped Parking Space"), so long as (a) Declarant provides written notice of such reassignment to the Initial Owner; and (b) such amendment assigns to the Initial Owner a replacement parking space selected by Declarant in its sole discretion. The Initial Owner and Qualifying Owner shall cooperate in the execution and recordation of any documents determined necessary by the Declarant with respect to such reassignment. In addition, each Owner may exchange or transfer Exclusive Use Corporation Property parking spaces if: (a) a deed of conveyance identifying the exchanged or transferred Exclusive Use Corporation Property parking spaces and the exchanging Owners or transferor and transferee and their respective Condominium Units is executed by the Owners and their Mortgagees and recorded in the Official Records of the County; and (b) such exchange or transfer

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does not reduce the number of handicapped or other parking spaces below the number required by the City for the Project. The Owners shall deliver a copy of the recorded deed of conveyance to the Corporation as soon as possible after recordation of the same in the Official Records of the County. Declarant reserves a special power of attorney, coupled with an interest, to execute such documents as are reasonably necessary on behalf of Owners and Mortgagees to correct misassignments of Exclusive Use Corporation Property parking spaces.

Section 10. Undivided Fractional Fee Interest in Common Area. The interest in the Common Area hereby established and which shall be conveyed with each respective Residential Condominium Unit is a one/ninety-seventh (1/97th) undivided fractional fee interest in Module B as depicted on the Condominium Plan for the Residential Condominium Units. The interest in the Common Area hereby established and which shall be conveyed with each respective Retail Condominium Unit is a one/half (1/2) undivided fractional fee interest in Module B as depicted on the Condominium Plan for the Retail Condominium Units. The interest in the Common Area hereby established and which shall be conveyed with each respective Parking Condominium Unit is a one/half (1/2) undivided fractional fee interest in Module B as depicted on the Condominium Plan for the Parking Condominium Units. The undivided fractional fee interests established and to be conveyed with the respective Condominium Units, as indicated above, cannot be changed. Declarant, for and on behalf of itself, and its successors, assigns and grantees, covenants and agrees that neither the Condominium Unit nor the respective undivided fractional fee interest in the Common Area shall be separately conveyed or encumbered. An otherwise valid conveyance or encumbrance referring only to the Condominium Unit shall also convey or encumber the respective undivided fractional fee interest in the Common Area. Any attempt to convey or encumber the undivided fractional fee interest in the Common Area without the respective Condominium Unit shall be null and void.

Section 11. Easements Over Corporation Property. Subject to the restrictions set forth in this Declaration (including the Rules and Regulations), each Owner of a Condominium Unit shall have a nonexclusive easement appurtenant to his or her Condominium for ingress, egress, use, and enjoyment in, on, over, under, across, and through the Corporation Property in the Project.

Section 12. Components of Condominium Ownership. Each Residential Condominium includes: (a) a separate interest in a Residential Condominium Unit, as defined hereinabove; (b) all easements, exclusive and nonexclusive, appurtenant to the respective Residential Condominium Unit; (c) a one-ninety-seventh (1/97th) undivided fractional fee interest in the Common Area depicted on the Condominium Plan for the Residential Condominium Units; and (d) a membership in the Corporation. Each Retail Condominium includes:

(a) a separate interest in a Retail Condominium Unit, as defined hereinabove; (b) all easements, exclusive and nonexclusive, appurtenant to the respective Retail Condominium Unit; (c) a one-half (1/2) undivided fractional fee interest in the Common Area depicted on the Condominium Plan for the Retail Condominium Units; and (d) a membership in the Corporation. Each Parking Condominium includes: (a) a separate interest in a Parking Condominium Unit, as defined hereinabove; (b) all easements, exclusive and nonexclusive, appurtenant to the respective Parking Condominium Unit; (c) a one-half (1/2) undivided fractional fee interest in the Common Area depicted on the Condominium Plan for the Parking Condominium Units; and (d) a membership in the Corporation.

Section 13. Condominium Numbering. The ninety-seven (97) individual Residential Condominium Units which are hereby established and which shall be individually conveyed are described and numbered on the Condominium Plan.

Section 14. Guest Parking Areas. Guest or temporary resident parking shall occur only in designated guest parking spaces within the subterranean garage in the Project.

ARTICLE IV

RESERVATION OF EASEMENTS AND OTHER PROPERTY RIGHTS IN THE CORPORATION PROPERTY

Section 1. Owners' Easements. Except as otherwise provided by this Declaration, every Owner shall have a nonexclusive right and easement of access, use and enjoyment in and to the Corporation Property, other than Exclusive Use Corporation Property, in the Project. Notwithstanding the foregoing, no Owner of a Retail Condominium Unit or Parking Condominium Unit shall have any right to access, use or enjoy the recreational facilities in the Project (e.g., fitness club, lobby with kitchen) or any common trash dumpsters, recycling bins or parking spaces designated solely for residential use. The foregoing rights and easements shall be appurtenant to and shall pass with title to every Condominium, subject to the limitations set forth in Section 2 below.

Section 2. Limitations on Owners' Easement Rights. The rights and easements of access, use and enjoyment set forth in Section 1 hereinabove shall be subject to the provisions of this Declaration, including, but not limited to, the following:

- (a) The right of Declarant to designate additional Corporation Property;
- (b) The right of the Corporation to reasonably limit the number of guests of Owners (except for the Retail Condominiums, which limitation shall be governed by applicable laws);

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(c) The right of the Corporation to establish and enforce reasonable Rules and Regulations pertaining to the use of the Corporation Property and Exclusive Use Corporation Property, including all facilities located thereon and to enact uniform and reasonable Architectural Guidelines, in accordance with this Declaration, including the Article herein entitled "Architectural Review". Notwithstanding the foregoing, the Declarant shall have the right to establish and enforce reasonable rules, regulations, and restrictions pertaining to the use of all public parking spaces in the Project subterranean garage that are owned by Declarant ("Public Parking Rules and Regulations"), and, subject to applicable easements and agreements (e.g., the Parking Easements and Covenants Agreement between Declarant and the Agency that has been recorded against the Project in the County Recorder's Office) to control the use of, fees charged for, all public parking spaces in the subterranean garage. In the event of any conflict between the Corporation's Rules and Regulations and the Public Parking Rules and Regulations with respect to the public parking spaces, the Public Parking Rules and Regulations shall control.

(d) The right of the Corporation, in accordance with its Articles, By-Laws and this Declaration, to borrow money with the assent of sixty-seven percent (67%) of the voting power of the Corporation, excluding Declarant, and/or to Mortgage, pledge, deed in trust or otherwise hypothecate any or all of its real or personal property as security for money borrowed or debts incurred, for the purpose of improving or repairing the Corporation Property and related facilities;

(e) The right of the Corporation to suspend the voting rights and rights and easements of any Member (and the persons deriving such rights and easements from any Member) to use and enjoy any amenities on the Corporation Property (except for reasonable rights of access to such Member's Condominium) for the period during which any Assessment against such Member's Condominium remains unpaid and delinquent; and after Notice and Hearing, to impose monetary penalties or suspend such use rights and easements for a period not to exceed thirty (30) days for any noncontinuing violation of this Declaration or Rules and Regulations, it being understood that any suspension for either nonpayment of any Assessments or breach of such Rules shall not constitute a waiver or discharge of the Member's obligations to pay Assessments as provided herein;

(f) Subject to the terms and provisions of the Article herein entitled "Mortgagee Protection," the right of the Corporation to dedicate or transfer all or any part of the Corporation Property to any public agency, authority or util-

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ity for such purposes and subject to such conditions as may be agreed to by the Owners. No such dedication or transfer shall be effective unless: (1) an instrument approving said dedication or transfer is signed by two authorized officers of the Corporation attesting that Owners representing at least sixty-seven percent (67%) of the voting power of the Corporation, excluding Declarant, approved such action and is recorded in the Office of the County Recorder, and (2) a written notice of the proposed dedication or transfer is sent to every Owner not less than fifteen (15) days nor more than thirty (30) days in advance; provided, however, that the dedication or transfer of easements for utilities or for other public purposes consistent with the intended use of the Corporation Property shall not require the prior approval of the Members of the Corporation;

(g) The right of Declarant (and its respective sales agents, representatives and prospective purchasers) to the nonexclusive use of the Corporation Property, and the facilities located thereon, without charge for sales, display access and exhibit purposes; provided, however, that such use shall cease upon the date that Declarant no longer owns a Condominium in the Project. Such use shall not unreasonably interfere with the rights of enjoyment of the Corporation Property by other Owners;

(h) The right of the Corporation to perform and exercise its duties and powers as set forth herein;

(i) The right of Declarant to designate additional Corporation Property;

(j) The right of the Corporation to approve, which approval shall not be unreasonably withheld, and impose various conditions on the reasonable access to the Corporation Property (e.g., including but not limited to the purpose of allowing an Owner to maintain the internal and external telephone wiring designed to serve his particular Condominium Unit). In addition, the right of the Corporation, acting through the Board, to restrict access to roofs, maintenance and landscaped areas, and Corporation Property, and to prohibit any modification to any portion of the Corporation Property (e.g., the Condominium buildings);

(k) Other rights of the Corporation, the Architectural Review Committee, the Board, the Owners and Declarant with respect to the Corporation Property as may be provided for in this Declaration; and

(l) Any limitations, restrictions or conditions affecting the use, enjoyment or maintenance of the Corporation

Property imposed by Declarant, or by the City, or other governmental agency having jurisdiction to impose any such limitations, restrictions or conditions, including, but not limited to, the rights of the City or such other governmental agency having jurisdiction to use their vehicles or appropriate equipment over those portions of the Corporation Property designed for vehicular movement to perform municipal functions or emergency or essential public services.

Section 3. Delegation of Corporation Property Use Rights. Subject to the rights reserved to the Corporation as set forth herein, any Owner who resides within the Project may delegate his rights of use and enjoyment to the Corporation Property to the members of his immediate family and their guests and invitees. In the event an Owner has rented or leased his Condominium, his rights to use and enjoy common amenities on the Corporation Property shall be automatically delegated to his tenants or lessees for the duration of their tenancy, and the Owner shall forfeit any rights to use and enjoy any common amenities on the Corporation Property (except those portions reasonably necessary to access said Owner's Condominium to perform normal functions of a landlord) 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 rights to use and enjoy any common amenities on the Corporation Property to the purchaser under the contract.

Section 4. Easements for Vehicular Traffic. In addition to the general right and easements for access, use and enjoyment granted herein, there shall be, and Declarant hereby reserves unto itself, and its successors and assigns, together with the right to grant and transfer all or a portion of the same, until the earlier of when Declarant no longer owns an interest in a portion of Lot 1 of Tract 61304 or five years from the recordation of this Declaration, a nonexclusive appurtenant easement for vehicular ingress, egress and access over and through the subterranean garage within the Project.

Section 5. Easements for Air Conditioners. As to any air conditioning compressor which is located on or within a portion of the Common Property, there is hereby created, established and granted an exclusive easement on, over and across said portion of the Common Property for the permanent placement of such compressor in accordance with plans submitted to the City by Declarant. Additionally, and subject to restrictions which may be imposed by the Board (e.g., access rights, use of specified vendors, etc.), each such affected Owner is granted an easement for ingress, egress and access on and over the Common Property to inspect, maintain, repair and replace his or her respective air conditioning compressor.

Section 6. Easements for Utilities. The rights and duties of the Owners of Condominiums within the Project with respect to sanitary sewer, water, electricity, gas, television cable and telephone lines, and other facilities, shall be governed by the following:

(a) Each respective utility company shall maintain all utility facilities and connections on the Project owned by such utility company; provided, however, that if any company shall fail to do so, it shall be the obligation of each Owner to maintain those facilities and connections located upon, within or servicing (e.g., sewer/water laterals) such Owner's Condominium, and it shall be the obligation of the Corporation to maintain those facilities and connections located upon the Corporation Property and/or which provide service to more than one (1) Condominium (e.g., trunk/main line utilities). Notwithstanding the foregoing, internal and external telephone wiring designed to serve a single Condominium Unit, but located outside the boundaries of the Condominium Unit, shall be maintained by the Owner of said Condominium Unit. Additionally, the Corporation shall maintain, repair and replace any stamped concrete in the Corporation Property that is damaged, destroyed or altered in any manner as a result of repair or maintenance work to utility facilities or connections performed by a utility company, unless such repair or maintenance work is caused by or the result of an Owner's or utility company's, their family members', guests', invitees', agents or employee's negligence or intentional conduct.

(b) Wherever sanitary sewer, water or gas connections, television cables, electricity or telephone lines are installed within the Project and it becomes necessary to gain access to said connections, cables and/or lines through a Condominium Unit owned by someone other than the Owner of the Condominium Unit served by said connections, cables and/or lines, the Owner of the Condominium Unit served by said connections, cables and/or lines shall have the right, and is hereby granted an easement to the full extent necessary therefor, to enter (after reasonable notice to the Owner and at a reasonable hour of the day) upon such other Condominium Unit or to have the utility companies enter upon such other Condominium Unit to repair, replace and generally maintain said connections, cables and/or lines.

(c) Whenever sanitary sewer, water or gas connections, television cables, electricity or telephone lines are installed within the Project, and said connections, cables and/or lines serve more than one (1) Condominium Unit, the Owner of each Condominium Unit served by said connections, cables and/or lines shall be entitled to the full use and enjoyment of such portions of same as service his Condominium Unit.

(d) In the event of a dispute between Owners respecting the repair or rebuilding of the aforesaid connections, cables and/or lines, or the sharing of the cost thereof, upon written request of one (1) of such Owners addressed to the Corporation, the matter shall be submitted to the Board who shall decide the dispute, and the decision of the Board shall be final and conclusive on the Owners.

(e) Easements over the Project for the installation and maintenance of electric and telephone lines, water, gas, drainage and sanitary sewer connections and facilities, and television antenna cables and facilities, as shown on the recorded map of the Project, of record, and/or as may be hereafter required or needed to service the Project, are hereby reserved by Declarant, together with the right to grant and transfer all or a portion of the same.

(f) As required by the City, all utility meters utility apparatus, including without limitation, backflow devices and electrical transformers, shall be screened from the public view by landscaping or other screening method approved by the City's Director of Planning and Building.

(g) As required by the City, all rooftop mechanical equipment shall be fully screened from public view and shall be architecturally compatible with the Condominium buildings in terms of theme, materials, colors, and textures. If the screening is not specifically designed into the Condominium buildings, a rooftop mechanical equipment plan showing screening must be submitted and approved by the City's Director of Planning and Building prior to the issuance of a building permit.

Section 7. Easements for Maintenance of the Corporation Property by the Corporation. There is hereby created, granted and reserved a nonexclusive easement in favor of the Corporation for ingress, egress and access on, over, under, and across all portions of the Project as reasonably required by the Corporation to perform its maintenance obligations set forth in this Declaration. In the event it becomes necessary for the Corporation to enter upon any Condominium Unit or Exclusive Use Corporation Property for purposes of: (a) performing its maintenance obligations as set forth in this Declaration; or (b) bringing an Owner and/or his Condominium into compliance with this Declaration, in accordance with the provisions set forth herein, the Corporation, and its duly authorized agents and employees, shall have the right, after reasonable notice to the Owner and at a reasonable hour of the day, to enter upon or within such Owner's Condominium Unit for the performance of such work. Such entry shall be made with as little inconvenience to the Owner as is practicable, and in the event that any damage shall be proximately caused by such entry,

the Corporation shall repair the same at its expense. Notwithstanding the foregoing, in the event of an emergency or regularly scheduled maintenance (e.g., periodic inspections of fire sprinkler heads in the Residential Condominium Units), such right of entry shall be immediate or in accordance with prior notice.

Section 8. Easements for Clustered Mailboxes. In order to comply with the various requirements of the City and the United States Postal Service, clustered mailboxes may be installed within the Project. Easements are hereby created on and over the affected portions of the Project and granted in favor of all Owners and the United States Postal Service for delivery, deposit and retrieval of mail. The Corporation shall maintain mailboxes in the Project not otherwise maintained by the United States Postal Services.

Section 9. Easements Over Sidewalks/Walkways. There are hereby created and reserved non-exclusive reciprocal appurtenant easements, granted in favor of all Owners, the members of their families, their lessees and tenants and/or their respective guests and invitees, for pedestrian access, use and enjoyment on, over and across all walkways within the Project, if any, per City approved site plans. In addition, as required by the Agency, there is hereby created a non-exclusive easement in favor of the general public over, across and through the walkway described and depicted on Exhibit "N" attached hereto, and incorporated by reference, for purposes of pedestrian access, use and enjoyment between the hours of 8:00 a.m. and 10:00 p.m. only ("Public Access Walkway"); provided, however, that the general public shall have no right to use, and the Corporation shall have the right to lock the gates to, the Public Access Walkway between the hours of 10:00 p.m. and 8:00 a.m.; and provided further, that the above-stated hours for use of the Public Access Walkway by the general public shall be subject to annual review, and may be revised, as deemed necessary, by the City's Director of Planning and Building at the request of the Corporation.

Section 10. Easements for Drainage. There are hereby created, granted and reserved over the Corporation Property easements for drainage according to the established patterns for drainage created by the City approved grading plans and/or architectural plans for the Project, as well as according to the actual, natural and existing patterns for drainage over undisturbed Corporation Property. Each Owner shall maintain his respective Condominium in such a manner to ensure that no water collects or ponds in any location adjacent to any walls or fences, if any, of the immediately adjacent Condominium. Without limiting potential liability as a result of other activities or actions, each Owner shall be liable for any damage that occurs to an adjacent Condominium Unit as a result of modifications to such Owner's Condominium. Each Owner covenants and agrees that he shall not obstruct or

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otherwise interfere with the drainage patterns of waters over the patio or balcony area of his Condominium, or, in the alternative, that in the event it is necessary and essential to alter said drainage patterns, he will make adequate provisions for proper drainage and submit such plans for written approval by the Architectural Review Committee.

Section 11. Easement for Area Drains. Declarant hereby establishes, reserves, and grants to the Corporation and Owners, nonexclusive reciprocal easements over the Corporation Property for drainage purposes to accommodate the drainage system, including, but not limited to area drains and pipes, originally installed by Declarant. Unless otherwise determined by the Board, the Condominium Owner served by said drainage system shall be responsible to maintain and preserve said system in an operating condition to ensure proper drainage on, over, under, across and through the patio and balcony areas of his Condominium in accordance with the established drainage patterns created by the as-built condition by Declarant or in accordance with the City approved plans for the Project, and shall bear the cost of the maintenance, repair or replacement associated with the drainage system which affects his Condominium. No Owner shall alter in any manner whatsoever, or remove the drainage system. In the event any portion of the drainage system is damaged, destroyed or not properly maintained, any Condominium Owner affected by such drainage system may cause said repair, restoration or maintenance work to be completed and shall be entitled to recover the appropriate expenses from the Condominium Owner responsible for such damage, destruction or improper maintenance. Notwithstanding the foregoing, if any portion of the drainage system is damaged or destroyed as a proximate result of any act or omission of any Owner, or any member of his family, guests, tenants, lessees and/or invitees (without regard to fault), such Owner shall immediately notify the Corporation of such damage or destruction and shall bear all of the costs related thereto, including any cost and/or expense related to the repair of the drainage system and any personal injury or property damage to any person or Condominium Unit in the Project.

Section 12. Easements for Construction and Sales. Declarant hereby reserves unto itself, and its successors and assigns, together with the right to grant and transfer all or a portion of the same, until the earlier of such time as Declarant no longer has an ownership in a portion of Lot 1 of Tract 61304 or five years from the recordation of this Declaration, nonexclusive easements for access, ingress and egress on and over the Project to carry on normal sales activity, including the operation of a models complex, sales office and parking area, and the display of promotional signs and exhibits in connection with the sale or lease of Condominiums in the Project.

Section 13. Easements for Master Antennae, Cable Television and Alarm System Cabling. There are hereby reserved for the

benefit of Declarant, and its successors and assigns, nonexclusive easements of access, ingress and egress to the Project for purposes of installation, operation, maintenance, repair, inspection, replacement and removal of master antennae, cable television service lines, alarm system cabling and all related facilities and equipment. Such easements shall be freely transferable to any other person or entity for the purpose of providing such services. All such master antennae, cable television service lines and alarm system cabling shall remain the property of Declarant or its successors and assigns. The exercise of all rights reserved hereunder shall not unreasonably interfere with the reasonable use and enjoyment of the Project. Declarant, or its successors and assigns, shall be responsible for any damage in any way arising out of, or in connection with, the rights and activities reserved hereunder.

Section 14. Reservation of Construction Rights by Declarant. In addition to the rights reserved by Declarant to control development of the Project as set forth in the Article hereinabove entitled "Introduction to 133 Promenade Walk," nothing in this Declaration shall limit the right of Declarant to maintain temporary fences, limit access by Owners to portions of the Corporation Property, establish, reserve and/or grant additional licenses, easements and rights-of-way in favor of Declarant, utility companies or others as may, from time to time, as may be reasonably necessary for the development of the Project. The foregoing rights established and reserved by Declarant shall be subject only to the applicable regulations and requirements of the City and the DRE and shall not result in the interference with the reasonable and regular use and enjoyment of the Corporation Property by Owners.

Section 15. Easement for Public Service Uses. In addition to the foregoing easements over the Corporation Property, there are hereby created, established and granted easements for public services, including, but not limited to, the right of police, fire, ambulance and other public services to enter upon any part of the Corporation Property for purposes of serving the health and welfare of all Owners in the Project.

Section 16. Control of Corporation Property. Control and/or title of the Corporation Property (excluding those portions of the Corporation Property which are subject to the various rights reserved by Declarant as set forth in this Declaration) shall be turned over by Declarant to the Corporation prior to or simultaneously with the first close of escrow for the sale of a Condominium in the applicable Phase. Without limiting the generality of the foregoing, Declarant shall convey fee title to Corporation Property to the Corporation free and clear of all encumbrances and liens, except property rights in and to the Corporation Property which are of record or created herein, and any current real property taxes, which shall be prorated to the date of transfer. As more particu-

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larly set forth herein and in the Article entitled "Enforcement of Bonded Obligations," in the event that Improvements proposed to be constructed within the Corporation Property have not been completed as of the recordation of this Declaration, as evidenced by a valid Notice of Completion recorded in the Official Records of the County, the completion of such Improvements shall be assured in accordance with Section 11018.5 of the California Business and Professions Code, or any similar statute hereinafter enacted, and the applicable regulations of the DRE. The Corporation shall be obligated to undertake all maintenance responsibilities for the Corporation Property when the Corporation levies Assessments for the maintenance thereof, or when the City approves the Corporation Property Improvements (as evidenced by the release by the City of any bonds posted by Declarant as required by City) installed by Declarant, whichever is first to occur. Notwithstanding the foregoing, if the contractors or subcontractors of Declarant are contractually obligated to maintain or warrant the landscaping or other Improvements on the Corporation Property for a specified period in which said contractors or sub-contractors shall perform such maintenance, the Corporation shall not interfere with the performance of such warranty or other contractual maintenance obligations. Maintenance performed by such contractors or subcontractors shall not serve to postpone the commencement of Assessments pursuant to this Declaration, nor entitle an Owner to claim any offset or reduction in the amount of such Assessments. Declarant is not obligated to install any Corporation Property Improvements other than those required by the City pursuant to the Project approval requirements. The nature, design, quality and quantity of all Improvements to the Corporation Property shall be determined by Declarant in its sole discretion in accordance with the terms of the Project approvals. In the event that a dispute arises between Declarant and the Corporation with respect to the nature, design, quality or quantity of the Improvements, or the acceptance of maintenance responsibilities therefor, the Corporation shall be obligated to accept ownership and/or control of the Corporation Property and undertake maintenance responsibilities pending resolution of the dispute. Notwithstanding anything to the contrary herein or in the By-laws for the Board, commencing on the date of the first annual meeting of the Owners, Declarant shall relinquish control over the Corporation's ability to decide whether to initiate a construction defect claim under Division 2, Part 2, Title 7 (commencing with Section 895) of the California Civil Code. Therefore, the Declarant, current employees and agents of Declarant, Board members who are appointed by Declarant, Board members elected by a majority of votes cast by Declarant, and all other Persons whose vote or written consent is inconsistent with the intent of the preceding sentence, are prohibited from participating and voting in any decision of the Corporation or Owners to initiate a defect claim as noted herein.

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Section 17. Easements for Encroachments. Declarant reserves for its benefit and the benefit of the Owners, and hereby creates, establishes, and grants to the Owners a reciprocal easement appurtenant to each Condominium over the Condominium Units and Common Property for the purpose of (i) accommodating any existing encroachment of any wall, eave, overhangs, wing walls and/or chimneys of any Improvement existing only as of the date the escrow initially closed for the sale of the Condominium from the Declarant to an Owner, and (ii) maintaining the same and accommodating authorized construction, reconstruction, repair, shifting, movement, or natural settling of such encroachments or Improvements. Declarant further reserves reciprocal easements for utility services and repairs, replacement and maintenance of the same over the Common Property for the benefit of the Owners. Use of the foregoing easements may not unreasonably interfere with each Owner's use and enjoyment of Owner's respective Condominium.

Section 18. Public Parking and Access Easements. As set forth in that certain Parking Easements and Covenants Agreement recorded in the Office of the County Recorder, the Agency has a nonexclusive easement for its benefit and the benefit of the general public in and to sixty-two (62) parking spaces ("Agency Parking Spaces") within the Project subterranean garage and a nonexclusive permanent easement for access, ingress, and egress to and from the public streets adjacent to the Project subterranean garage to and from the Agency Parking Spaces, and for pedestrian access to and from the Retail Condominium Units within the Project, including the Agency Parking Spaces. Owners and residents of the Project may not park in the Agency Parking Spaces.

Section 19. Use of Retail Exclusive Use Corporation Property Trash Area by Businesses in Vicinity of Project. As required by the Agency, the operators of the businesses located on each of the properties described on Exhibit "I" attached hereto and incorporated by reference (each, an "Outside Business") shall have the right to maintain and use, and the Owners of the Retail Condominium Unit Owners shall allow each Outside Business to use, trash receptacles in the Retail Exclusive Use Corporation Property trash area described and/or depicted on Exhibit "J" attached hereto and incorporated by reference, subject to at least the following terms and conditions: (a) the dimensions of any trash receptacle maintained by an Outside Business in such Retail Exclusive Use Corporation Property trash area may not exceed four feet by six feet; (b) any trash receptacle in the such area shall be maintained and used in accordance with the Rules and Regulations promulgated by the Corporation; (c) each Outside Business maintaining a trash receptacle in the Retail Exclusive Use Corporation Property trash area shall pay rent to the Owners of the Retail Condominium Units in an amount which shall not exceed Three Dollars (\$3.00) per square foot per month until the first anniversary of the date a certificate of occupancy is issued for the Improvements at the

Project and which may be increased annually thereafter in accordance with increases in the Consumer Price Index Urban Wage Earners and Clerical Workers (Los Angeles-Anaheim-Riverside, CA, All Items, Base 1982-84=100), as published by the United States Department of Labor, Bureau of Labor Statistics or successor governmental organization; (d) the Owners of the Retail Condominium Units, in their sole and absolute discretion, may contract with a trash hauler on behalf of all Outside Businesses maintaining trash receptacles in the Retail Exclusive Use Corporation Property trash area and bill each of such Outside Businesses for its prorata portion of the cost of such services, plus an administrative fee of ten percent (10%) of such cost, or, alternatively, require each Outside Business to contract separately for trash disposal services, or, alternatively, require each Outside Business to contract with a specific trash hauler for such services; and (e) if required by the Owners of the Retail Condominium Units, in their sole and absolute discretion, each Outside Business maintaining a trash receptacle in the Retail Exclusive Use Corporation Property trash area shall enter into a lease incorporating the provisions of this section and other commercially reasonable terms and conditions deemed appropriate by the Owner of the Retail Condominium Units. Prior to entering into any lease or other agreement with an Outside Business concerning the use of the Retail Exclusive Use Corporation Property trash area, a Retail Condominium Unit Owner shall obtain the Corporation's written approval of the form of the lease and/or agreement. The Retail Condominium Unit Owner shall also provide the Corporation with a copy of the lease and/or agreement, promptly after the lease and/or agreement has been fully executed, and shall indemnify and defend the Corporation from and against any and all claims and liabilities arising out of the Retail Condominium Unit Owner's failure to comply with the requirements set forth in this Section. The Outside Businesses shall not have any right to deposit trash in any trash receptacles in the Project other than those receptacles located in the Retail Exclusive Use Corporation Property trash area.

Section 20. Other Easements. Easements other than those set forth above, including, without limitation, easements described and/or depicted on the map of Tract 61304 or in other documents recorded in the Official Records of the County, or elsewhere in this Declaration may affect the Project.

Section 21. Conversion of Retail Condominium Units. Declarant and all of the Owners acknowledge that a portion of the Property has been set aside for commercial purposes. Subject to the approval of the Agency and the City, Declarant, in its sole discretion, and only so long as Declarant owns such property, may elect to convert such Retail Condominium Units to residential use. In such case all other Owners shall cooperate with Declarant and take such actions and execute such agreements, instruments and other documents as may be necessary, in the opinion of Declarant,

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(c) December 31, 2009.

Any action by the Corporation which must have the approval of the membership of the Corporation before being undertaken shall require the vote or written assent of both a majority of the Class B membership as well as a majority of the Class A membership, so long as there are two (2) outstanding classes of membership, unless a specific provision of this Declaration or the By-Laws or Articles of the Corporation requires (i) the approval of a greater percentage of the voting membership, or (ii) a vote by Members other than Declarant, or (iii) a specific approval percentage of all the Members. Notwithstanding the foregoing, any action by the Corporation pursuant to the Article contained herein entitled "Enforcement of Bonded Obligations" shall only require a majority of the voting power of the Owners, other than Declarant.

Section 3. Special Procedures For Appointment to the Board. The Declarant shall be entitled to solely appoint a majority of the members of the Board until the first to occur of the following events:

(a) The election of the Board immediately following the close of escrow by Declarant of at least Seventy-Three (73) Residential Condominium Units in the Project; or

(b) December 31, 2010.

In the event Declarant shall not have sold and closed escrows for at least Seventy-Three (73) the Residential Condominium Units by December 31, 2010, Declarant's right to elect a majority of the members of the Board shall be automatically extended until the aforesaid number of Residential Condominium Units have been sold, but in no event later than December 31, 2011.

Notwithstanding the foregoing, the Class A Members shall be entitled to elect at least one of the members of the Board, so long as there are two (2) classes of membership outstanding in the Corporation.

Section 4. Adjustment of Voting Rights. The voting rights in the Corporation shall be adjusted on the first day of the month immediately following the first close of an escrow for the sale of a Condominium in each subsequent Phase of the Project.

Section 5. Vesting of Voting Rights. The voting rights attributable to any given Condominium in the Project, as provided for herein, shall not vest until the Assessments provided for hereinbelow have been levied by the Corporation against said Condominium.

Section 6. Suspension of Voting Rights. As more particularly set forth in the Article entitled "General Provisions," the Board shall have the authority, among other things, to suspend the voting rights of any Member to vote at any meeting of the Members for any period during which such Owner is delinquent in the payment of any Assessment, regardless of type, it being understood that any suspension for nonpayment of any Assessment shall not constitute a waiver or discharge of the Member's obligation to pay the Assessments provided for in this Declaration.

Section 7. Transfer. The Corporation membership held by any Owner of a Condominium shall not be transferred, pledged or alienated in any way, except as incidental to the sale of such Condominium. In the event of such sale, the Corporation membership may only be transferred, pledged or alienated to the bona fide purchaser or purchasers of the Condominium, or to the Mortgagee (or third party purchaser) of such Condominium upon a foreclosure sale. Any attempt to make a prohibited transfer is void and will not be reflected upon the books and records of the Corporation. The Corporation may levy a reasonable transfer fee against new Owners and their Condominiums (which fee shall be a Compliance Assessment chargeable to such new Owner) to reimburse the Corporation for the actual administrative cost of transferring the memberships to the new Owners on the records of the Corporation.

Section 8. Record Dates. For the purposes of determining Members entitled to notice of any meeting, to vote or to exercise any other rights in respect of any lawful action, the Board may fix in advance record dates as provided in the By-Laws.

ARTICLE VI

POWERS AND DUTIES OF THE CORPORATION

Section 1. Management Body. The Corporation is hereby designated as the management body of the Project. The Members of the Corporation shall be the Owners in the Project as provided herein, and the affairs of the Corporation shall be managed by a Board of Directors, as more particularly set forth in the By-Laws. The initial Board shall be appointed by the Declarant. Thereafter, the Directors shall be elected as provided in the By-Laws.

Section 2. Powers. The Board, for and on behalf of the Corporation, shall have the right and power to do all things necessary to conduct, manage and control the affairs and business of the Corporation. Subject to the provisions of the Articles, the By-Laws and this Declaration, the Board shall have all general powers authorized under the California Corporations Code for non-profit, mutual benefit corporations, and shall have the following specific powers:

(a) Enforce the provisions of this Declaration (including, but not limited to, the ability to record a notice of noncompliance or violation, unless otherwise provided by common law), including any amendments thereto, and all contracts or any agreements to which the Corporation is a party;

(b) Acquire, manage, maintain, repair and replace all Corporation Property and Improvements located thereon, including all personal property, in a neat, clean, safe and attractive condition at all times, and to pay all utilities, gardening and other necessary services for the Corporation Property, all as more specifically set forth herein, including the Article entitled "Repair and Maintenance";

(c) Maintain fire, casualty, liability and fidelity bond coverage, and other insurance coverage pursuant to the terms herein, including the Article entitled "Insurance";

(d) Obtain, for the benefit of the Corporation Property, all commonly metered water, gas and electric services, refuse collection and cable (or master antenna) television service, if any;

(e) Employ and retain a professional manager and/or management company to perform all or any portion of the duties and responsibilities of the Board and engage such other personnel (including attorneys, budget preparers, and accountants) as necessary for the operation of the Project and administration of the Corporation;

(f) Pay all taxes and special assessments which would be a lien upon the entire Project or the Corporation Property, and to discharge any lien or encumbrance levied against the entire Project or the Corporation Property;

(g) Pay for reconstruction of any portion of the Corporation Property damaged or destroyed;

(h) Delegate its powers;

(i) Adopt reasonable Rules and Regulations concerning the maintenance, improvement, use and/or occupancy of the Project and election procedures in compliance with California Civil Code Section 1363.03;

(j) Enter into any Condominium when necessary in connection with maintenance or construction for which the Corporation is responsible;

(k) Execute lot line and condominium boundary adjustments (and corresponding deeds), enter into a maintenance and/or other agreement with Declarant or a third party, subject to Civil Code Section 1363.07, if applicable, grant fee title to or easements over the Corporation Property to Declarant or a third party, and/or receive fee title to or an easement over real property owned by Declarant or a third party as reasonably necessary due to those conditions in the field where it is not readily apparent where Lot lines and/or Condominium boundaries are located and the respective party's maintenance responsibilities commence and end, and such adjustments, deeds and/or agreements will promote a clearly defined and uniform maintenance plan by the respective parties or as otherwise determined appropriate by a majority vote of the Board;

(l) Grant exclusive easements over portions of the Corporation Property in accordance with California Civil Code Section 1363.07, as same may be amended from time to time, and with the assent of sixty-seven percent (67%) of the voting power of the Corporation;

(m) Allocate, levy and collect Assessments on all Condominiums in the Project for which Assessments have commenced, and enforce payment of such Assessments in accordance with the terms and provisions set forth in the Article herein entitled "Effect of Nonpayment of Assessments: Remedies of the Corporation";

(n) Subject to compliance with Section 1369.510 et seq. of the California Civil Code, as same may be amended from time to time, to institute, defend, settle, intervene, or participate on behalf of the Corporation in any dispute resolution proceeding in matters pertaining to (i) enforcement of the Declaration, Rules and Regulations and By-Laws; (ii) damage to the Common Property; and (iii) damage to the Condominium Units which arises out of, or is integrally related to, damage to the Common Property that the Corporation is obligated to maintain or repair;

(o) Negotiate and enter into agreements for telecommunication services, with terms not in excess of ten (10) years, provided that Declarant does not have a direct or indirect ownership interest in the supplier of such services or equipment equal to or greater than ten percent (10%);

(p) Negotiate and enter into agreements with any nonprofit corporations (e.g., governing portions of the Project, including the streets and recreational amenities located thereon) or Local Government Agencies;

(q) Negotiate and enter into contracts in which the Corporation enters into litigation or any alternative dispute resolution procedure when the Corporation's obligation to pay for services is set in whole or in part on a contingency basis except (i) contracts for collection of assessment or other accounts receivable; (ii) contracts involving evaluation of services; or (iii) contracts with a total amount to be paid by the Corporation not in excess of Forty Thousand Dollars (\$40,000.00);

(r) Execute all necessary documents in order to effectuate the Limited Warranty, including, without limitation, the "Limited Warranty Validation Form";

(s) Authorize an agent, management company representative, or bookkeeper to appear and participate in a small claims court action on behalf of the Corporation in accordance with California Code of Civil Procedure Section 116.540(i), (j);

(t) Without any limitation of the foregoing powers, (i) operate, maintain, and inspect the Corporation Property and its various components in conformance with any Maintenance Guidelines and any Maintenance Manual, and (ii) review any Maintenance Manual for necessary or appropriate revisions as deemed necessary by the Board (Declarant recommends at least an annual review);

(u) As applicable, comply with terms and provisions of California Civil Code Section 1375, as amended, in connection with any potential dispute based upon a claim for defects in the design or construction of the Corporation Property;

(v) Maintain the parking spaces in the Parking Condominium Units, subject to reimbursement (i.e., payment of the applicable assessment) from the Parking Condominium Unit Owners as provided in the Budget initially approved by the DRE and subject to applicable increases thereafter; and

(w) Perform any and all other acts and things that a nonprofit, mutual benefit corporation organized under the laws of the State of California is empowered to do, which may be necessary, convenient or appropriate in the administration of its affairs for the specific purposes of meeting its duties as set forth in this Declaration.

Section 3. Duties. The Board shall perform and execute the following duties for and on behalf of the Corporation:

(a) Provide, water, sewer, gas, electricity, garbage and trash collection, regular periodic drainage device clearing and other necessary utility services for the Corporation Property, if any, and, if not separately metered or

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provided, for the Condominium Units (subject to reimbursement from the applicable Owners);

(b) Provide insurance for the Corporation and its Members in accordance with the provisions herein, including the Article hereinbelow entitled "Insurance," and distribute notices as may be required by law;

(c) Acquire, own, maintain and repair all portions of the Corporation Property in a neat, clean, safe, attractive, sanitary and orderly condition at all times consistent with this Declaration. Without limiting the generality of the foregoing, the Corporation shall be responsible for maintaining the private storm drain system, private on-site sewer main lines (excluding laterals which exclusively serve individual Condominiums) to the extent such sewer lines are not maintained by a public sewer agency or district, Condominium buildings, fire escapes, fire sprinklers in the Residential Condominium Units, including sprinkler heads which protrude into the airspace of the Residential Condominium Units, fire standpipes, fire alarm systems, fire extinguishers, and other fire prevention equipment and/or facilities located on Corporation Property (the Owners of the Retail Condominium Units are responsible for the maintenance of any fire sprinkler heads and/or other fire prevention or fire suppression devices installed within or servicing the Retail Condominium Units), sound walls, retaining walls, perimeter walls, elevator cabs and systems, recreational facilities (e.g., fitness club, lobby with kitchen), subterranean garage, air supply and exhaust systems and sensors servicing the garage, garage lighting, sump pumps servicing the garage, if any, garage access gates and access control systems (e.g., telephones and access card readers except those maintained by the Parking Condominium Unit Owner), common trash dumpsters and recycling bins designated solely for residential use and Shopkeeper Space Use (The Owners of the Retail Condominium Units are responsible for the maintenance of all trash dumpsters within the Retail Exclusive Use Corporation Property trash areas), Project monument signs, arbors and landscaping located on Corporation Property, excepting therefrom landscaping and improvements located in the Exclusive Use Corporation Property, and street trees along the public streets adjacent to the Project as depicted in an exhibit to this Declaration (e.g., see Exhibit "A-1"), in a condition comparable to the condition initially approved by the City;

(d) Contract for master antenna television service at the Project if approved by the Board or included in the Corporation budget;

(e) Contract for any other material, supplies, furniture, labor, services, maintenance, repairs, structural alterations and insurance which the Corporation is required to

pay for pursuant to the terms and provisions of this Declaration or by law;

(f) Pay all real and personal property taxes and Assessments which the Corporation is required to pay for pursuant to the terms and provisions of this Declaration or by law, unless separately assessed to Owners; provided, however, that it shall be the obligation of each Owner to pay his respective share of the tax assessment levied on the Project prior to separate assessments by the tax assessor pursuant to Section 2188.6 of the California Revenue and Taxation Code, as same may be amended, from time to time;

(g) Cause periodic inspections to be made, by a licensed engineer or otherwise qualified individual, of any slope areas (if any) and drainage devices located within the Corporation Property in accordance with the Stormwater Management System Maintenance Program approved for the Project;

(h) Accept all Corporation Property, conveyed, leased or otherwise transferred to it, if any, by Declarant, its successors or assigns, or an appropriate governmental agency;

(i) Except as required by law, cause financial statements for the Corporation to be regularly prepared and copies distributed to each Member of the Corporation, regardless of the number of Members or the amount of assets of the Corporation:

(1) A pro forma operating statement (budget) for the immediately preceding fiscal year shall be distributed within the time period specified by statute prior to the beginning of the fiscal year (e.g., not less than 30 days nor more than 90 days prior to the beginning of the fiscal year), and shall contain the following information:

i) An itemized estimate of the Corporation's revenue and expenses, determined on an accrual basis;

ii) A summary, printed in bold type, of the current status of the Corporation's reserves, based upon the most recent review or study conducted pursuant to California Civil Code Section 1365.5 ("Study"), as may be amended, from time to time, and prepared in accordance with all requirements of law (e.g., Civil Code Section 1365, 1365.2.5);

iii) A statement prepared in accordance with all requirements of law (e.g., Civil Code Section 1365, 1365.2) as to both of the following:

(A) Whether the Board has determined or anticipates that the levy of one (1) or more Special Assessments will be required to repair, replace or restore any major component (e.g., Improvement to the Corporation Property) or to provide adequate reserves therefor; and

(B) The mechanism or mechanisms by which the Board will fund reserves to repair or replace major components, including assessments, borrowing, use of other assets, deferral of selected replacement of repairs, or alternative mechanisms.

iv) A general statement prepared in accordance with all requirements of law (e.g., Civil Code Section 1365, 1365.2) setting forth the procedures utilized by the Corporation to calculate and establish reserves to defray the costs of future repairs, replacements or additions to the Corporation Property Improvements; and

v) A statement as to whether the Board has determined or anticipates that the levy of one (1) or more Special Assessments will be required to repair, replace or restore any major Improvements to the Corporation Property, or to provide adequate reserves therefor.

Notwithstanding the foregoing, in lieu of distributing the pro forma operating budget required hereinabove, the Board may elect to distribute a summary of the pro forma budget to all Members with a written notice, in at least 10-point bold type on the front page, that the pro forma budget is available at the business office of the Corporation, or at another suitable location within the Project, and that copies will be provided upon request and at the expense of the Corporation. If any Member requests that a copy of the pro forma budget required herein be mailed to said Member, the Corporation shall mail the copy to the Member by first-class mail at the expense of the Corporation, within five (5) days of the receipt of said request;

(2) A balance sheet as of an accounting date which is the last day of the month closest in time to six

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(6) months from the date of the close of escrow for the first sale of a Condominium, and an operating statement for the period from the date of the first close of escrow to the said accounting date, shall be distributed within sixty (60) days after the accounting date. This operating statement shall include a schedule of Assessments received, and receivable, identified by the number of the Condominiums assessed;

(3) An annual report consisting of the following shall be distributed within one hundred twenty (120) days after the close of the fiscal year:

i) A balance sheet as of the last day of the Corporation's fiscal year;

ii) An operating (income) statement for the fiscal year;

iii) A statement of changes in financial position for the fiscal year; and

iv) Any information required to be reported pursuant to Section 8322 of the California Corporations Code and Section 1365 of the California Civil Code, as each may be amended from time to time.

This annual report shall ordinarily be prepared by a licensee of the California Board of Accountancy, in accordance with generally accepted accounting principles, for any fiscal year in which the gross income of the Corporation exceeds Seventy-Five Thousand Dollars (\$75,000.00). However, if for any reason the report is not prepared by a licensee of the California Board of Accountancy, said report shall be accompanied by a certificate from an authorized officer of the Corporation that the statements were prepared without audit from the books and records of the Corporation;

(4) A statement of the Corporation's policies and practices in enforcing its remedies against Members for nonpayment of Assessments, as set forth in the Article herein entitled "Effect of Nonpayment of Assessments: Remedies of the Corporation," which shall be distributed within the time period required by statute prior to the beginning of the fiscal year (e.g., not less than 30 days nor more than 90 days prior to the beginning of the fiscal year); and

(5) A summary of the applicable Corporation's general liability insurance policy, earthquake and flood insurance policy, if one or more have been obtained, and liability coverage policy for the Board, which includes statements, a summary, and information required under California Civil Code Section 1365(e) as same may be amended from time to time. Currently, such items of disclosure include the following: (1) the name of the insurer; (2) the type of insurance; (3) the policy limits of the insurance; and (4) the insurance deductibles.

The Corporation shall, as soon as reasonably practical, notify its Members by first-class mail if any of the policies described in Subparagraph (i) above have lapsed, been canceled, and are not immediately renewed, restored or replaced, or if there is a significant change, such as a reduction in coverage or limits, or an increase in the deductible for any of those policies. If the Corporation receives any notice of nonrenewal of a policy described in the subparagraph above, the Corporation shall immediately notify its Members if replacement coverage will not be in effect by the date the existing coverage will lapse. To the extent the information noted above is described within the respective insurance policies, the Corporation may distribute such information to the Members and be in compliance with the disclosure requirements of the referenced Civil Code Section. Notification regarding cancellation or policy renewals must comply with Civil Code Section 1365(e)(2), as same may be amended from time to time. Currently, the summary distributed pursuant to Subparagraph (i) shall contain, in at least 10-point boldface type, the following statement: "This summary of the Corporation's policies of insurance provides only certain information, as required by Subdivision (e) of Section 1365 of the California Civil Code, and should not be considered a substitute for the complete policy terms and conditions contained in the actual policies of insurance. Any Corporation Member may, upon request and provision of reasonable notice, review the Corporation's insurance policies and, upon request and payment of reasonable duplication charges, obtain copies of those policies. Although the Corporation maintains the policies of insurance specified in this summary, the Corporation's policies of insurance may not cover your property, including personal property or real property improvements to or around your dwelling, or personal injuries or other losses that occur within or around your dwelling. Even if a loss is covered, you may nevertheless be responsible for paying all or a portion of any deductible that applies. Corporation Members should consult with their

individual insurance broker or agent for appropriate additional coverage."

(j) The Board shall review on a quarterly basis, the following:

i) A current reconciliation of the Corporation's operating accounts;

ii) A current reconciliation of amounts collected as reserves;

iii) The current year's actual amounts collected as reserves and expenses compared to the current year's budget;

iv) An income and expense statement for the Corporation's operating and reserve accounts; and

v) The most current account statements prepared by the financial institutions where the Corporation maintains its operating and reserve accounts.

Withdrawal of funds from the Corporation's reserve account shall require the signature of either: (i) two (2) members of the Board; or (ii) one (1) member of the Board and an officer of the Corporation who is not also a member of its Board. As used in this Section, "reserve account" means moneys that the Board has identified from its annual budget for use to defray the future repair or replacement of, or additions to, those major components of the Corporation Property which the Corporation is obligated to repair or replace on a periodic basis, rather than on a regular annual basis. The Board shall not use any funds collected and budgeted as "reserve" moneys for any costs and/or expenses that are not related to repair and/or replacement costs for those elements of the Corporation Property that must be repaired and/or replaced on a periodic basis. Notwithstanding the foregoing, temporary transfer of funds may occur in compliance with Civil Code Section 1365.5, as may be amended from time to time. In the event reserve funds are temporarily transferred to pay for dispute resolution or litigation (if allowable) proceedings, the Board shall comply with the disclosure and notification requirements of Civil Code Section 1365.5(d), as may be amended from time to time.

(k) At least once every three (3) years, cause a study of the reserve account requirements of the Project to be conducted if the current replacement value of the major components which the Corporation is obligated to repair, replace, restore or maintain is equal to or greater than one-half (1/2) of the gross Corporation budget for any fiscal year of the Corporation. In connection with such study, the Board shall cause to be conducted, if required by law, a visual inspection of the accessible areas of the major components of the Corporation Property which the Corporation is obligated to repair, replace, restore, or maintain. The Board shall consider and implement the necessary adjustments to the Board's analysis of the reserve account requirements as a result of such review. The reserve study shall consider and include, at a minimum, the requirements set forth in Section 1365.5(e) of the California Civil Code, as the same may be amended, from time to time;

(l) Allow the Owners of the Retail Condominium Units to establish and utilize valet parking services in connection with the operation of their businesses, provided that the Owners of the Retail Condominium Units establish, to the reasonable satisfaction of the Board, that they have appropriate insurance coverage relating to such services and that such services are otherwise reasonable;

(m) Compute and allocate to the Owners of the Retail Condominium Units the Retail Assessment Component;

(n) Compute and allocate to the Owners of the Parking Condominium Units the Parking Assessment Component;

(o) Assume and pay out of the Assessments provided for hereinbelow all costs and expenses incurred by the Corporation in connection with the performance and execution of all of the aforesaid powers and duties, and any other powers and duties the Corporation may assume as provided for in Section 4 hereinbelow;

(p) Formulate, adopt and enforce such Rules and Regulations as it may deem proper for the operation of the Corporation Property and as necessary to establish election procedures in compliance with California Civil Code Section 1363.03, as more particularly described below. Notice of adoption of any such Rules and Regulations and of any change, amendment or repeal thereof, shall be given in writing to each Member and shall be on file in the principal office of the Corporation. In the event of any conflict between such Rules and Regulations and this Declaration, this Declaration shall prevail;

(w) Periodically review and revise the Maintenance Guidelines, if any, as the Board may deem reasonable and prudent to adjust to the changing needs of the Project;

(x) Cause a summary of the provisions of Section 1369.590 of the California Civil Code, as same may be amended from time to time, regarding alternative dispute resolution prefiling requirements and which specifically reference Section 1369.510 et seq. of the Civil Code, to be prepared and annually distributed to each Member of the Corporation. The summary shall be provided either at the time the pro forma operating budget is distributed herein or in the manner specified in Section 5016 of the California Corporations Code, as same may be amended from time to time. The summary shall include a description of the Corporation's internal dispute resolution process, as required by Section 1363.850 of the Civil Code;

(y) Elect the officers of the Corporation and fill any vacancies on the Board, except if such vacancy is created by the removal of a Director;

(z) Except as otherwise allowed under Section 1375 of the California Civil Code, as same may be amended from time to time, obtain approval from a majority of Members prior to incurring dispute resolution expenses, including without limitation attorneys' fees, where the Corporation initiates dispute resolution proceedings or is joined as a plaintiff in dispute resolution proceedings. Such approval shall not be necessary if the legal proceedings are initiated to (i) enforce use restrictions contained herein, (ii) enforce architectural control provisions contained herein; or (iii) collect any unpaid assessments levied pursuant to this Declaration;

(aa) Cause a notice regarding "Assessments And Foreclosure" to be prepared and annually distributed to each Member of the Corporation in accordance with California Civil Code Section 1365.1, as the same may be amended from time to time. Except as otherwise provided in California Civil Code Section 1365.1, as the same may be amended from time to time, the notice shall be printed in 12-point type and shall be distributed during the sixty (60) day period immediately preceding the beginning of the Corporation's fiscal year;

(ab) Comply with the Corporation's duties and obligations (and benefits) with respect to the Limited Warranty;

(ac) Without any limitation of the foregoing duties, (1) operate, maintain, and inspect the Corporation Property and its various components in conformance with any Maintenance Guidelines and any Maintenance Manual, and (2) review any Maintenance Manual for necessary or appropriate revisions as deemed necessary by the Board (e.g., at least an annual review).

(ad) Adopt and provide a fair, reasonable and expeditious procedure for resolving disputes between the Corporation and Members that complies with applicable law (e.g., Civil Code Section 1363.810 et seq.) which, if the Board so decides, may be the procedure set forth in Civil Code Section 1363.840;

(ae) As required by applicable law [e.g., California Civil Code Section 1378(c), as the same may be amended from time to time, or any successor statute], cause a notice of any requirements for Corporation approval of physical changes to Condominiums or Common Property to be prepared and annually distributed to Members. The notice shall describe the types of changes that require Corporation approval and shall include a copy of the procedure used to review and approve or disapprove a proposed change.

Section 4. Discretionary Powers. The Board, at its option, may assume, perform and execute the following powers and duties for and on behalf of the Corporation:

(a) Retain the services of such personnel, in addition to the professional property management company, as the Corporation deems necessary and proper to assist in the operation of the Corporation and/or management of the Corporation Property, regardless of whether such other personnel are employed directly by the Corporation or otherwise;

(b) Remove or replace any Improvement that extends into the Corporation Property under authority of an easement when access to a utility line underneath such Improvement is requested by any utility company; provided, however, that the cost shall be assessed against the Owner of the Condominium involved as a Compliance Assessment if said Owner caused the Improvement to be so placed in the Corporation Property without legal right to do so;

(c) Incur any liability or pay any costs or expenses for a single Condominium or Owner thereof; provided, however, that in the event the Corporation does incur any such

liability or pay any such costs or expenses, the amount thereof shall be specially assessed against the Owner of such Condominium as a Compliance Assessment; provided further, however, that nothing herein shall permit the Corporation to assess the Owners for any new Improvements to the Corporation Property except as otherwise provided in this Declaration;

(d) Subject to the limitations set forth herein, contract for any other material, furniture, labor, services, maintenance, repairs, structural alterations or insurance, or pay any taxes or Assessments which, in the opinion of the Board, shall be necessary or proper for the operation of the Common Property for the benefit of the Owners or for the enforcement of this Declaration; and

(e) Enter into a maintenance or subsidy agreement with Declarant, at Declarant's sole discretion, to temporarily reduce the financial obligations of the Owners for Assessment.

Section 5. Notification by Corporation of Defects.
The Board agrees that in the event of any alleged defect in any improved Corporation Property which the Corporation believes the Declarant may be responsible, the Board will provide Declarant with written notice of such defect in accordance with Civil Code Section 1375, as the same may be amended. Declarant shall have a reasonable opportunity to inspect such alleged defect, and if Declarant agrees with the Board (or otherwise elects to perform the work) to repair, replace or otherwise cure any defect in workmanship and/or material. The Corporation acknowledges and agrees that Declarant, (or its authorized agents), shall be entitled at its sole discretion to determine the material and methods to be used in affecting such repair, replacement or cure.

Section 6. Awards Rendered in Construction Defects Disputes. Any recovery by the Corporation or any Owner for any damage, to or defect in, the Common Property shall be utilized solely for the purpose of correcting such damage or defect.

Section 7. Special Meeting of the Corporation for Construction Defect Disputes. In the event the Board decides to commence binding arbitration proceedings under the Home Builder's Limited Warranty or decides to commence any other legal proceedings against any of the Declarant Parties (as set forth in Article VI, Section 16, below, of this Declaration, entitled "Arbitration of Disputes") relating to construction defect Disputes, the Secretary shall call a special meeting of the Corporation. In addition to the information required by Section 1375 to be specified in the notice of such meeting, the notice shall also specify the following: (a) the estimated costs to repair the defects; (b) how the necessary repairs will be funded; (c) the name of the attorney whom the Corporation is contemplating retaining and an estimate of the

attorney's fees, consultant's fees and any other costs to be incurred to prosecute such proceedings; (d) how such fees and costs will be funded; (e) each Member's duty to disclose to prospective purchasers the alleged defects; and (f) the potential impact the proceedings may have on the marketability and availability of financing for Condominiums in the Project. Such notice shall be sent to all Members of the Corporation. The decision of the Board to commence any other legal proceedings against any of the Declarant Parties relating to a construction defect Dispute must be approved by not less than fifty-one percent (51%) of the voting power of the Corporation residing in Members other than the Declarant.

Section 8. Delegations of Duties. In the event that the Corporation shall delegate any or all of its duties, powers or functions to any person, corporation or firm to act as manager, neither the Corporation nor the members of its Board shall be liable for any omission or improper exercise by the manager of any such duty, power or function so delegated.

Section 9. Right of Entry for Emergency. The Board, any person authorized by the Board or any Owner may enter any Condominium in the event of any emergency involving illness or potential danger to life or property. Such entry shall be made with as little inconvenience to the Owner as is practicable, and in the event that any damage shall be proximately caused by or result from said entry, the Corporation shall repair the same at its expense.

Section 10. Right of Entry for Repairs. The Board, or any person authorized by the Board, shall have the right to enter, upon reasonable notice, any Condominium to effect necessary repairs which the Owner has failed to perform or which are necessary in connection with the repairs to the Corporation Property or an adjoining Condominium. Such entry shall be made with as little inconvenience to the Owner as is practicable, and in the event that any damage shall be proximately caused by or result from said entry, the Corporation shall repair the same at its expense.

Section 11. Limitations on Board Action. The Board shall be prohibited from taking any of the following actions, except with the vote or written assent of a majority of the Members, other than the Declarant, constituting a quorum consisting of more than fifty percent of the voting power of the Corporation residing in the Members, other than the Declarant:

- (a) Entering into a contract with a third person, wherein the third person will furnish goods or services for the Corporation Property or the Corporation for a term longer than one (1) year, with the following exceptions:

(1) A management contract, the terms of which have been approved by the VA/FHA and are consistent with provisions herein;

(2) A contract with a public utility company if the rates charged for the materials or services are regulated by the Public Utilities Commission; provided, however, that the term of the contract shall not exceed the shortest term for which the supplier will contract at the regulated rate;

(3) Prepaid casualty and/or liability insurance policies of not to exceed three (3) years duration, provided that the policy permits for short-rate cancellation by the insured;

(4) Agreements for cable television services and equipment or satellite dish television services and equipment of not to exceed ten (10) years duration, provided that the lessor under the agreement is not an entity in which Declarant has a direct or indirect interest of ten percent (10%) or more; and

(5) Agreements for sale or lease of burglar alarm and fire alarm equipment installation and services of not to exceed five (5) years duration, provided that the supplier or suppliers are not entities in which the Declarant has a direct or indirect ownership interest of ten percent (10%) or more.

(b) Incurring aggregate expenditures for capital improvements to the Corporation Property in any fiscal year in excess of five percent (5%) of the budgeted gross expenses of the Corporation for that fiscal year;

(c) Selling during any fiscal year property of the Corporation having an aggregate fair market value greater than five percent (5%) of the budgeted gross expenses of the Corporation for that fiscal year;

(d) Paying compensation to Directors or to officers of the Corporation for services performed in the conduct of the Corporation's business; provided, however, that the Board may cause a Director or officer to be reimbursed for expenses incurred in carrying on the business of the Corporation;

(e) Filling a vacancy on the Board created by the removal of a Director;

(f) Incurring dispute resolution expenses, including without limitation attorneys' fees, where the Corporation

initiates dispute resolution proceedings or is joined as a plaintiff in dispute resolution proceedings. Such approval shall not be necessary if the legal proceedings are initiated to (i) enforce the use restrictions contained herein; (ii) enforce the architectural control provisions contained herein; or (iii) collect any unpaid assessments levied pursuant to this Declaration; or

(g) Amending or limiting the Corporation's duties and obligations (and benefits) with respect to the Limited Warranty.

Section 12. Licenses, Easements and Rights-of-Way. The Board, for and on behalf of the Corporation, is authorized and empowered to grant such licenses, easements and rights-of-way for sewer lines, water lines, underground conduits, storm drains, roadways, and other public utility purposes over those portions of the Corporation Property upon which no building or other structure has been erected as may be necessary and appropriate for the orderly maintenance, preservation and enjoyment of the Corporation Property or for the preservation of the health, safety, convenience and welfare of the Owners. Such licenses, easements and rights-of-way may be granted at any time prior to twenty-one (21) years after the death of the individuals who have signed this Declaration and their issue who are in being as of the date hereof, and the right to grant such licenses, easements and rights-of-way is hereby expressly reserved.

Section 13. New Improvements. Except as otherwise provided in this Declaration, the Corporation may construct new Improvements or additions to the Common Property, or demolish existing Improvements, provided that in the case of any Improvement, addition or demolition involving a total expenditure in excess of five percent (5%) of the budgeted gross expenses of the Corporation for that fiscal year, the written consent or vote of a majority of the Owners (other than the Declarant) in the Project as to the maximum total cost therefor shall first be obtained, and provided that no Condominium shall be altered or damaged by any such demolition or construction without the consent of the Owner thereof. The Board shall levy a Special Assessment against all Owners in the Project for the cost of such work.

Section 14. Corporation Rules and Regulations. The Board shall also have the power to adopt, amend and repeal Rules and Regulations, as it deems reasonable, which may include the establishment of a system of fines and penalties enforceable as Compliance Assessments. The Rules and Regulations shall govern such matters in furtherance of the purposes of the Corporation, including, without limitation, the use of the Common Property, the Exclusive Use Corporation Property (e.g., patio, balcony, parking space, storage areas, air conditioning pad, including without

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limitation, restrictions on the weight, type, and maintenance of potted plants, and other items), signs, parking restrictions and enforcement (subject to limitations imposed by the Public Parking Rules and Regulations defined above, if any), trash collection, minimum standards for maintenance of Condominiums consistent with such standards as may be set forth in this Declaration or adopted by the Architectural Review Committee, election procedures in compliance with California Civil Code Section 1363.03, and any other matter which is within the jurisdiction of the Corporation; provided, however, that the Rules and Regulations may not discriminate among Owners (except to the extent appropriate between and among the Owners of Retail Condominium Units and Residential Condominium Units and the Parking Condominium Units) and shall not be inconsistent with this Declaration, the Articles or By-Laws. A copy of the Rules and Regulations as they may, from time to time, be adopted, amended or repealed, or a notice setting forth the adoption, amendment or repeal of specific portions of the Rules and Regulations, shall be delivered to each Owner and may be placed on file in the principal office of the Corporation. The Rules and Regulations shall have the same force and effect as if they were set forth in and were part of this Declaration, and shall be binding on the Owners and their successors in interest, whether or not actually received thereby. The Rules and Regulations, as adopted, amended or repealed, shall be available at the principal office of the Corporation to each Owner upon request. In the event of any conflict between any such Rules and Regulations and any other provisions of this Declaration, or the Articles or By-Laws, the provisions of the Rules and Regulations shall be deemed to be superseded.

Section 15. Nonliability and Indemnification.

(a) General Limitation. Except as specifically provided in this Declaration, or as required by law, no right, power or responsibility conferred on the Board or the Architectural Review Committee by this Declaration, the Articles or the By-Laws, shall be construed as a duty or obligation charged upon the Board, the Architectural Review Committee, any member of the Board or the Architectural Review Committee, or any other officer, employee or agent of the Corporation. No such person shall be liable to any party (other than the Corporation or a party claiming in the name of the Corporation) for injuries or damage resulting from such person's acts or omissions within what such person reasonably believed to be the scope of his Corporation duties ("Official Acts"), except to the extent that such injuries or damage result from such person's willful or malicious misconduct. No such person shall be liable to the Corporation (or to any party claiming in the name of the Corporation) for injuries or damage resulting from such person's Official Acts, except to the extent that such injuries or damage result from such person's negligence or willful or malicious misconduct;

(b) Indemnification. The Corporation shall pay all expenses incurred by, and satisfy any judgment or fine levied against, any person as a result of any action or threatened action against such person to impose liability on such person for his official acts, provided that:

(1) The Board determines that such person acted in good faith and in the manner such person reasonably believed to be in the best interests of the Corporation; and

(2) In the case of an action or threatened action by or in the right of the Corporation, the Board determines that such person acted with such care, including reasonable inquiry, as an ordinary prudent person in a like position would use under similar circumstances.

Any determination of the Board required under this Section must be approved by a majority vote of a quorum consisting of Directors who are not parties to the action or threatened action giving rise to the indemnification. If the Board fails or refuses to make any such determination, such determination may be made by the vote or written consent of a majority of a quorum of the Members of the Corporation, provided that the person to be indemnified shall not be entitled to vote. The entitlement to indemnification hereunder shall inure to the benefit of the estate, executor, administrator, heirs or devisees of any person entitled to such indemnification.

Section 16. Arbitration of Disputes. Unless otherwise required by the Limited Warranty for "Disputes" (defined below) covered thereunder or any express limited warranty that may be provided by Declarant to an original Owner of a Retail Condominium, any and all claims, controversies, breaches or disputes (each a "Dispute") between or among the Declarant, or any director, officer, partner, attorney, member, employee or agent of Declarant, or any contractor, subcontractor, design professional, engineer or supplier who provided labor, services or materials to the Project (collectively, the "Declarant Parties"), the Corporation, and/or any Owner, relating to or arising out of the Project, this Declaration or any other agreements between the Declarant Parties, the Corporation, and/or an Owner (except for Disputes subject to the Limited Warranty which may be provided to an original Owner and/or Corporation by Declarant or pursuant to any express limited warranty that may be provided by Declarant to an original Owner of a Retail Condominium Unit), whether such Dispute is based on contract, tort, or statute, including, without limitation, any Dispute over (1) breach of contract, (2) negligent or intentional misrepresentation or fraud, (3) nondisclosure, (4) breach of any

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alleged duty of good faith and fair dealing, (5) allegations of latent or patent construction defects, or (6) any other matter arising from or related to the interpretation of any term or provision of this Declaration, or any defense going to the validity of this Declaration, or any provision of this Declaration, shall be resolved amicably and without the necessity of time consuming and costly litigation through arbitration pursuant to the Federal Arbitration Act and subject to the procedures set forth in this Section 16. Any Dispute concerning the interpretation or the enforceability of this Section 16, including, without limitation, its revocability or voidability for any cause, any challenges to the enforcement or the validity of this Declaration, or this Section 16, or the scope of arbitrable issues under this Section 16, and any defense relating to the enforcement of this Section 16, including, without limitation, waiver, estoppel, or laches, shall be decided by an arbitrator in accordance with this Section 16 and not by a court of law. Unless otherwise provided by the Declarant, the following nonadversarial procedure [e.g., subparagraphs (a) and (b)] shall apply to Disputes not otherwise subject to the Limited Warranty.

(a) Notice. Any person with a Dispute shall notify the Declarant in writing of the claim, which writing (i.e., by personal or mail service as authorized by Code of Civil Procedure Sections 415.10, 415.20, 415.21, 415.30 or 415.40 to the party to whom the Dispute is directed) shall describe the nature of the claim and any proposed remedy (the "Claim Notice").

(b) Right to Inspect and Right to Corrective Action. Commencing on the date the Claim Notice is delivered and continuing until the Dispute is resolved, the Declarant and its representatives shall have the right to (i) meet with the party alleging the Dispute at a reasonable time and place to discuss the Dispute, (ii) enter the Project to inspect any areas that are subject to the Dispute, and (iii) conduct inspections and testing (including destructive or invasive testing) in a manner deemed appropriate by the Declarant. Within a reasonable period after receipt of the Claim Notice, which period shall not exceed sixty (60) days, the Declarant and the claimant shall meet at a mutually acceptable place within or near the Project to discuss the Dispute. At such meeting or at such other mutually agreeable time, the Declarant and the Declarant's representatives, as noted above, shall have full access to the property that is subject to the Dispute 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 rights shall continue until such time as the Dispute is resolved as set forth herein. The parties to 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 Declarant's representatives and agents shall be provided full access to the Project to take and complete corrective action. Nothing set forth in this Section 16 imposes any obligation on

Declarant to inspect, repair or replace any items or alleged defects for which Declarant is not otherwise obligated under applicable State and federal law or the Limited Warranty or any express limited warranty provided by Declarant to an Owner of a Retail Condominium in connection with the sale of the Condominiums.

(c) Binding Arbitration. In the event that a Dispute is raised and not resolved pursuant to the nonadversarial procedures noted above [i.e., subparagraphs (a) and (b) or as otherwise provided by Declarant or required by the Limited Warranty or any express limited warranty provided by Declarant to an Owner of a Retail Condominium Unit], such Dispute shall be submitted to binding Arbitration by and pursuant to the rules of CAS in effect at the time of the initiation of the arbitration. In the event CAS is unwilling or unable to serve as the arbitration service, the parties shall select another reputable arbitration service. If the parties are unable to agree on an alternative arbitration service, then any party may petition a court of competent jurisdiction in the County to appoint such alternative arbitration service which shall be binding on the parties. If the parties agree, the rules and procedures of the arbitration service required herein (i.e., CAS) or selected as provided herein, which are in effect at the time the request for arbitration is submitted shall be followed; otherwise, the parties agree to the following arbitration provisions in subparagraph (d).

(d) General Arbitration Provisions.

(i) Each Owner, by acceptance of a deed to a Condominium, and the Corporation, by acceptance of a deed to the Corporation Property, acknowledges that this Declaration involves and concerns interstate commerce and is governed by the provisions of the Federal Arbitration Act (9 U.S.C. §1, et seq.) now in effect and as the same may from time to time be amended, to the exclusion of any different or inconsistent state or local law, ordinance, regulation, or judicial rule. Accordingly, any and all disputes shall be arbitrated - which arbitration shall be mandatory and binding - pursuant to the Federal Arbitration Act and the California Arbitration Act, to the extent the California Arbitration Act is consistent with the Federal Arbitration Act. Each Owner, the Corporation and Declarant are giving up any rights each Owner, the Corporation or Declarant might possess to have the dispute litigated in a court or jury trial.

(ii) This Section 16 shall inure to the benefit of, and be enforceable by, Declarant's subcontractors, agents, vendors, suppliers, design professionals, warranty administrator, insurers and any other persons whom any Owner or the Corporation contends is responsible for any alleged defect in

or to the Project or such Owner's Condominium or any improvement or appurtenance thereto.

(iii) Each party shall bear its own attorneys' fees and costs (including expert costs) for the arbitration.

(iv) The decision of the arbitrator shall be final and binding. Each Owner, by acceptance of a deed to a Condominium, and the Corporation, by acceptance of a deed to the Corporation Property, acknowledges that an application to confirm, vacate, modify or correct an award rendered by the arbitrator shall be filed in any court of competent jurisdiction in the County.

(v) The participation by any party in any judicial proceeding concerning this Section 16 or any matter arbitrable hereunder shall not be deemed a waiver of the right to enforce this Section 16 notwithstanding any provision of law to the contrary, and shall not be asserted or accepted as a reason to delay, to refuse to participate in, or to refuse to enforce this Section 16.

(vi) Except as otherwise provided by the Limited Warranty or as required by applicable law, the fees to initiate the arbitration (other than the arbitrator's fees) shall be advanced by Declarant and subsequent fees and costs of the arbitrator and/or the arbitration service shall be borne equally by the parties to the arbitration; provided, however, the administration and arbitrator fees and any other fees and costs of the arbitration ultimately shall be borne as determined by the arbitrator (including, but not limited to the fees to initiate the arbitration).

(vii) The arbitrator appointed to serve shall be a neutral and impartial individual and shall be authorized to provide all recognized remedies available in law or equity for any cause or action that is the basis for arbitration.

(viii) The venue of the arbitration shall be in the County where the Project is located unless the parties to the arbitration agree in writing to another location.

(ix) If any provision of this Section 16 shall be determined to be unenforceable or to have been waived, the remaining provisions shall be deemed to be severable therefrom and enforceable according to their terms.

(x) Each Owner, the Corporation and Declarant are giving up their respective judicial rights to discovery and appeal, unless those rights are specifically included in this Section 16. If Declarant, the Corporation or any Owner refuses to submit to arbitration, such Owner, the Corporation

agree that this procedure does not involve a jury trial and that this procedure and the lack of a jury trial shall be binding upon their respective successors and assigns and upon all persons and entities asserting rights or claims or otherwise acting on behalf of them or their successors and assigns.

(3) The parties shall be entitled to conduct all discovery as otherwise provided in the California Code of Civil Procedure, and the referee shall oversee discovery and may enforce all discovery orders in the same manner as any trial court judge, with rights to regulate discovery and to issue and/or enforce subpoenas, protective orders or other limitations on discovery available under California law. In the context of construction defect disputes, all parties shall be entitled to reasonable site inspections, visual inspections, destructive testing, and other discovery mechanisms commonly employed in such disputes;

(4) The reference proceeding shall be conducted in accordance with California law (including the rules of evidence), and in all regards the general referee shall follow California law as applicable at the time of the general reference proceeding. The general referee may issue any remedy or relief, other than punitive damages, which the courts of the State of California could issue if presented the same circumstances, and the general referee shall follow and otherwise employ the standards for issuing such relief as defined by California law. The general referee may require one or more pre-hearing conferences. A stenographic record of the trial shall be made, provided that the record shall remain confidential except as may be necessary for post-hearing motions and any appeals. The general referee's statement of decision shall contain findings of fact and conclusions of law to the extent applicable. The general referee shall have the authority to rule on all post-hearing motions in the same manner as a trial judge. The statement of decision of the general referee upon all of the issues considered by the general referee shall be binding upon the parties, and upon filing the statement of decision with the clerk of any court of the State of California having jurisdiction thereof, or with the judge if there is no clerk, judgment may be entered thereon. The judgment and decision of the general referee shall be appealable

in the same manner and subject to the same rules as if rendered by the court.

(5) Any dispute involving third parties (i.e., a person or entity other than Declarant, or Owner or the Corporation) shall be included in the general reference procedure prescribed herein to the extent permitted by law. All parties shall cooperate in good faith to ensure that all necessary and appropriate parties are included in the judicial reference proceeding.

(6) The exclusive venue for all general reference proceedings shall be in the County where the Project is located;

(7) Except where attorneys' fees are awarded as an element of sanctions, the parties shall bear their own attorneys' fees in any proceeding conducted under this paragraph. Declarant shall initially advance all fees and costs necessary to initiate the general reference proceeding (except the fees for the referee); however, the general referee may, in his or her discretion, reallocate such fees and costs among the parties as the interests of justice dictate. The general referee may award litigation costs (excluding attorney fees) to the prevailing party. This provision does not modify any provision of a contract between Declarant and any other entity other than an Owner requiring indemnification or establishing a different allocation of costs between Declarant and such entity.

(8) If any provision of this paragraph shall be determined to be unenforceable or to have been waived, the remaining provisions shall be deemed to be severable therefrom and enforceable according to their terms.

(e) Inspection Easements. The Declarant reserves easements to enter any Condominium, including the interior of the Condominium Unit and the Exclusive Use Corporation Property, and the Corporation Property to inspect those areas and to conduct destructive testing referred to in California Civil Code § 1375(d). However, the Declarant shall notify the Owner of the Condominium and/or the Corporation (if entry to the Corporation Property is required) of at least three (3) alternative dates and times when such inspection can take place (the earliest of which shall not be less than ten (10) days after the notification is given) and the Declarant shall give the Owner and/or the Corporation the opportunity to specify which date and time is acceptable to the Owner.

Should the Owner and/or Corporation not respond affirmatively with respect to one of the dates and times within five (5) days, then the Declarant may decide which of the dates and times the inspection and testing shall take place and so notify the Owner and/or Corporation. Alternatively, the Declarant may seek a judicial order allowing such inspection and testing to take place; if such occurs, Declarant shall be entitled to its reasonably incurred attorneys' fees and be deemed the "prevailing party" should such a court order be sought and obtained. Declarant shall be obligated to fully repair any damage caused by any such destructive testing.

(f) Miscellaneous. Any and all communications by and between the parties, whether written or oral, which are delivered by the parties or their attorneys or other representatives in an effort to settle the matter shall be considered communications undertaken in the course of effecting a settlement or compromise, as such shall not be admissible as an admission on the part of any party or any representative or agent of that party to be utilized for any such purpose in any action or proceeding.

Nothing herein shall be considered to reduce or extend any applicable statute of limitation. If at any time an action would be barred by a statute of limitation if not filed within sixty (60) days, then such action may be filed notwithstanding any other provision of this Section 16.

(g) Manufactured Products Maintenance and Limited Warranty Information. Each Owner, as to his respective Condominium, and the Corporation, as to the Corporation Property, acknowledge that Declarant has provided such Owner and the Corporation with manufactured product maintenance, preventative maintenance and limited warranty information pertaining to such Owner's Condominium and to the Corporation Property. Declarant reserves the right, by written notice to each Owner and/or to the Corporation, to supplement and/or amend such manufactured product maintenance, preventative maintenance and limited warranty information from time to time. Each Owner and the Corporation also acknowledge that by law, such Owner and such Corporation is obligated to follow all reasonable maintenance and preventative maintenance schedules and obligations communicated in writing from Declarant as well as commonly accepted maintenance practices. Each Owner and the Corporation covenant to faithfully follow all such maintenance and preventative maintenance schedules and obligations contained in all such manufactured product maintenance, preventative maintenance and limited warranty information (and each Owner shall require and cause any tenant or lessee of such Owner's Condominium to follow all such schedules and obligations).

(h) Indemnification. Each Owner of a Condominium in the Project and the Corporation covenant to indemnify, defend and hold Declarant harmless from any loss, costs or damages arising from such Owner's or such Corporation's failure or refusal to perform its respective obligations.

DECLARANT, THE CORPORATION AND EACH OWNER SHALL USE THE PROCEDURES ESTABLISHED IN THIS SECTION TO RESOLVE ALL DISPUTES AND SHALL BE DEEMED TO WAIVE THEIR RIGHTS TO RESOLVE DISPUTES IN ANY OTHER MANNER. PURSUANT TO THIS SECTION, DECLARANT, THE CORPORATION (BY ACCEPTANCE OF A DEED TO THE CORPORATION PROPERTY), AND EACH OWNER (BY ACCEPTANCE OF A DEED TO A CONDOMINIUM) ACKNOWLEDGE, UNDERSTAND, AND AGREE THAT THEY SHALL HAVE NO RIGHT TO HAVE ANY DISPUTE TRIED BEFORE A JURY.

THIS SECTION MAY NOT BE AMENDED WITHOUT DECLARANT'S PRIOR WRITTEN CONSENT, WHICH CONSENT MAY BE WITHHELD IN DECLARANT'S SOLE AND ABSOLUTE DISCRETION.

Section 17. Power of Attorney to Correct Errors in Condominium Plans. Upon acceptance of a deed to a Condominium in the Project, each Owner, on behalf of himself and his or her Mortgagees, hereby grants to the Corporation a special power of attorney to correct any errors in a Condominium Plan by executing on behalf of the affected Owners and Mortgagees an amendment to the Condominium Plan and an instrument to effect any conveyances or partial reconveyances necessary to correct such errors. The power hereby given to the Corporation is limited as follows:

(a) The power may be exercised only to correct errors in a Condominium Plan as evidenced by a written statement which describes the error(s) and which is signed by the engineer who prepared the Condominium Plan or by Declarant. The power hereby given may not be utilized for any other purpose.

(b) The power may not be exercised on behalf of an Owner or his or her Mortgagee if the Owner's Condominium or Exclusive Use Corporation Property would be reduced in size by reason of the correction, unless written approval is obtained from the affected Owner and Mortgagee.

The power hereby given is coupled with an interest and may not be revoked by an Owner, but may be revoked by a Mortgagee. Any such revocation by a Mortgagee shall be by means of its signed statement of revocation recorded in the official records of the County.

ARTICLE VII

ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessment. The Declarant, for each Condominium owned within the Project, hereby covenants, and each Owner of any Condominium, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Corporation: (a) Regular Assessments; (b) Special Assessments; (c) Compliance Assessments; (d) Special Benefit Assessments; and (e) such other assessments as the Corporation may periodically establish and apply to the applicable Condominium (notwithstanding the foregoing, the General Assessment Component and Variable Assessment Component of the Regular Assessments are not applicable to the Retail and Parking Condominiums, and the Parking Assessment Component and Retail Assessment Component are not applicable to the Residential Condominiums). Except as otherwise provided by law, the Regular, Special, and Special Benefit Assessments, together with a reasonable late charge as may, from time to time, be established by the Board in accordance with California law, interest, costs and reasonable attorneys' fees for the collection thereof, shall be a charge against and a continuing lien upon the Condominium against which each such Assessment is levied, and shall also be the personal obligation of the Owner of such property at the time when the Assessment came due. Each Compliance Assessment levied against a Condominium, together with interest, costs, reasonable late charges and reasonable attorneys' fees for the collection thereof, shall be the personal obligation of the Owner of the property at the time of the Assessment. The personal obligation for delinquent Assessments shall not pass to the successors in title unless expressly assumed by them.

Section 2. Purpose of Regular Assessments: Levy and Collection. The Regular Assessments levied by the Corporation shall be used exclusively to promote the health, safety and welfare of the residents in the Project and, except as otherwise provided in this Declaration, to maintain, repair, replace and improve the Corporation Property, and any other Improvements or areas which the Corporation is obligated to maintain, as provided herein. The Corporation, by and through its Board, shall levy and collect Assessments from the Owner of each Condominium in the Project in an amount sufficient to cover all of the Common Expenses incurred by the Corporation in connection with the performance and execution of the powers and duties set forth in this Declaration, the By-Laws and Articles. In connection therewith, the Corporation shall not impose or collect Assessments, penalties or fees that exceed the amount reasonably necessary for the purpose or purposes for which they were levied. The Corporation shall allocate, as applicable, to the Owners of the Retail Condominium Units and Parking Condominium Units, the Retail Assessment Component and Parking Assessment

California Civil Code Section 1366, as same may be amended, from time to time, from and after the first day of the fiscal year immediately following the conveyance of the first Condominium to an Owner, the maximum Regular Assessment may be increased subject to the following limitations:

(a) Increases in Regular Assessments for any fiscal year which are less than or equal to twenty percent (20%) above the maximum Regular Assessment, the Parking Assessment Component, and Retail Assessment Component of the Regular Assessment for the immediately preceding fiscal year may be approved by the Board, provided that the Board shall: (1) comply with the provisions set forth in Section 1365(a) of the California Civil Code, as same may be amended from time to time, with respect to the distribution of the pro forma operating budget of the Corporation for the forthcoming fiscal year; or (2) obtain the approval of Members, constituting a quorum, casting a majority of affirmative votes at a meeting or an election of the Corporation conducted in accordance with California Corporations Code Sections 7510, et seq., and Sections 7613, et seq. For purposes of this entire Section 3, a quorum means more than fifty percent (50%) of the Members of the Corporation. Notwithstanding anything herein to the contrary, the Board may approve increases for any fiscal year to the Parking Assessment Component and Retail Assessment Component if such increase is less than or equal to a twenty percent (20%) increase to each budget allocation line item identified in the DRE approved budget;

(b) Increases in Regular Assessments for any fiscal year which are greater than twenty percent (20%) above Regular Assessments for the immediately preceding fiscal year may be approved by the Board only after the Board obtains the approval of Members, constituting a quorum, casting a majority of affirmative votes at a meeting or election of the Corporation, conducted in accordance with Sections 7510, et seq., and Section 7613, et seq. of the Corporations Code. As noted above this limitation does not apply to the Parking Assessment Component and/or Retail Assessment Component; and

(c) The Assessment increase limitation set forth in Subsection (b) above does not apply to increases in Assessments related to emergency situations, which shall be deemed to include the following:

- (1) Extraordinary expenses required by an order by a court of competent jurisdiction;
- (2) Extraordinary expenses for the maintenance or repair of Corporation Property that is necessary to remedy any dangerous condition in the Project that represents a threat of damage or injury to any person or property; and

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(3) Extraordinary expenses necessary to repair or maintain the Corporation Property that could not have been reasonably anticipated by the Board at the time the most recent Corporation budget was prepared. Notwithstanding the foregoing, in the event that the Board increases the Regular Assessment above twenty percent (20%) pursuant to this Subparagraph (3), the Board shall distribute written notice concerning said increase to all Owners and a copy of a resolution adopted by the Board setting forth: (i) the necessity of the extraordinary expenses; and (ii) the justification why said expenses were not reasonably foreseeable at the time the most recent budget was prepared. For the purpose of calculating whether an increase to Regular Assessments exceeds twenty percent (20%), the term "Regular Assessments" shall be deemed to include the amount assessed against each Condominium by the Corporation as a Regular Assessment (which for the Retail and Parking Condominium Owners consists only of the Retail Assessment Component and Parking Assessment Component, respectively), plus any amount paid by the Declarant as a subsidy or pursuant to any subsidy or maintenance agreements, to the extent such subsidy payments offset an amount which would otherwise be paid by Owners as Regular Assessments.

The Board may fix the Regular Assessment at an amount not in excess of the maximum Regular Assessment. So long as Declarant is offering Condominiums in the Project for sale pursuant to a Final Subdivision Public Report, the Regular Assessment may not be decreased by ten percent (10%) or more without the express prior written consent of the Declarant and the DRE. The Corporation may, upon ratification by a majority of the Board, enter into an agreement with Declarant, its successors or assigns, to reduce or abate Assessments, upon such terms and conditions as may be agreed to by the parties.

Section 4. Special Assessments for Capital Improvements.

(a) In addition to the Regular Assessments authorized above, the Board may not, subject to the limitations of California Civil Code Section 1366, without the vote or written approval of Members constituting a quorum (which shall mean more than fifty percent [50%] of Owners of the Corporation) casting a majority of affirmative votes at a meeting or election of the Corporation, conducted in accordance with Sections 7510, et seq., and 7613 of the Corporations Code, levy Special Assessments to defray the costs of any action or undertaking on behalf of the Corporation which in the aggregate exceed five percent (5%) of the budgeted gross expenses

of the Corporation for that fiscal year. The five percent (5%) limitation shall not apply to increases in Special Assessments related to an emergency situation which shall be deemed to include the following:

(1) Extraordinary expenses required by an order by a court of competent jurisdiction;

(2) Extraordinary expenses for the maintenance or repair of Corporation Property that is necessary to remedy any dangerous condition in the Project that represents a threat of damage or injury to any person or property; and

(3) Extraordinary expenses necessary to repair or maintain the Corporation Property that could not have been reasonably anticipated by the Board at the time the most recent Corporation budget was prepared. Notwithstanding the foregoing, in the event the Board levies any Special Assessment that exceeds the five percent (5%) limitation pursuant to this Subparagraph (3), the Board shall distribute written notice concerning said Special Assessment to all Owners and a copy of a resolution adopted by the Board setting forth: (i) the necessity of said Special Assessment; and (ii) the justification why said Special Assessment was not reasonably foreseeable at the time the most recent budget was prepared. Except as provided in Subsection (b) below, every Special Assessment shall be levied upon the same basis as that prescribed for the levying of Regular Assessments.

(b) A Special Assessment levied against Owners to raise funds for the reconstruction or major repair of the Condominium Units, if applicable, in the Project shall be levied on the basis of the ratio of the square footage of the floor area of the Condominium Unit to be assessed, to the square footage of the floor area of all Condominium Units to be assessed.

Section 5. Compliance Assessments. A Compliance Assessment may not be characterized nor treated as an assessment which may become a lien against the Owner's Condominium enforceable by a sale in accordance with the provisions of Sections 2924 et seq. of the Civil Code; provided, however, at such time as the sale of Condominiums is not governed by the DRE, the foregoing shall not apply to any Compliance Assessment imposed against an Owner consisting of a reasonable late payment penalty for delinquent Assessments and/or charges to reimburse the Corporation for the loss of interest and for costs reasonably incurred (including attorneys' fees) in its efforts to collect delinquent Assessments or imposed for costs incurred by the Corporation in the repair of damage to Common Property and facilities for which the Member or the Member's guests or tenants were responsible.

Section 6. Variable Assessment. A Variable Assessment Component shall be assessed solely to the Owners of Residential Condominiums to which the exclusive or disproportionate maintenance obligation of a Variable Element has been allocated.

Section 7. Notice of Increase in Assessments. The Board shall provide to the Owners, by first class mail to the address on file with the Corporation, notice of any increase in Regular, Special Assessments not less than thirty (30) nor more than sixty (60) days prior to such increase becoming due.

Section 8. Special Benefit Assessments. If not otherwise allocated by the Corporation as a Variable Assessment Component, Parking Assessment Component or Retail Assessment Component of the Regular Assessment, Special Benefit Assessments shall mean and refer to a charge levied by the Corporation against an Owner and his respective Condominium to cover the expenses incurred by the Corporation in the operation, maintenance, repair, and/or funding of reserves as to a portion of the Project designated herein as a "Special Benefit Area" or which is identified or referred to by the Board or the Declarant as an area or facility benefitting only the Owners within such an Area. These expenses chargeable to only Owners in a Special Benefit Area, and may include, without limitation, the following:

(a) Maintenance, management, operation, repair and replacement of particular Improvements within the Special Benefit Area;

(b) Utilities or services for the benefit of Owners within the Special Benefit Area;

(c) Reasonable reserves, as deemed appropriate by the Board, for repair and replacement of any Improvements maintained by the Corporation within a Special Benefit Area; and

(d) Unpaid Special Benefit Assessments.

The Corporation shall distribute to Owners within any Special Benefit Area a pro forma operating statement and budget for the upcoming fiscal year which shall estimate the expenses attributable to the Special Benefit Area, and shall set forth the amount and payment schedule of the Special Benefit Assessments. Increases in Special Benefit Area Assessments for any fiscal year which are less than or equal to twenty percent (20%) above the maximum Special Benefit Area Assessment for the immediately preceding fiscal year may be approved by the Board, provided that the Board shall obtain the approval of Members affected by such Assessment, constituting a quorum, casting a majority of affirmative votes. For purposes of this Section, a quorum means more than fifty percent (50%) of the Members of the Corporation affected by the Special Benefit Area Assessment. The Assessment increase limitation set forth herein-above does not apply to increases in Special Benefit Area Assessments related to emergency situations that could not have been reasonably anticipated by the Board at the time the most recent Corporation budget was prepared which determined the amount of the Special Benefit Area Assessments.

Section 9. Date of Commencement of Regular Assessments: Due Dates. Subject to the exception which may apply with model Condominiums noted below, the Regular Assessments provided for herein shall commence with respect to all Condominiums on the first day of the month following the first close of escrow for the sale of a Residential Condominium in Phase 1, or on the first day of the month following the first occupancy of a Residential Condominium in Phase 1 pursuant to a rental or lease agreement with the Declarant, or its authorized agent, whichever occurs first. The first Regular Assessments shall be adjusted according to the number of months remaining in the fiscal year, as set forth in the By-Laws. The Board shall fix the amount of the Regular Assessment against each Condominium at least thirty (30) days in advance of each Regular Assessment period. Written notice of the Regular Assessment shall be sent to every Owner subject to the provisions hereinabove. Notwithstanding any other provisions of this Declaration and as set forth hereinabove, until the earlier to occur of: (a) the recordation of a Notice of Completion of an Improvement to the Corporation Property; or (b) the placement into use of the Corporation Property, each Owner (including Declarant) may be declared by the Board to be exempt from paying that portion of the Regular Assessment which is directly attributable to expenses and reserves to be incurred by the Corporation in the maintenance, operation and repair of such Corporation Property.

Section 10. Collection of Assessments. Except as otherwise provided herein, Regular and Special Assessments shall be levied at a uniform rate for all Condominiums and may be collected on a monthly basis. If any installment of a Regular Assessment is less than the amount assessed and the payment does not specify the Corporation funds or fund into which it should be deposited, the receipt thereof by the Corporation from that Member shall be credited in order of priority, first to the operating fund, until that portion of the Regular Assessment has been satisfied, and second to the reserve fund. Compliance Assessments shall be due thirty (30) days after such Assessment has been levied unless otherwise determined by the Board in a manner consistent with Civil Code Section 1366, as may be amended from time to time.

Section 11. Certification of Payment. The Corporation shall, upon demand and for a reasonable charge, furnish a certificate signed by an officer or agent of the Corporation setting forth whether the Assessments on a specified Condominium have been paid. If a certificate states that Assessments have been paid, such certificate shall be conclusive evidence of such payment.

Section 12. Delivery by Owner. Each Owner of a Condominium shall, as soon as practicable prior to the transfer of title to the Condominium or the execution of a real property sales contract, as defined in California Civil Code, Section 2985, or as may be amended, from time to time, give to the prospective purchaser a copy of this Declaration and copies of the By-Laws and

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Articles of the Corporation, and a true statement, in writing, from the Board as to the amount of the Corporation's current Regular and Special Assessments and fees, as well as any delinquent Assessments and information relating to penalties, attorneys' fees and other charges authorized by this Declaration on the Condominium as of the date the statement is issued, and any change in the Corporation's current Assessments and fees which have been approved by the Board but have not become due and payable as of the date disclosure is provided pursuant to this Section.

Section 13. Delivery of Statement. Upon written request, the Board shall, within ten (10) days of the mailing or delivery of such request, respectively, provide the Owner of a Condominium with a copy of this Declaration, and copies of the By-Laws and Articles of the Corporation, together with the pro forma budget, an insurance policy summary, a true statement in writing as to the amount of any delinquent Assessments, penalties, attorneys' fees and other charges authorized by this Declaration on the Condominium as of the date of the request, the most recent financial statement, the Corporation's current Regular and Special Assessments, and any change in the Corporation's current Assessments and fees which have been approved by the Board but have not become due and payable as of the date disclosure is provided pursuant to this Section. The Board may impose a fee for providing such documents and statements, but in no event shall the fee exceed the reasonable cost to prepare and reproduce the requested documents. In accordance with applicable legal requirements, if any, within ninety (90) days following the first close of escrow for the sale of a Condominium in the Project, or as soon as reasonably obtainable, the Declarant shall provide the Corporation with copies of the (1) recorded tract map for the project; (2) Corporation Property grant deeds; (3) this Declaration; (4) filed Articles of Incorporation; (5) the Corporation's by-laws; (6) rules and regulations or architectural guidelines adopted by the Corporation, if any; (7) notice of completion certificates for Corporation Property, if any; (8) completion bond(s) naming the Corporation as a beneficiary, if any; (9) warranties for Corporation Property equipment or fixtures, if any; (10) insurance policies obtained for the Corporation; and (11) membership register, to the extent it is available and if required by law.

Section 14. Delivery by Declarant. Within ninety (90) days following the first close of escrow for the sale of a Condominium in the Project, or as soon as reasonably obtainable, the Declarant shall provide the Corporation with copies of the (1) recorded tract map for the project; (2) Corporation Property grant deeds; (3) this Declaration; (4) filed Articles of Incorporation; (5) the Corporation's By-Laws; (6) Rules and Regulations and/or Architectural Guidelines adopted by the Corporation, if any; (7) notice of completion certificates for Corporation Property, if any; (8) completion bond(s) naming the Corporation as a beneficiary, if any; (9) warranties for Corporation Property equipment or fixtures,

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if any; (10) insurance policies obtained for the Corporation; and (11) membership register, to the extent it is available and if required by law.

Section 15. Reserves. The Regular Assessments shall include reasonable amounts, as determined by the Board, collected as reserves for the future periodic maintenance, repair and replacement of all or a portion of the Corporation Property, or any such other purpose determined by the Board. All amounts collected as reserves shall be deposited by the Board in a separate bank account for the purposes for which they were collected, and are to be segregated from and not commingled with any other funds of the Corporation. The expenditure of such funds shall be limited to the repair and replacement of those elements of the Corporation Property which must be repaired or replaced according to a reserve study as permitted by Section 1365.5 of the California Civil Code, as same may be amended from time to time.

Section 16. Offsets and Waiver Prohibited. No Owner may waive or otherwise avoid liability for the Assessments provided for herein for any reason whatsoever, including, but not limited to, non-use of the Corporation Property or abandonment of his Condominium, nor shall any Owner be entitled to any offset against any Assessment provided for herein for any reason whatsoever, including, but not limited to, any expenditure made by such Owner for or on behalf of the Corporation.

Section 17. Exempt Property. The following property subject to this Declaration shall be exempt from the Assessments herein:

(a) All property dedicated to and accepted by a local public authority;

(b) All property owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of California, however, no land or Improvements devoted to dwelling use shall be exempt from said Assessment; and

(c) Any Corporation Property owned in fee by the Corporation.

Section 18. Capitalization of Corporation. Each purchaser of a Condominium in the Project shall contribute to the working capital of the Corporation an amount equal to One Hundred Dollars (\$100). Said amount shall be deposited by each purchaser into his respective escrow for the purchase of his Condominium from Declarant. This capital contribution shall in no way be deemed to be a prepayment of any portion of the Regular Assessment obligation of said Owners to the Corporation.

ARTICLE VIII

EFFECT OF NONPAYMENT OF ASSESSMENTS:
REMEDIES OF THE CORPORATION

Section 1. Effect of Nonpayment of Assessments: Remedies of the Corporation. Any Regular, Special, or Compliance Assessment not paid within fifteen (15) days after the due date shall be deemed delinquent and the Owner shall be required to pay: (a) reasonable costs of collection, including reasonable attorneys' fees; (b) a reasonable late charge not exceeding ten percent (10%) of the delinquent Assessment or Ten Dollars (\$10.00), whichever is greater, or as may, from time to time, be established by the Board in accordance with California law; and (c) interest on all sums imposed under this Section at an annual percentage rate not to exceed twelve percent (12%) commencing thirty (30) days after the Assessment was due. The Board, for and on behalf of the Corporation, may commence legal action against the Owner personally obligated to pay the same, or, in the case of a Regular, Special Assessment, may foreclose the lien against his Condominium. Such lien may also be foreclosed by a power of sale or other nonjudicial procedure provided for by the laws of the State of California. In furtherance thereof, each Owner hereby vests in the Corporation, its successors or assigns, the right and power to bring all actions at law or to pursue lien foreclosure against any Owner for purposes of collecting such delinquent Assessments. The Corporation need not accept any tender of a partial payment of an installment of an Assessment and all costs and attorney's fees attributable thereto, and any acceptance of any such tender shall not be deemed to be a waiver of the Corporation's right to demand and receive full payments thereafter. Payments for Assessments shall first be applied to the principal owed for the Assessments and only after such principal amount is paid in full, shall such payments be applied to interest or collection expenses for such Assessments. If requested by an Owner, the Corporation shall provide the Owner with a receipt of payment of Assessments, indicating the date of the Owner's payment of Assessments and the person who received such payment on behalf of the Corporation. The Corporation shall establish a mailing address for the overnight payment of Assessments.

Section 2. Notice of Delinquent Assessments. No action shall be brought to foreclose a lien for delinquent Assessments, or to proceed under the power of sale herein, unless the Corporation complies with all applicable provisions of law (e.g., California Civil Code Section 1367.1(a), as the same may be amended from time to time, and provisions of California Civil Code Section 2924, 2924(b), and 2924(c), as may be amended from time to time).

Section 3. Foreclosure Sale. Any foreclosure sale provided for above is to be conducted by the Board, its attorney or other persons authorized by the Board, in accordance with the

provisions of Sections 2924, et seq. of the California Civil Code applicable to the exercise of powers of sale in Mortgages and deeds of trust, as same may be amended, from time to time, or in any other manner permitted by law. The Corporation, through duly authorized agents, shall have the power to bid on the Condominium at a foreclosure sale and to acquire, hold, lease, mortgage and convey the same.

Section 4. Curing of Default. Upon the timely curing of any default for which a Notice of Delinquent Assessments or lien was filed by the Corporation, the officers thereof are hereby authorized to file or record, as the case may be, an appropriate release of such Notice upon receipt of payment from the defaulting Owner of a reasonable fee to be determined by the Corporation to cover the costs of preparing and filing or recording such release.

Section 5. Cumulative Remedies. The Corporation's remedies for nonpayment of Assessments, including, but not limited to, an action to recover a money judgment, Assessment lien and right of foreclosure and sale, are cumulative and in addition to and not in substitution of any other rights and remedies which the Corporation and its assigns may have hereunder or at law.

Section 6. Mortgagee Protection. Notwithstanding all other provisions hereof, no lien created hereunder nor any breach of the terms and provisions of this Declaration, nor the enforcement of any term or provision hereof, shall defeat or render invalid the rights of any Mortgagee under any recorded first Mortgage or deed of trust upon a Condominium made in good faith and for value; provided, that after such Mortgagee or other person or entity obtains title to such Condominium by judicial or nonjudicial foreclosure, such Condominium shall remain subject to this Declaration and the payment of Assessments which fall due subsequent to the date of taking title.

ARTICLE IX

USE RESTRICTIONS

The Condominium Units and Common Property shall be occupied and used only as set forth hereinbelow.

Section 1. Private Dwelling. Except as otherwise provided herein (e.g., portions of the Shopkeeper Spaces may be used for commercial uses as set forth here), each Residential Condominium Unit shall be used solely for residential purposes (e.g., single family dwelling purposes only), except such temporary uses as shall be permitted by Declarant while the Project is being developed and Condominiums are being sold by Declarant; provided, however, that Declarant reserves unto itself, and its successors and assigns, together with the right to grant and transfer all or

a portion of the same, for so long as Declarant owns any interest in a portion of Lot 1 of Tract 61304, the right to carry on normal sales activity on the Project, including the operation of models, sales office, design center and parking areas, provided Declarant shall not unreasonably interfere with any other Owner's use of the Common Property.

Section 2. Common Property Use. Use of the Common Property shall be subject to the provisions of this Declaration, the Rules and Regulations and to any additional limitations imposed by any of the other Corporation management documents, and to any additional limitations imposed by the Corporation.

Section 3. Conduct Affecting Insurance. Nothing shall be done or kept in any Condominium Unit or in the Common Property which will increase the rate of insurance on the Common Property without the approval of the Corporation. No Owner shall permit anything to be done or kept in his Condominium Unit or in the Common Property which will result in the increase of the rate of insurance or cancellation of insurance for the Common Property or which would be in violation of any law. If, by reason of the occupancy or use of said premises by the Owner, the rate of insurance to the Common Property shall be increased, the Owner shall become personally liable for the additional insurance premiums.

Section 4. Liability for Damage to the Common Property. Each Owner shall be liable to the Corporation, pursuant to the laws of the State of California, for any and all costs and expenses which may be incurred by the Corporation to repair any damage to the Common Property which may be sustained by reason of the negligent acts or omissions or the willful misconduct of said Owner or any member of his family, his guests, tenants, lessees, or their respective guests or invitees, whether minor or adult. Subject to Notice and Hearing and approval by a majority of the Board, any such costs and expenses shall be levied by the Board as a Compliance Assessment against such Owner. The Corporation may, after notice and hearing as provided in the By-Laws, levy a Special or Compliance Assessment against said Owner equal to the increase, if any, in insurance premiums directly attributable to the damage caused by the Owner or person for whom the owner may be responsible.

Section 5. Signs. Subject to the provisions of California Civil Code, Sections 712 and 713, 1353.5 and 1353.6, and Government Code Section 434.5, as same may be amended from time to time, and any Sign Program adopted by the Architectural Review Committee, no sign of any kind shall be displayed to the public view on or from any Condominium Unit or the Common Property without the approval of the Corporation, except such signs as may be used by Declarant for as long as Declarant owns an interest in a portion of Lot 1 of Tract 61304, in connection with the development of the

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Project and sale of Condominiums, and except one (1) "for sale," "for lease" or "for exchange" sign of reasonable size on any Condominium Unit. Only professional signs shall be allowed and an Owner or his agent may not post any signs or advertising at an entrance to the Project or in the Common Property unless approved by the Board or allowed by the Rules and Regulations. In addition to the foregoing, all signs permitted under this Section shall conform with the City's sign ordinance, if any, and with all applicable governmental regulations.

Notwithstanding the foregoing, signs relating to the operation of businesses in the Shopkeeper Spaces and signs relating to the operation of businesses in the Retail Condominium Units may be displayed, without the approval of the Corporation, in those portions of the Common Property described and depicted on Exhibit "G" attached hereto and incorporated by reference, provided that: (1) the size, shape, color, and display of such signs shall be approved in writing by the Agency and/or the City; (2) the owner of the Shopkeeper Spaces or Retail Condominium Unit where the business is operated shall be solely responsible and liable for the maintenance and repair of the signs relating to the operation of businesses in such Shopkeeper Spaces and Retail Condominium Units; and (3) the Owner of the Shopkeeper Spaces or Retail Condominium Unit (as applicable) shall maintain adequate insurance coverage and indemnify the Corporation from and against any and all claims and liabilities arising out of or in any way relating to the display of such signs (including, without limitation, any and all claims for copyright and trademark infringement, advertising injury, bodily injury and property damage). The Corporation shall be responsible for enforcing the sign program pertaining to the Shopkeeper Units.

There is hereby created, granted and reserved in favor of each Owner of a Shopkeeper Space and Retail Condominium Unit a nonexclusive easement in, on, over, across and through those portions of the Corporation Property described and depicted on Exhibit "G" attached hereto, as reasonably necessary for purposes of the installation, placement, maintenance, repair, and replacement of all signs pertaining to the operation of businesses in such Shopkeeper Spaces and Retail Condominium Units that have been approved in writing by the Agency and/or the City. The Owner of the Shopkeeper Space or Retail Condominium Unit to which such signs pertain shall give reasonable advance notice of its intent to commence any work in connection with the installation, placement, maintenance, repair, or replacement of such signs, and, prior to commencing such work, shall provide the Corporation with written evidence of its compliance with the provisions of this Section.

Notwithstanding the foregoing, signs relating to parking in the Parking Condominium Units may be displayed, provided that: (1) the size, shape, color, and display of such signs shall be approved in writing by the Agency and/or the City and the Corporation; (2) the owner of the Parking Condominium Unit shall be solely

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responsible and liable for the maintenance and repair of such signs; and (3) the Owner of the Parking Condominium Unit shall maintain adequate insurance coverage and indemnify the Corporation from and against any and all claims and liabilities arising out of or in any way relating to the display of such signs (including, without limitation, any and all claims for copyright and trademark infringement, advertising injury, bodily injury and property damage).

Section 6. Maintenance of Animals. No animals of any kind shall be raised, bred or kept in any Condominium Unit or in the Common Property, except that common domesticated dogs, cats, birds or other household pets (other than small household pets such as fish), may be kept only in each Residential Condominium Unit in reasonable numbers as determined by the Board; provided, however, that no animal shall be kept, bred or maintained for any commercial purpose and shall not exceed any weight limitations, if any, established by the Board. As used in this Declaration, "reasonable numbers" shall ordinarily mean two (2) total pets (excluding fish and other small household pets) per Condominium; however, the Board may determine that a reasonable number in any instance may be more or less than two (2). Each Owner shall be responsible for cleaning up any excrement or other unclean or unsanitary condition caused by said animal in the Project. While walking or exercising an animal in the Project, the owner thereof shall, at all times, have readily available means to cleanup any excrement or other unclean or unsanitary conditions caused by said animal. All permissible pets belonging to Owners, tenants, lessees or guests must be kept within an enclosed area, or on a leash being held by a person capable of controlling the animal. The Corporation, upon the approval of two-thirds (2/3) of the Board, shall have the right to prohibit maintenance of any animal within the Project which constitutes a private nuisance to any other person. Every person bringing an animal upon or keeping an animal in the Project shall be liable pursuant to the laws of the State of California to each and all persons for any injury or damage to persons or property caused by such animal.

Section 7. Quiet Enjoyment. No Owner shall permit or suffer anything to be done in the Project or kept upon such Owner's Condominium which will obstruct or unreasonably interfere with the rights of quiet enjoyment of the other occupants, or annoy them by unreasonable noises (e.g., inappropriate use of horns) or otherwise, nor will any Owner commit or permit any nuisance on the premises or commit or suffer any immoral or illegal act to be committed thereon. Each Owner acknowledges and understands that the Project is a mixed commercial and residential Condominium project, that the Condominium buildings are not sound and/or odor proof and that noises and/or odors from adjacent Condominiums (e.g., the Retail Condominiums) and the Corporation Property may be heard or smelled. Notwithstanding the foregoing, for as long as Declarant owns any interest in a portion of Lot 1 of Tract 61304, the Declarant's efforts in selling the Condominiums may interfere with the

which violates Civil Code Section 1353.7 (relating to the installation and repair of a roof).

Section 9. Improvements. There shall be no construction, alteration or removal of any Improvement in the Project (other than those repairs or rebuilding permitted herein, including the Article entitled "Damage or Destruction to the Corporation Property") without the approval of the Architectural Review Committee, as set forth hereinbelow. No Improvement shall be constructed upon any portion of any Corporation Property, other than such Improvements as shall be constructed: (a) by the Declarant (or a person or entity to whom Declarant assigns its rights as developer) or (b) by the Corporation as provided herein, as may be permitted by the Architectural Review Committee in accordance with the Article herein entitled "Architectural Review - Approval." Each Owner assumes all risks which may result from improvements he makes to his Condominium Unit, and each Owner indemnifies and holds harmless the Corporation, 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 such improvements. **EXCEPT AS OTHERWISE PROVIDED IN THIS DECLARATION, NO OWNER MAY MODIFY ANY PORTION OF THE EXTERIOR OF THE CONDOMINIUM BUILDINGS.**

Section 10. Windows. No window in any Condominium Unit shall be covered in whole or in part, inside or outside, with aluminum foil, newspaper, paint, tint or any other material reasonably deemed inappropriate for such use by the Architectural Review Committee; provided, however, an Owner may use plain white sheets to cover windows for a period not to exceed three (3) months after the close of escrow pending the installation of drapes, curtains, shutters or other appropriate interior window coverings. Subject to review and approval by the Architectural Review Committee, an extension of three (3) months may be provided. In the event an Owner has installed appropriate window coverings for all windows facing the street, the Architectural Review Committee shall automatically grant such Owner a three (3) month extension to obtain necessary window coverings for any windows of his Condominium that do not face a street. The Retail Condominiums are exempt from this provision.

Section 11. Commercial Use of Residential Condominium Units. As required by the City, the commercial portion of the Shopkeeper Space (e.g., see Exhibit "K" attached hereto) shall be used only for commercial purposes by one or more persons who physically reside in the Residential Condominium Unit in which the Shopkeeper Space is located, on terms and conditions specified in commercial business licenses issued by the City, and may not be used for any residential use or any of the prohibited purposes set forth in Exhibit "L" attached hereto and incorporated by reference. As required by the City, no portion of any Shopkeeper Space may be

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rented or leased, except in conjunction with the rental or lease of the entire Residential Condominium Unit in which the Shopkeeper Space is located (i.e., the tenant must lease both the Shopkeeper Space and all other portions of the Residential Condominium Unit in which the Shopkeeper Space is located). As required by the City, the Residential Condominium Units facing the east/west alley adjacent to the Project may not be used for commercial purposes; however, as with all of the Residential Condominium Units in the Project, they may be used to conduct home-based businesses in accordance with this Declaration and on terms and conditions authorized in Home Occupation licenses issued by the City. Except as otherwise provided in this Declaration, no business, commercial, manufacturing, mercantile, storage, vending or industrial operations of any kind shall be conducted in or upon any Residential Condominium Unit or the Common Property, except such temporary uses as shall be permitted by Declarant while the Project is being constructed and Condominiums are being sold by the Declarant. Notwithstanding the foregoing, this Section shall not preclude an Owner of a Residential Condominium Unit from maintaining a home-based business and conducting business activities therefrom on the following conditions: (a) there is no external evidence of such activity; (b) such activities are conducted in conformance with all applicable government ordinances (e.g., a Home Occupation license is obtained from the City); (c) the patrons or clientele of such activities do not visit the Condominium Unit or park automobiles or other vehicles within the Project; (d) the existence or operation of such activities is not apparent or detectable by sight, sound or smell from outside of the boundaries of the Condominium Unit; (e) no such activity increases the liability or casualty insurance obligation or premium of the Corporation; and (f) such activities are consistent with the character of the Project and conform with the provisions of this Declaration. In no event, however, shall any Owner or the Corporation use a Condominium Unit as an office for the rental, resale or leasing of Condominiums without the prior written consent of Declarant.

Section 12. Use of Retail Condominium Units.

As required by the City and Agency, the Retail Condominium Units in the Project may be used only for indoor and outdoor dining, retail sales, public markets, arts and crafts, shows, and other similar commercial purposes, on terms and conditions specified in commercial business licenses issued by the City. The Retail Condominium Units may not be used for any of the prohibited purposes set forth in Exhibit "L" attached hereto and incorporated by reference.

(a) Agency's Right to Approve or Disapprove Tenants During First Five Years of Occupancy. Until the fifth (5th) anniversary of the City's issuance of a certificate of occupancy for a Retail Condominium Unit ("Tenant Approval Period"), the Executive Director of the Agency shall have the

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common trash dumpsters, recycling bins or parking spaces designated solely for residential use or Shopkeeper Space Use.

(c) The Retail Condominium Units shall not be used for conducting any of the prohibited uses specified on Exhibit "L" attached hereto and incorporated by reference.

(d) The delivery or shipment of merchandise, supplies, and fixtures to and from the Retail Condominium Units shall be accomplished in a manner that shall not unreasonably interfere with the quiet enjoyment or the security of the Residential Condominium Units.

(e) Except as permitted herein, the Owner of a Retail Condominium Unit shall not allow or permit any continuing vibration ("Vibration") or any offensive or obnoxious and continuing noise ("Noise") or any offensive or obnoxious and continuing odor ("Odor") to emanate from the Retail Condominium Unit into the Corporation Property, Residential Condominium Units, or other Retail Condominium Units, nor shall Owner allow or permit any machine or other installation thereon or the conduct of its business to constitute a nuisance or otherwise to unreasonably interfere with the safety or comfort of any of the Owners of other Units. Construction, remodeling and maintenance of a Retail Condominium Unit and activities reasonably necessary to accomplish the same shall not be deemed to be a Vibration, Noise or Odor within the meaning of this subsection. Upon the failure of the Owner of a Retail Condominium Unit to remedy Noise or Vibration after receiving notice from the Board and a ten (10) day opportunity to cure, the Board may at its option elect to either: (1) attempt to resolve the matter by agreement with the Owner of the Retail Condominium Unit; or (2) utilize the dispute resolution provisions herein.

(f) An Owner of a Retail Condominium Unit shall be entitled to encroach upon public sidewalk areas adjacent to, but not included within, the Project for sidewalk seating, provided that: (i) such Owner shall have first obtained the written consent of the City of Long Beach and any other applicable governmental agency; and (ii) all designs or plans and specifications for such sidewalk area shall be consistent with reasonable Architectural Guidelines applicable thereto.

(g) Subject to the provisions herein, an Owner of a Retail Condominium Unit shall be entitled to make improvements and alterations within the boundaries of such Owner's Retail Condominium Unit or to establish the storefront, awning or sign within the Common Areas provided that all plans and specifications for such improvements and alterations shall be consistent with the architectural design guidelines and sign program approved for the Project by the City and/or Agency.

The Owner of the Retail Condominium Unit shall, at its sole cost and expense, be responsible for maintaining the storefront, awning and sign in accordance with the reasonable guidelines set forth by the Architectural Review Committee.

Section 14. Loading Facilities. Unless otherwise authorized by Declarant or the Board in their sole discretion, all loading and unloading shall be performed in a Designated Loading Easement Area (e.g., Exhibit "F"), and not on any other portion of an affected Retail Condominium Unit, Corporation Property or public property. As required by the City's ordinances for Downtown Planned Development District (PD-30), all product loading and service areas shall be screened from public view from a public right-of-way. Subject to the Rules and Regulations of the Corporation, all Owners shall have the right to use the Designated Loading Easement Areas. If provided in the DRE approved budget for the Project, the Owners of the Retail Condominium Units shall be responsible, at their sole cost and expense, for the maintenance of the Designated Loading and Corridor areas described and/or depicted on Exhibit "F."

Section 15. Trash. Unless otherwise authorized by Declarant or the Architectural Review Committee in their sole discretion, all trash generated by the Owners of Residential Condominium Units must be deposited in designated sanitary trash containers in common trash areas within the Corporation Property that are screened from public view on all sides, as may be designated by the Board or the Architectural Review Committee. Such trash areas may not be used by the Owners, residents, tenants, or occupants of the Retail Condominium Units or the Shopkeeper Spaces. Trash may not be stored overnight in patio or balcony areas or other Exclusive Use Residential Corporation Property areas.

Each Owner of a Retail Condominium Unit shall maintain its own separate sanitary trash containers located in the Exclusive Use Corporation Property trash area described and/or depicted in the Condominium Plan for the Retail Condominium Units (see Exhibit "J" for general location of trash area). As required by the City, the trash containers shall be screened from public view on all sides. Trash generated by the use of the Retail Condominium Units shall not be deposited within any common trash receptacles on the Corporation Property which are designated for residential use. The sanitary trash containers located in the Exclusive Use Corporation Property trash area may not be used by the Owners, residents, tenants, or occupants of the Shopkeeper Spaces or the Residential Condominium Units. However, as required by the Agency (and discussed hereinabove), the Outside Businesses listed on Exhibit "I" shall have the right to deposit trash within the Exclusive Use Corporation Property trash areas on the terms and conditions specified in this Declaration.

Trash generated by the Shopkeeper Spaces shall be deposited in the trash areas described and/or depicted on Exhibit "J" attached hereto and incorporated by reference. Such trash areas may not be used by the Owners, residents, tenants, or occupants of the Retail Condominium Units or the Residential Condominium Units. The Board may levy a Special Assessment on the Owners of the Shopkeeper Spaces for the cost of maintaining such trash areas.

No trash or containers may be left or stored on patios or balconies or in hallways. In addition, no toxic or hazardous materials (other than household cleansers) may be disposed of within trash containers or trash chutes within the Project. As required by the City, and except as provided herein, the Corporation shall be responsible for managing all refuse collection for the Project as described in the refuse collection plan for the Project originally approved by the City. The Board may adopt additional rules and regulations regarding disposal of trash as the Board may deem reasonable and necessary.

Section 16. Parking. All vehicles in the Project shall be parked in accordance with the following:

(a) The subterranean garage and all driveways and accessways to the garage are subject to the Protective Covenants of this Declaration, as well as all applicable laws, ordinances and regulations of all governmental agencies having jurisdiction over the Project. Parking is permitted only in designated parking spaces within the subterranean garage (e.g., see Exhibit "E"). The number of parking spaces within the subterranean garage that may be assigned to Condominiums within the Project may differ. Any unassigned open parking spaces, if any, shall be available on a first-come, first-served basis to all guests, visitors and temporary parking for Owners to accommodate delivery of items and/or moving in and out of the Condominium. Notwithstanding the foregoing, no vehicle may be temporarily parked in any unassigned parking space for more than the applicable continuous hour limitation approved by the Board;

(b) Except as may be otherwise expressly permitted by the Corporation pursuant to duly adopted Rules and Regulations, or approved by a governmental agency exercising appropriate jurisdiction, parking in or obstructing any fire lanes in the Project, is prohibited;

(c) Except as otherwise permitted by the Corporation, as set forth herein, no Owner shall park any vehicle on any portion of the Project, except wholly within his/her assigned Exclusive Use Corporation Property parking space(s) in the subterranean garage. No Exclusive Use Corporation Property parking space may be sold or assigned to, or retained in the ownership of, any person not an Owner, and no Exclusive

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Use Corporation Property parking space may be rented or leased to a non-Owner except in connection with the rental or lease of a Condominium. Without limiting the generality of the foregoing, no Owner shall park any large commercial type vehicle or any recreational vehicle (including, but not limited to, campers, motorhomes, trailers, boat trailers, boats, mobile homes or other similar vehicles) on any portion of the Project; provided, however, that large commercial type vehicles delivering goods and supplies to the Retail Condominium Units may be temporarily parked in the Designated Loading Easement Areas described and depicted on Exhibit "F" attached hereto and incorporated by reference;

(d) Each Owner shall keep his/her Exclusive Use Corporation Property parking space readily available for parking of his/her respective vehicle(s), and shall not store any goods or materials therein (except if within a designated storage space, if any), nor use any portion thereof for a workshop or other use, if such storage or use would prevent said Owner from parking the number of four wheel vehicles therein for which said Exclusive Use Corporation Property parking space was originally designed and constructed by Declarant to accommodate. Each Owner shall ensure that his/her Exclusive Use Corporation Property parking spaces are at all times available for parking and shall use such spaces for parking his/her vehicles therein when said vehicles are in the Project. Each Owner acknowledges that the configuration of parking spaces within the garage may be irregular (e.g., head-to-head, diagonal, parallel, and tandem parking spaces may all be included within the garage). Each Owner acknowledges and understands that the irregular configurations and the height of the garage may prohibit the parking of certain vehicles within the garage or an Owners parking space(s). The gates to the subterranean garage shall remain closed at all times, except as reasonably required for entry to and exit from the subterranean garage;

(e) No Owner shall conduct any repairs to any motor vehicle of any kind whatsoever in the subterranean garage or upon any portion of the Common Property or his Condominium, except for emergency repairs thereto and then only to the extent necessary to enable the vehicle to be moved to a proper repair facility;

(f) As required by the Agency and the City, the subterranean parking garage shall contain no less than three hundred eight (308) parking spaces, of which certain parking spaces shall be designated for use by Owners and other residents of the Project and their guests, and other parking spaces shall be designated for commercial/retail uses and public parking (as described and depicted on Exhibit "E" attached hereto and incorporated by reference). Owners and residents of the Project may not park in the commercial/retail

and public parking spaces unless said Owner complies with the rules and regulations imposed on such spaces by the Owner therefor (i.e., the Parking Condominium Unit Owners). The hours of operation of the public parking spaces shall be 8:00 am. to 1:00 a.m. on Sundays through Thursdays and holidays on which the Long Beach City Hall is closed and 8:00 a.m. to 2:00 a.m. on Fridays and Saturdays. The Corporation or Owner of the Parking Condominium Unit (with respect to parking spaces located within the Parking Condominium Unit) shall prevent loitering in all parking and landscaping areas during the hours of operation of the public parking spaces and shall cause the public parking and landscaping areas to be cleaned of trash debris on a daily basis. If loitering problems develop, the City's Director of Planning and Building shall have the right to require the Corporation or Owner of the Parking Condominium Unit (with respect to parking spaces located within the Parking Condominium Unit) to take additional preventative measures, including, without limitation, installing additional lighting or private security guards, to discourage loitering.

(g) As required by the City, the Corporation shall maintain appropriate security lighting, with light and glare shields so as to avoid any light intrusion onto adjacent or abutting residential buildings or neighborhoods pursuant to Section 21.41.259 of the City's Municipal Code, in all parking areas serving the Project (e.g., subterranean garage in the Project). Lighting levels in the garage shall comply with Section 21.41.259 of the City's Municipal Code. In addition, the Corporation shall implement other reasonable and appropriate security measures that are required by the City's Chief of Police. The method of separation of residential parking from commercial parking, garage security, access restrictions, and the allocation of parking spaces shall be consistent with City requirements applicable to the Project.

(h) As required by the City, the entry sign to the subterranean garage in the Project shall be compatible with all downtown signage, to the satisfaction of the Agency.

(i) No cabinets, drawers, lockers, storage bins, tool containers or sheds, bicycle hooks or racks, tool racks, or any other type of container or rack shall be placed on the floor of the garage or affixed to the ceiling or any of the walls of the garage, except those bicycle lockers, chain link storage lockers, storage cabinets, and bicycle racks originally installed by Declarant as an option or upgrade to a Condominium, if any. No bicycle locker, chain link storage locker, storage cabinet, or bicycle rack originally installed by Declarant may be rented or leased to a non-Owner except in connection with the rental or lease of a Condominium. No illegal, toxic or hazardous substance or material (including

gasoline and other flammable petroleum products), weapons, or ammunition may be stored within or on a bicycle locker, chain link storage locker, storage cabinet or bicycle rack. The Board may establish other Rules and Regulations concerning the use of the bicycle lockers, chain link storage lockers, storage cabinets, and/or bicycle racks. Any Owner or other resident who elects to use a bicycle locker, chain link storage locker, storage cabinet, or bicycle rack does so at his/her own risk. Neither Declarant nor the Corporation assumes any responsibility for, or makes any warranty or representation with respect to, the security, privacy, or safety of any bicycle locker, chain link storage locker, storage cabinet or bicycle rack, or any item contained therein.

Section 17. Regulation of Parking. Subject to the rights of the Corporation, through its officers, committees and agents, the Board is hereby empowered to establish "parking" and "no parking" areas within the Corporation Property, including any fire lanes, in accordance with Section 22658.2 of the California Vehicle Code, or any similar statute hereafter enacted, as well as to enforce these parking limitations by all means lawful for such enforcement, including, but not limited to, the levying of fines and the citing and towing of vehicles; however, the Board may not approve installation of speed bumps unless written approval is obtained from the City. The Board shall have the authority to tow away and store any vehicle or similar equipment parked in violation of the above limitations whether the same shall belong to any Owner or a member of his family or to any tenant, lessee, guest or invitee of any Owner. Charges for such towing and storing shall be assessed against the Owner of the Condominium which is responsible for the violation of such restrictions, and such assessment may be enforced as a Compliance Assessment. Subject to the approval of the Agency or the City, as well as the rights of the Corporation, through its officers, committees and agents, the Board is also hereby empowered to establish reasonable rules and standards for the operation of the subterranean garage. The Board shall allow the Owners of the Retail Condominium Units to establish and utilize valet parking services in connection with the operation of their businesses, provided that the Owners of the Retail Condominium Units establish, to the reasonable satisfaction of the Board, that they have appropriate insurance coverage relating to such services and that such services are otherwise reasonable.

Section 18. Compliance With Management Documents. All Owners shall comply with all of the Protective Covenants as set forth herein, with the provisions of the Articles and the By-Laws, with all Rules and Regulations of the Corporation.

Section 19. Solar Heating. As set forth herein, Owners shall have the right to place and maintain equipment and facilities related to the installation and maintenance of individual solar

heating systems within his or her Unit or Exclusive Use Corporation Property (e.g., patio, balcony). The installation and maintenance of any solar system by an individual Owner shall be subject to all applicable zoning regulations, the Uniform Building Code and City associated ordinances, and reasonable review by the Architectural Review Committee for compliance with the architectural standards adopted by the Corporation, based on reasonable standards consistent with Section 714 of the California Civil Code, as same may be amended from time to time.

Section 20. Antennas/Miscellaneous. No radio station or shortwave operators of any kind shall operate from any Condominium. The Board may contract with a third party television service provider ("T.V. Service Provider") for master antenna television service at the Project in which case, each Residential and Retail Condominium Unit within the Project shall receive such television service, and the cost of such service shall be included in the Assessments for each Condominium; no Owner shall have the right to opt out of such service. To the extent that an Owner desires additional programming beyond what is included in the master antenna television service, the Owner shall be responsible for contracting with and paying the T.V. Service Provider directly for such additional programming. Except as otherwise required by law, no Owner shall install, or cause to be installed, or maintain any television, radio, "Citizens Band" (C.B.) antenna, satellite dish or other similar electronic receiving or broadcasting device (including those devices having a diameter or diagonal measurement of one meter or less) in the Project. If the installation of such an antenna, satellite dish or other electronic receiving or broadcasting device is mandated under the law, it shall not be installed in such a manner as to be visible from the Corporation Property, unless such installation is (1) approved by the Architectural Review Committee (which approval for a video or television antenna, including a satellite dish, shall not be unreasonably withheld or delayed but may include restrictions which do not significantly increase the cost of the installation, maintenance or use of the device or significantly decrease its efficiency or performance or preclude reception of an acceptable quality signal) and (2) in compliance with all applicable ordinances of the City, California Statutes (e.g., Civil Code Section 1376), and Federal Regulations, as each may be amended or revised. Installation consistent with this requirement shall be allowed only within an Owner's Exclusive Use Corporation Property patio or balcony and not within any other portion of the Corporation Property (e.g., attached to the exterior portion of the Condominium building). No basketball backboard or other fixed sports apparatus may be constructed or maintained in the Project without the Architectural Review Committee's prior approval. No fence or wall may be erected, altered or maintained on any Condominium except with the Architectural Review Committee's prior approval. No wiring or air conditioning fixture, water softener or other devices may be installed on the exterior of the condominium building or in a

Condominium or be allowed to protrude through the walls or roof of the condominium building, except one (1) or more chimneys and vents originally installed, if at all, by Declarant, in a Condominium (with the exception of those items installed during the original construction of the residential structure in a Condominium) unless the Architectural Review Committee's prior written approval is obtained.

Section 21. Water Softeners. No Owner of a Residential Condominium Unit shall install any on-site regenerative water softener within any portion of the Project, unless approved in writing by the Board (or done in a manner consistent with standards approved by the Board) and applicable governmental agency.

Section 22. Leasing. No Owner shall be permitted to rent or lease his Residential Condominium for transient or hotel purposes or for a period of less than thirty (30) days. By unanimous vote of the Board, more stringent leasing requirements may be adopted and imposed equally against all Owners of Residential Condominium Units in the Project. All rental and lease agreements shall be in writing and shall provide that the terms of such agreement shall be subject in all respects to the provisions of this Declaration, By-Laws, Articles, and Rules and Regulations, and that any failure by the tenant or lessee to comply with the terms of such documents shall constitute a default under such agreement. Notwithstanding the foregoing, each Owner shall comply with any initial Owner Occupancy requirements imposed by Declarant.

Section 23. Drilling. No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted within the Project, nor shall oil wells, tanks, tunnels or mineral excavations be permitted within the Project. No derrick or other structure designed for use in boring for oil, water or natural gas shall be erected, maintained or permitted within the Project.

Section 24. Exemption of Declarant. Nothing in this Article or elsewhere in this Declaration shall limit, restrict, abridge or control, in any manner whatsoever, the rights of Declarant to complete the planning, development, grading, construction, advertising, marketing, leasing and sales of the Condominiums, and all other property within the Project, including, without limitation, the following specific rights, which may be exercised by Declarant, its successors and assigns, or by its agents and employees, in conjunction with such development and marketing, until the earlier of (1) when Declarant no longer owns an interest in a portion of Lot 1 of Tract 61304, or (2) five years from the recordation of this Declaration:

(a) The right to maintain and operate one (1) or more advertising, sales or leasing office(s), construction trailer(s), construction parking areas, temporary utility facilities and/or lines, and parking areas, located upon any Property owned by Declarant;

(b) The right to post and display from any Corporation Property any sign, flag, banner, billboard or other advertising which Declarant may, in its sole discretion, deem appropriate, irrespective of size, color, shape or materials of such items, so long as such use does not unreasonably interfere with the Owner's normal use and enjoyment of the Corporation Property;

(c) The right to install, place, replace, construct, reconstruct, modify or remove any Improvement from any Corporation Property, as Declarant may, in its sole discretion, deem appropriate; provided that in the event Declarant removes any Corporation owned Improvement from any Corporation Property without the express prior written consent of the Board, Declarant shall replace such Improvement with an Improvement of substantially similar value, appearance and utility within a reasonable period following completion of any work necessitating the removal of the Improvement;

(d) The right to conduct any commercial activity upon any Corporation Property which reasonably relates to the development, marketing, leasing or sales of the Condominiums in the Project;

(e) The right to park vehicles upon any Corporation Property; and

(f) The right to use the subterranean garage and streets within the Project, which right shall also extend to prospective purchasers or lessees of the Condominiums or of other property within the Project.

All or any portion of the rights of Declarant herein and elsewhere in this Declaration may be assigned by Declarant to any successor-in-interest in the Project, by an express written assignment recorded in the Office of the County Recorder.

Section 25. No Easements For View Purposes; Disclaimer. Neither the City, the Declarant nor the Architectural Review Committee, nor the members, representatives, employees or consultants of any of the foregoing, have made any representations whatsoever concerning the view, if any, that a particular Condominium or other Improvement thereon will enjoy. There are no rights, express or implied easements whatsoever appurtenant to any Condominium for view purposes or for the passage of light and air across any other Condominium or any property not within the Project, regardless of whether such Condominium is owned by Declarant. Each Owner accepting a deed to a Condominium hereby expressly acknowledges and agrees that the Condominiums, walls and fences constructed by Declarant, and further construction, both within the Project and in the immediate vicinity of the Project, may impair the view from such Owner's Condominium, and each Owner hereby expressly consents to any such impairment. Each Owner

further acknowledges and understands that property surrounding the Project may be developed or redeveloped in accordance with applicable City standards, and that the City has no view preservation ordinance.

Section 26. Screen Doors. No Owner shall install any screen door in any portion of the Condominium Unit unless such Owner has written approval from the Architectural Review Committee or the screen was originally installed by Declarant.

Section 27. Best Management Practices. All Owners and other residents in the Project shall comply with the Best Management Practices adopted for the Project.

Section 28. Hazardous or Toxic Waste. Nothing other than natural rain water or potable water may be discharged into the storm drains and storm drainage system located on private or public property. The National Pollutant Discharge Elimination System (NPDES) and Section 5650 of the California Fish and Game Code prohibit, among other things, discharging anything other than natural rain water into storm drainage systems. Toxic chemicals or hydrocarbon compounds such as gasoline, motor oil, antifreeze, solvents, paints, paint thinners, wood preservative and other such fluids shall not be discharged into any street, public or private, or into storm drains or storm water conveyance systems. Use and disposal of pesticides, fungicides, herbicides, insecticides, fertilizers and other such chemical treatments shall meet Federal, State, County and City requirements as prescribed on their respective containers. All Owners within the Project are required to comply with such restrictions. Owners shall wash vehicles within the Project only if allowed by law and then, if applicable, only in accordance with the requisite requirements.

Section 29. Patio and Balcony Areas. No Owner shall use or permit his or her Exclusive Use Corporation Property patio and/or balcony area to be used in any manner which will obstruct or interfere with the rights of quiet enjoyment of other occupants or be deemed unsightly by the Board in its sole and absolute discretion. Without limiting the generality of the foregoing, unless otherwise allowed by the Board in the Rules and Regulations, no Owner shall (i) install, place, keep or store any storage units, boxes, refuse, recyclable materials, storage, refuse, or recycling containers, woodpiles, clotheslines, clothes drying racks, or other equipment, bicycles, or any children's toys or equipment (including, without limitation, tricycles, wagons, strollers, skateboards, scooters, slides, and playhouses) within his or her patio or balcony area; (ii) maintain any plants or planter boxes on top of the fence or railing enclosing his or her patio or balcony area; or (iii) water any plants located within his or her patio or balcony area in such a manner so that excess water drains onto the Condominium Units or persons adjacent to or beneath the patio or balcony areas or other areas deemed inappropriate by the Board.

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Section 30. Rights of Disabled. Subject to the provisions of the Article herein entitled "Architectural Review - Approval," each Owner may modify his Condominium Unit and the route leading to the front door of his Condominium Unit, at his sole expense, in order to facilitate access to his Condominium Unit by Persons who are blind, visually impaired, deaf or physically disabled, or to alter conditions which could be hazardous to such Persons.

Section 31. Water Beds. Each Owner hereby acknowledges that no water beds are allowed in the Project and any Owner who breaches this Section shall indemnify and hold the Declarant, Corporation, and Members harmless from any claims, damages, losses or other liability arising from such breach.

Section 32. Mechanics Liens. No Owner nor any of the Owner's respective tenants, guests or invitees shall cause or permit any mechanic's lien to be filed against the Project for labor or materials alleged to have been furnished or delivered to any Condominium or any portion thereof. Any Owner who does so shall immediately cause the lien to be discharged within five (5) days after notice from the Board. If any such party fails to remove such mechanic's lien, the Board may discharge the lien and, if the Board discharges such lien, the Board may charge the applicable Owner a Special Assessment for such cost of discharge.

Section 33. No Security Bars or Roll-Up Doors. As required by the City, exterior security bars and roll-up doors shall not be applied to any windows or pedestrian entrances to the Condominium buildings in the Project.

Section 34. Exterior Public Telephones. As required by the City, any request for the installation of an exterior public telephone within the Project (*i.e.*, a public telephone not located within the interior of the Condominium buildings in the Project) shall be administered pursuant to Chapter 5.71 of the City's Municipal Code, as the same may be amended from time to time.

Section 35. Privacy Standards. As required by the City, the Project shall comply with the residential privacy standards contained in the City's ordinance for the Downtown Planned Development District (PD-30) (*i.e.*, the required distance from the primary room window to the primary window of other units shall be at least 40 feet, the required distance from the primary room window to the public corridor or walkway shall be at least 8 feet, the required distance from the primary room window to the front or side street property line shall be at least 10 feet, and the required distance from the primary room window to the interior side/rear property line or blank wall shall be at least 15 feet).

Section 36. No Warranty of Enforceability. While Declarant has no reason to believe that the restrictive covenants

shall be responsible for all routine maintenance, such as sweeping and cleaning, and changing lightbulbs in the patio and balcony areas; Retail Condominium Unit Owners shall be responsible for all maintenance, including, without limitation, routine and structural maintenance of the patios appurtenant to their Condominium Units);

(b) As required by the City, any graffiti found on the exterior of the Condominium buildings or on other Improvements within the Project shall be removed within twenty-four (24) hours of its appearance;

(c) Sound walls, retaining walls and Project perimeter fences and walls, including all gates, latches and locks associated therewith (latches, hinges, locks etc. associated with fences or walls associated with the patios shall be maintained by the applicable Owners unless otherwise provided by the Board). Project perimeter fences and walls shall mean and refer to those certain walls and fences which were originally constructed by Declarant on the Corporation Property or other portion of the Project, which are designated by Declarant or the Board to constitute Project perimeter fences and walls and which will be maintained by the Corporation as provided herein;

(d) Private on-site sewer and drainage facilities and devices, including any cross-connection drainage devices, to the extent that such facilities and devices are not maintained by a public sewer agency or district other utilities (e.g., sewer and water lines); provided, however, that each Owner shall be responsible for inspecting, maintaining, repairing, and replacing (as the case may be) all sewer and water lines, grease traps, and oil/water separators, if any, which are located within or which exclusively serve said Owner's Condominium Unit;

(e) The private on-site storm drainage system for the Project, in accordance with all Best Management Practices adopted for the Project;

(f) All common amenities, mailbox structures servicing multiple Condominiums, Project signs and monumentation (excluding signs used in connection with the operation of businesses in the Retail Condominium Units and Parking Condominium Units), the Public Access Walkway (see Exhibit "N" attached hereto), and the Project entry gates (including, without limitation, the gates barring access to the Public Access Walkway);

(g) All landscaped areas, including the street trees along the public streets adjacent to the Project depicted as an exhibit to this Declaration (e.g., see Exhibit "A-1"), excepting therefrom any landscaping or other Improvements located in Exclusive Use Corporation Property. As required by the City and the Agency, landscape maintenance shall include, but not be limited to, watering, irrigation, fertilization, mowing, edging, weeding, removal and replacement of dead landscaping material, trimming of grass, and tree and shrub pruning. All landscaped areas shall be maintained in a neat and healthy condition. Any dying or dead plant materials shall be replaced with the minimum size and height plant(s) required by Chapter 21.42 (Landscaping) of the Zoning Regulations. At the discretion of the City, a yearly inspection may be conducted by the City to verify that all irrigation systems are working properly and that the landscaping is in good healthy condition. The Corporation shall reimburse the City for the cost of the inspection as per the special building inspection specifications established by the City Council. Where feasible, all landscape areas shall be planted with drought tolerant plant materials. All landscape areas shall be provided with water conserving automatic irrigation systems designed to provide complete and adequate coverage to sustain and promote healthy plant life. The irrigation system shall not cause water to spray or flow across a public sidewalk;

(h) A program for the inspection and the maintenance of, all fire sprinklers, fire standpipes, fire alarm systems, fire extinguishers, fire escapes, and other fire prevention equipment and/or facilities, if any, originally installed by Declarant in the Condominium buildings in a condition comparable to the condition originally approved by the City; provided, however, that each Owner of a Retail Condominium Unit shall be solely responsible for the inspection and maintenance of any and all fire sprinklers, fire standpipes, fire alarm systems, fire extinguishers, and other fire prevention or suppression equipment located within or servicing his Retail Condominium Unit;

(i) All common recreational facilities (e.g., fitness club, lobby with kitchen), in a condition comparable to the condition originally approved by the City;

(j) All amenities and all furnishings, equipment and other personal property owned by the Corporation;

(k) All Corporation Property lighting facilities, if any;

(l) An inspection and preventive program for the prevention and eradication of infestation by wood destroying

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pests and organisms in the Corporation Property. In connection with the inspection and prevention program for the prevention and eradication of infestation by wood destroying pests and organisms, the Corporation, upon reasonable notice (which shall be given no less than fifteen [15] days nor more than thirty [30] days before the date of temporary relocation) to each Owner and the occupants of his/her Condominium Unit, may require such Owner and occupants to temporarily relocate from such Condominium Unit in order to accommodate efforts by the Corporation to eradicate such infestation. The notice shall state the reason for the temporary relocation, the date and time of beginning of treatment, the anticipated date and time of termination of treatment, and that the occupants will be responsible for their own accommodations during the temporary relocation. Any damage caused to a Condominium Unit by such entry by the Board or by any person authorized by the Board shall be repaired by the Board as a Common Expense of the Corporation. All costs involved in maintaining the inspection and preventive program as well as repairing and replacing the Corporation Property and Improvements thereon when the need for such maintenance, repair or replacement is the result of wood destroying pests or organisms shall be a Common Expense subject to the restrictions applicable to Special Assessments;

(m) All other areas, facilities, furnishings and Improvements of whatever nature as may, from time to time, be requested by the vote or written consent of three-fourths (3/4) of the voting power of the Members;

(n) Until the termination of the Redevelopment Plan, maintaining all Improvements in the Project in accordance with the requirements of the Agreement Containing Covenants Affecting Real Property between the Agency and the Declarant and any amendments thereto; and

(o) Maintaining everything that the Corporation is obligated to maintain in a clean, sanitary and attractive condition reasonably consistent with the level of maintenance reflected in the most current budget of the Corporation, and in conformance with any Maintenance Guidelines. Unless specifically provided in any Maintenance Guidelines, or as required by the product manufacturers' maintenance guidelines/recommendations, or as commonly accepted maintenance practices may govern, the Board shall determine, in its sole discretion, the level and frequency of maintenance of the Corporation Property and Improvements thereon (each Owner shall maintain everything that the Owner is obligated to maintain in a clean, sanitary and attractive condition and in conformance with any Maintenance Guidelines and Maintenance Recommendations and any product manufacturers' maintenance guidelines/recommendations, as well as commonly accepted maintenance practices).

Except as otherwise provided herein, all costs and expenses for such maintenance above shall be a Common Expense, and shall be paid out of the general operating fund of the Corporation. The Board shall have the right to require that only a contractor or other person approved by the Board enter the roof or other portion of the Corporation Property. A general maintenance matrix is attached hereto as Exhibit "M" and incorporated by reference.

Section 2. Maintenance Manual. The Declarant may deliver to the Board a "Maintenance Manual" which sets forth the Declarant's and its consultants' recommended frequency of inspections and maintenance of various components of the Corporation Property. The Board shall, during its meetings, determine whether the recommended inspections and maintenance activities have been followed, and, if any such recommendations have not been followed, what corrective steps need to be taken to assure proper inspection and maintenance of the Corporation Property. The Board shall keep a record of such determinations in the Board's minutes. The Board shall, from time to time, make appropriate revisions to the Maintenance Manual. The Board shall review the Maintenance Manual for appropriate revisions at least on an annual basis after the Board has prepared the annual pro forma budget and reserve study required by the By-Laws.

In addition to the requirements of any Maintenance Manual, the Board may have the Corporation Property inspected at least once every three (3) years to (a) determine whether the Corporation Property is being maintained adequately in accordance with applicable standards of maintenance, (b) identify the condition of the Corporation Property and any Improvements thereon, including the existence of any hazards or defects, and the need for performing additional maintenance, refurbishment, replacement or repair, and (c) recommend preventative actions which may be taken to reduce potential maintenance costs to be incurred in the future. The Board may employ such experts and consultants as are necessary to perform such inspection. The Board may have a report of the results of the inspection prepared. The report should include at least the following:

(a) A description of the condition of the Corporation Property, including a list of items inspected and the status of maintenance, repair and need for replacement of all such items;

(b) A description of all maintenance, repair and replacement planned for the ensuing fiscal year and included in the budget;

(c) If any maintenance, repair or replacement is to be deferred, the reason for such deferral;

(d) A summary of all reports of inspections performed by any expert or consultant employed by the Board to perform inspections;

(e) A report of the status of compliance with the maintenance, replacement and repair needs set forth in the inspection report for preceding years; and

(f) Such other matters as the Board deems appropriate.

Section 3. Project Inspections. The Board shall require strict compliance with all provisions of this Declaration and shall periodically cause a compliance inspection of the Project to be conducted by the Architectural Review Committee to report any violations thereof. The Board shall also cause inspections of the Corporation Property and all Improvements thereon to be conducted in conformance with the applicable maintenance guidelines, and in the absence of inspection frequency recommendations in any applicable maintenance guidelines at least once every three (3) years, in conjunction with the inspection required for the reserve study to be conducted as required herein, in the By-laws or by State law, to (a) determine whether the Corporation Property is being maintained adequately in accordance with applicable standards of maintenance, (b) identify the condition of the Corporation Property and any Improvements thereon, including the existence of any hazards or defects, and the need for performing additional maintenance, refurbishment, replacement, or repair, and (c) recommend preventive actions which may be taken to reduce potential maintenance costs to be incurred in the future. The Board shall during its meetings, regularly determine whether the recommended inspections and maintenance activities set forth in any applicable maintenance guidelines have been followed and, if not followed, what corrective steps need to be taken to assure proper inspections and maintenance of the Corporation Property and all Improvements thereon. The Board shall keep a record of such determinations in the Board's minutes. The Board shall keep Declarant fully informed of the Board's activities under this Section. The Board shall employ, consistent with reasonable cost management, such experts, contractors and consultants as are necessary to perform the inspections and make the reports required by this Section.

The Board shall prepare a report of the results of each of the inspections required by this Section, which shall comply with Section 2 above, including: For a period of ten (10) years after the date of the last close of escrow for a Lot in the Project, the Board shall also furnish to Declarant (a) the report of each condition inspection performed for the Board, whenever such inspection is performed and for whatever portion of the Corporation Property is inspected, within thirty (30) days after the completion of such inspection, and (b) the most recent inspection report prepared for any portion of the Corporation Property, within ten

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(10) days after the Corporation's receipt of a written request therefor from Declarant.

Section 4. Repair and Maintenance by Owner. Except as otherwise in this Declaration [including, without limitation, in Section 1 above] regarding the Corporation's maintenance obligations affecting an Owner's Condominium, every Owner shall have the duty to maintain, repair and replace, at his sole cost and expense, all Improvements within such Owner's Condominium or which represent an integral part thereof (e.g., pipes, water pressure regulator, plumbing outlets and fixtures, furnaces, ducts [e.g., HVAC, dryer, stove, oven], electrical wiring and circuit breakers, and utility lines and outlets which provide service to only one Condominium, including the internal and external telephone wiring designed to exclusively serve a Condominium Unit), in a neat, clean, safe, sanitary, attractive and orderly condition at all times. Each Owner shall keep his respective Exclusive Use Corporation Property in a neat and clean condition in accordance with the Corporation Rules and Regulations. Without limiting the generality of the foregoing, and by way of example only, and except as may otherwise be provided in Section 1 above regarding the Corporation's maintenance obligations, every Owner shall:

(a) Paint, maintain, repair, replace, restore, decorate, tile, finish, plaster, and/or landscape or cause to so maintained, repaired, replaced, restored, decorated, tiled, finished, plaster, and/or landscaped (as the case may be) the following:

(1) The interior surfaces of the walls, ceilings, and floors of his Condominium Unit. However, no bearing walls, ceilings, floors or other structural or utility bearing portions of the buildings housing the Units shall be pierced or otherwise altered or repaired, without the prior written approval of the plans for the alteration or repair by the Architectural Review Committee, which may approve or disapprove such in its sole and absolute discretion. Each Owner shall have the right to substitute new finished surfaces in place of those existing on the ceiling, floors, walls and doors of his or her Condominium Unit at the time of the original sale of said Condominium Unit from Declarant; however, without Architectural Review Committee approval, hard floor surfaces shall not be installed in areas in which the installation of the hard surface floor covering would increase the level of noise heard in any Condominium Unit, unless such hard surfaces replace hard surfaces previously installed by or approved by Declarant. Notwithstanding anything to the contrary herein or in the Rules and Regulations or guidelines of the Architectural Review Committee, the Board may establish certain sound attenuation measures applicable to flooring and the

installation thereof (including by not limited to the applicable underlayment materials).

(2) The windows and the interior surfaces of doors enclosing the Condominium Unit, including the metal frames, hardware, lock, latches, hinges, weatherstripping, thresholds, tracks and exterior screens of glass doors and windows;

(3) Except as may otherwise be provided above, all window glass, screens, if any, and all interior doors and the structural integrity of the exterior doors (including locks, latches, weatherstripping, and thresholds);

(4) All interior lighting fixtures, all exterior light bulbs controlled by a switch inside the Condominium Unit and all interior plumbing fixtures, including bathtubs, shower stalls, toilets, and sinks, heating, cooling, Cable television, water heating systems, heating systems, and electric equipment/system, and other utilities (e.g., sewer and water lines) which are located within or which exclusively serve said Owner's Condominium Unit (Each Owner of a Retail Condominium Unit shall also be responsible for inspecting and maintaining any and all fire sprinklers, fire standpipes, fire alarm systems, fire extinguishers, and other fire prevention or suppression equipment located within or servicing his Retail Condominium Unit);

(5) All internal and external telephone wiring designed to serve his Condominium Unit;

(6) All kitchen appliances, forced air heating units, the air conditioning unit, the hot water heater, and the garage door opener which are located within or service his Condominium Unit;

(7) Routine maintenance (e.g., sweeping and cleaning) of any Exclusive Use Corporation Property appurtenant to the Condominium Unit (e.g., patio and/or balcony);

(8) The Exclusive Use Corporation Property, excluding those portions maintained by the Corporation; and

(9) For each Retail Condominium Unit only, maintain the floor, slab, fire sprinkler heads and other fire prevention or suppression devices, grease traps, oil/water separators, exhaust fans, air conditioning units and utilities exclusively serving the Retail

Condominium Unit, awnings, commercial signs, Retail Exclusive Use Corporation Property trash areas, trash bins, and corridor providing access to the Exclusive Use Corporation Property trash areas (unless otherwise provided by the Board), outside seating areas (if any - Exhibit "Q"), and Designated Loading Easement Areas described and/or depicted on Exhibit "F" attached hereto and incorporated by this reference.

(10) For each Parking Condominium Unit only, maintain the parking spaces within such Parking Condominium Unit (except to the extent maintained by the Corporation), all signage for the Parking Condominium Unit approved by the City and the Corporation, and the access gate and all access control systems (including, without limitation, any systems that allow the residents of Residential Condominium Units to park within the Parking Condominium Unit).

(b) Comply with the right of the Board to require that only a contractor or other person approved by the Board enter the roof or other portion of the Corporation Property, including Exclusive Use Corporation Property Areas.

(c) In the event any Owner shall fail to perform his/her maintenance obligations as set forth herein, the Corporation shall have the right, but not the duty, to cause such maintenance to be performed. If the Board elects to cause such maintenance work to be performed, the cost thereof (including a reasonable administrative fee) shall be assessed against said Owner as a Compliance Assessment. Each Owner shall reimburse the Corporation for those costs incurred which result from the Condominium occupants' excessive or neglectful use of the Exclusive Use Corporation Property or other portions of the Project.

Section 5. Damage and Destruction Affecting a Condominium.

(a) Duty to Rebuild. In the event any Condominium is damaged or destroyed by fire or other casualty, unless otherwise provided for by the Corporation or insurance coverage provided by the Corporation, it shall be the duty of the Owner to repair or reconstruct the Condominium in a manner which will restore it to its condition and appearance immediately prior in time to such damage or destruction, or as otherwise approved by the Architectural Review Committee. The affected Owner shall be obligated to proceed with all due diligence hereunder, and shall promptly commence reconstruction within a reasonable time after the damage occurs, and shall complete such reconstruction as soon as reasonably possible thereafter. Restoration and repair of any damage to

the interior of any individual Condominium Unit, including, without limitation, all interior walls, lighting fixtures, plumbing fixtures, cabinets, furniture and improvements therein, together with restoration and repair of all interior paint, wall coverings and floor coverings, shall be made by and at the individual expense of the Owner of the Condominium Unit so damaged unless otherwise provided for by the insurance coverage of the Corporation. In the event of a determination to rebuild the adjoining portion of the Corporation Property also damaged or destroyed, such interior repair and restoration shall be completed as promptly as practicable in a lawful and workmanlike manner, and in accordance with the plans approved by the Board or its designated Architectural Review Committee, as provided for in this Declaration.

(b) Approval of Restoration Plans; Design and Variance. In connection with the restoration and repair of any Condominium, the Owner thereof may apply for approval to the Architectural Review Committee to reconstruct and rebuild in a manner which will provide for an exterior appearance and design different from that which existed prior to the date of the casualty. Application for such approval shall be made in writing, together with full and complete plans and specifications, working drawings and elevations showing the proposed reconstructions and the end result thereof. The Architectural Review Committee shall grant such approval only if the design proposed by the Owner would result in a finished Condominium in harmony of exterior design with the other Condominiums in the Project. Failure of the Architectural Review Committee to act within thirty (30) days after receipt of such a request in writing, coupled with full and complete plans and specifications, drawings and elevations shall constitute approval thereof. The Owner shall also obtain approval from the City of the proposed Condominium.

Section 6. Levy of Compliance Assessments. In the event the Corporation shall incur any costs or expenses due to the failure of any Owner to perform his maintenance obligations as set forth herein, or in order to repair any damage to the Corporation Property due to any negligent acts or omissions or willful misconduct on the part of an Owner, or any member of his family, his guests, invitees, tenants or lessees, or their guests or invitees, the Corporation shall have the right, but not the duty, to cause such maintenance or repairs to be performed. If the Board elects to cause such maintenance or repair work to be performed, after Notice and Hearing as provided in the By-Laws, the cost thereof shall be assessed against said Owner as a Compliance Assessment.

Section 7. Maintenance of Public Utilities. Nothing contained herein shall require or obligate the Corporation to maintain, replace or restore the underground facilities or public

utilities which are located within easements in the Common Property owned by such public utilities. However, the Corporation shall take such steps as are necessary or convenient to ensure that such facilities are properly maintained, replaced or restored by such public utilities.

Section 8. Retail Condominium Unit Owner's Right to Cure. If the Corporation fails to maintain or repair any portion of the Corporation Property and such failure will have a material adverse impact on the development, leasing, sale, operation and/or use of the Retail Condominium Units or, any portion thereof, and such failure is not cured within thirty (30) days after the delivery of written notice of such failure by the Owner of a Retail Condominium Unit to the Corporation, the Owner of the Retail Condominium Unit shall have the right, but not the obligation, to enter the Corporation Property to cure such failure. The actual costs incurred by the Owner of the Retail Condominium Unit to cure same shall be due and payable within thirty (30) days after the Retail Condominium Unit Owner's delivery to the Corporation of a statement therefor accompanied by copies of invoices and/or receipts evidencing such costs; provided, however, that such costs must be reasonable under the circumstances and may not exceed the amount budgeted by the Corporation for such maintenance or repair of the Corporation Property. The Owner of a Retail Condominium Unit shall not have the right to offset any amount incurred pursuant to this Section against any Assessments owing by the Retail Condominium Unit Owner to the Corporation.

ARTICLE XI

ENVIRONMENTAL AND OTHER DISCLOSURES AND REQUIREMENTS

Section 1. Environmental Requirements.

(a) Duties and Obligations of the Owners. To reduce and/or eliminate negative effects on the environment, and to comply with all Best Management Practices, all Owners shall:

(1) Dispose of waste materials properly, eliminate littering, and participate in the City's recycling program (if applicable);

(2) Use fertilizers, herbicides, pesticides and other harmful chemicals properly;

(3) Take all necessary steps to insure that NO oil, antifreeze, paints and similar chemicals enter the storm drain systems;

(4) Use Best Management Practices to eliminate or reduce surface pollutants when planning any changes to the landscaping and surface improvements to the Project;

(5) Comply with the drainage requirements of all City ordinances and standards and the requirements of all Water Quality Management Plans applicable to the Project;

(6) Take all necessary steps to prevent excessive erosion and sedimentation; and

(7) Use proper landscaping methods to eliminate non-storm water runoff to avoid adverse impacts on the environment.

(b) Duties and Obligations of the Corporation.
Notwithstanding anything to the contrary set forth herein, the Corporation shall:

(1) Contract with a contractor to perform the following activities, subject to the following limitations, periodically to minimize the pollution of storm drain water:

i) Either mechanically or manually remove all large size urban debris from catch basins and storm drains periodically;

ii) Maintain stenciling on storm drains saying "NO DUMPING, DRAINS TO OCEAN";

iii) Minimize irrigation runoff by using controllers to provide several short watering cycles;

iv) Use Best Management Practices to eliminate or reduce surface pollutants when planning any changes to the landscaping and surface improvements to the Project;

v) Immediately correct any irrigation design or maintenance deficiencies which cause excessive runoff;

vi) Follow all fertilizer applications with light irrigation to permit fertilizer to soak into the landscaped area.

(2) Be responsible for the maintenance and repair (except to the extent such maintenance or repair

obligation has been accepted by a public agency) of the following:

i) All private sewer systems located within the streets within the Project;

ii) All storm drain facilities located within the Project, in accordance with the Water Quality Management Plans approved for the Project; and

iii) All other property or facilities, the maintenance of which is required of the Corporation hereunder, including, without limitation, landscaping, concrete walkways and perimeter walls on Project boundaries (if applicable).

(3) The Corporation shall comply with all Best Management Practices set forth in the Water Quality Management Plans approved for the Project.

ARTICLE XII

ARCHITECTURAL REVIEW - APPROVAL

Section 1. Exemptions From Architectural Review. Except as otherwise provided herein (e.g., certain Retail Condominium Unit Improvements), no Improvements shall be allowed within the project unless same have been approved by the Architectural Review Committee in accordance with the provisions of this Declaration. Notwithstanding the foregoing, Declarant shall be exempt from compliance with any of the provisions of this Article as they may relate to the original construction and development of the Project by Declarant in accordance with the plans approved by the City; provided, however, if Declarant shall desire to construct any Improvements to the exterior or interior of a Condominium Unit after such Condominium Unit has been completed and approved by the City, Declarant shall obtain approval for such Improvements from the City, and provided further, if Declarant shall retain a Condominium for personal use, any Improvements to such Condominium shall be subject to architectural approval pursuant to this Article.

Section 2. Architectural Review. Except for the purposes of proper maintenance and repair, and except as may otherwise be permitted hereunder, no person shall build, construct, erect or install any Improvement, or modify the exterior appearance of his Exclusive Use Corporation Property, until all conditions which may be imposed by the City have been satisfied and until any and all plans and specifications required pursuant to this Article shall have been submitted to and approved in writing by the Architectural Review Committee. For the purposes of this Section, the term

"exterior" shall mean any outside wall, outside surface, roof, entry, exterior stairway, outside door, balcony, or other outside structure which is visible to others in the Project and/or to the public. No Owner may modify the exterior of any Condominium building.

Section 3. Architectural Review Committee. The Architectural Review Committee is hereby authorized with the rights and powers set forth in this Article. Said Committee may consist of three (3) members, and each initial member shall serve until the first election of the Board. In the event of the failure or inability of any member of the Architectural Review Committee to act, the remaining members shall designate a successor who shall serve for the remainder of the term of the member he replaces. The Declarant shall appoint all of the original members of the Architectural Review Committee, and replacements thereto. Further, Declarant reserves the power to appoint a majority of the members of the Architectural Review Committee until ninety percent (90%) of the Condominiums in the proposed development of the Project (i.e., a portion of Lot 1 of Tract 61304 have been sold and escrows closed or until the fifth (5th) anniversary of the issuance of the Final Subdivision Public Report for the Project. After one (1) year from the date of the issuance of the Final Subdivision Public Report for the Project, the Board shall have the power to appoint one (1) member to the Architectural Review Committee until ninety percent (90%) of the Condominium Units in the Project have been sold, or until the fifth anniversary date of the first close of escrow for the sale of a Condominium Unit pursuant to the Final Subdivision Public Report for the Project, whichever first occurs. Thereafter, the Board shall have the power to appoint all of the members of the Architectural Review Committee. All members appointed to the Architectural Review Committee by the Board shall be from the membership of the Corporation. Members appointed to the Architectural Review Committee by the Declarant, however, need not be members of the Corporation. No member of the Architectural Review Committee shall be liable to any person for his decisions or failure to act in making decisions as a member of the Architectural Review Committee. Declarant may, in its discretion and at any time, assign to the Corporation by written assignment its powers of removal and appointment with respect to the Architectural Review Committee, subject to such terms and conditions regarding the exercise thereof as Declarant may impose.

Section 4. Meetings of the Architectural Review Committee. The Architectural Review Committee shall meet, from time to time, as necessary to perform its duties hereunder. The Architectural Review Committee may, by a majority vote of the members thereof and the Board, delegate any or all of the Committee's rights and responsibilities hereunder to one (1) or more duly licensed architects, who shall have full authority to act on behalf of the Architectural Review Committee on all matters so delegated.

landscaping to be planted; or because of the dissatisfaction of the Architectural Review Committee with any aspect of the proposed Improvement which could cause the proposed Improvement to be inappropriate, inharmonious or out-of-keeping with the general plan of improvement for the Project, or with the Improvements on or topography of the surrounding property.

The Architectural Review Committee may condition its approval of proposals or plans and specifications for any Improvement: (a) on such changes therein as it deems appropriate, (b) upon the agreement by the person submitting the same to grant appropriate easements to the Corporation for the maintenance of the Improvement, or (c) upon the agreement of the person submitting the same to reimburse the Corporation for the cost of such maintenance, or all of the above, and may require submission of additional plans and specifications or other information prior to approving or disapproving the submission.

The Architectural Review Committee may also issue rules or guidelines setting forth procedures for submission of plans for approval, requiring a payment of a fee to the Corporation to accompany each submission of plans and specifications, or additional factors which it will take into consideration in reviewing submissions.

The Architectural Review Committee may require such detail in plans and specifications submitted for its review as it deems proper, including, without limitation, floor plans, site plans, drainage plans, elevation drawings, landscape plans and description or samples of exterior material and colors.

Except as otherwise provided herein for the Owners of the Retail Condominiums, each Owner acknowledges and understands that he or she has absolutely no right or ability to modify the condominium buildings in any manner, unless otherwise provided and approved in writing by the Board.

Section 6. Decisions of the Architectural Review Committee. Until receipt by the Architectural Review Committee of any required plans and specifications, and such other information as may be required in Section 5 above, the Architectural Review Committee may postpone review of any plans submitted for approval. Decisions of the Architectural Review Committee and the reasons therefor should be transmitted by the Architectural Review Committee to the applicant, at the address set forth in the application for approval, within forty-five (45) days after receipt by the Architectural Review Committee of all plans, specifications and materials required. Any application submitted pursuant to the provisions of Section 5 above shall be deemed approved, unless written disapproval or a request for additional information or materials by the Architectural Review Committee shall have been transmitted to the applicant within forty-five (45) days after the receipt by the Architectural Review Committee of all required materials.

Section 7. Submittal to Public Agencies - Right of Architectural Review Committee to Review. Upon obtaining the written approval of the Architectural Review Committee for the proposed Improvement, if such Improvement requires a building permit, the Owner shall thereafter submit the plans and specifications to all appropriate governmental agencies in accordance with their respective requirements. In the event that all approvals by the governmental agencies necessary for the issuance of a building permit are not obtained within six (6) months after the date of approval by the Architectural Review Committee, the Architectural Review Committee shall have the right, but not the obligation, to review all previously approved plans and specifications. In addition, in the event that the governmental agencies require modifications to the plans and specifications previously approved by the Architectural Review Committee, the Owner shall submit to the Architectural Review Committee all modifications to the plans and specifications previously approved by the Architectural Review Committee, which shall have the right to review and to impose further conditions on any such modifications.

Section 8. Conflicts Between Governmental Agencies and Architectural Review Committee. In the event of any conflict in the conditions of approval of any proposed Improvement imposed by the governmental agencies and the Architectural Review Committee, the more restrictive of such conditions shall be controlling. Further, nothing herein shall limit the Architectural Review Committee from imposing conditions of approval of any proposed Improvements to the Residential Condominium Units which are more restrictive than conditions that may be imposed by the appropriate governmental agencies (the Architectural Review Committee may not impose conditions of approval which are more restrictive than conditions that may be imposed by the appropriate governmental agencies with respect to Improvements to Retail Condominium Units).

Section 9. No Waiver of Future Approvals. The approval of the Architectural Review Committee to any submissions for any work done, or proposed to be done, or in connection with any other matter requiring the approval or consent of the Architectural Review Committee, shall not be deemed to constitute a waiver of any right to withhold approval or consent of any similar proposals, plans and specifications, drawings or other matters subsequently or additionally submitted for approval.

Section 10. Compensation of Members. The members of the Architectural Review Committee shall receive no compensation for services rendered, other than reimbursement by the Corporation, pursuant to Board approval, for expenses incurred in the performance of such members' duties hereunder. This Section shall not be interpreted or construed to prohibit the Corporation from compensating any duly licensed Architect who has been delegated rights and duties as provided in this Article.

Section 11. Variances. Where circumstances such as topography, location of buildings, location of landscaping or other matters require, the Architectural Review Committee, by the vote or written assent of a majority of the members thereof and the Board, may allow reasonable variances as to any of the Protective Covenants contained in this Declaration or provisions under the rules and regulations promulgated by the Architectural Review Committee, on such terms and conditions as it shall require. The granting of such a variance shall not operate to waive any of the terms and provisions of this Declaration for any purpose, except as to the particular Condominium and particular provision hereof covered by the variance, nor shall it affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting the Owner's use of his Condominium, including, but not limited to, zoning ordinances, lot setback lines or requirements imposed by the City or other governmental authority.

Section 12. Inspection of Work. Upon consent of the Owner, which consent shall not be unreasonably withheld, any member or authorized representative of the Architectural Review Committee may, at any reasonable hour and upon reasonable notice, enter and inspect any Condominium which has been the subject matter of an approval of a submission for an Improvement to his Condominium. Such entry shall be made with as little inconvenience to the Owner as reasonably possible, and any damage caused thereby shall be repaired by the Corporation. If the Architectural Review Committee finds that such work was not done in substantial compliance with the approved plans and specifications, it shall notify the Owner in writing of such noncompliance, specifying the particulars of noncompliance and shall require the Owner to remedy the same within thirty (30) days from the date of notification of such noncompliance. If a noncompliance exists, the Board, after Notice and Hearing, may levy a Compliance Assessment against such Owner for the costs of removing or remedying such noncompliance.

Section 13. Non-Liability of Architectural Review Committee Members. Neither Declarant, the Corporation, the Board or the Architectural Review Committee, or the members or designated representatives thereof, shall be liable for damages to any Owner submitting plans or specifications to them for approval, or to any Owner in the Project affected by this Declaration by reason of mistake in judgment, negligence or nonfeasance, unless due to willful misconduct or bad faith of the Architectural Review Committee. The Architectural Review Committee's approval or disapproval of a submission shall be based solely on the considerations set forth in this Article, and in such rules and regulations as may be promulgated by the Architectural Review Committee, and the Architectural Review Committee shall not be responsible for reviewing, nor shall its approval of any plan or design be deemed approval of, any plans or design from the standpoint of structural safety and conformance with building or other codes.

Section 14. Appeal. In the event plans and specifications submitted to the Architectural Review Committee are disapproved, the party making such submission may appeal in writing to the Board. The written request must be received by the Board not more than thirty (30) days following the final decision of the Architectural Review Committee. The Board may request the written recommendations of the Architectural Review Committee for review. Within sixty (60) days following receipt of the request for appeal, the Board shall consider the appeal at an open meeting and render its written decision. The failure by the Board to render a decision within said sixty (60) day period shall be deemed a decision in favor of the party making such submission.

Section 15. Approval of City. Each Owner is solely responsible for ensuring that all plans and specifications submitted by such Owner to the Architectural Review Committee comply with, and do not violate, any applicable provision of law, including, without limitation, the Fair Employment and Housing Act (California Government Code Section 12900 et seq.), the City's Municipal Code, all applicable building and construction codes, and all other applicable laws, regulations, and ordinances governing land use and public safety. Approval of any proposed or existing Improvement by the Architectural Review Committee or the Board, or the completion of any Improvement, shall not be construed to warrant or represent in any way that the Improvement was approved by or complies with the minimum standards of the City or any other applicable provisions of law. Similarly, approval of any proposed or existing Improvement by the City shall not be construed to constitute approval of such Improvement by the Architectural Review Committee or the Board.

ARTICLE XIII

DAMAGE OR DESTRUCTION TO THE CORPORATION PROPERTY

Section 1. Election to Restore Corporation Property. Except as otherwise provided in Section 2 hereinbelow, damage to or destruction of all or any portion of the Corporation Property (e.g., the condominium building, excepting therefrom the Condominium Unit) shall be handled in the following manner:

(a) In the event of damage to or destruction of the Corporation Property and the insurance proceeds are sufficient to effect total restoration, the Corporation shall, as promptly as is practical, cause the Corporation Property (e.g., the condominium buildings) to be repaired and reconstructed in a good workmanlike manner to its condition prior to such damage or destruction.

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(b) If the insurance proceeds available are at least ninety percent (90%) of the estimated cost of total repair and reconstruction to the Corporation Property, the Corporation shall, as promptly as practical, cause such Corporation Property to be repaired and reconstructed in a good workmanlike manner to its condition prior to the damage or destruction, and the difference between the insurance proceeds and the actual cost shall be levied by the Corporation as a Special Assessment against each Condominium based on the square footage of the Condominium.

(c) If the insurance proceeds available are less than ninety percent (90%) of the estimated cost of total repair and reconstruction to the Corporation Property, the Owners shall, by the written consent or vote of a majority of the Owners, determine whether (1) to restore the Corporation Property as promptly as practical to its condition prior to the damage or destruction, and to raise the necessary funds over and above the insurance proceeds available by levying assessments against each Condominium based on the square footage of each Condominium; or (2) to restore the Corporation Property in a way which utilizes all available proceeds and an additional amount not in excess of ten percent (10%) of the estimated cost of total reconstruction and repair to the Corporation Property, and which is assessable as provided above to all Condominiums, but which is less expensive than restoring the Corporation Property to its condition prior to the damage or destruction.

Section 2. Election Not to Restore Corporation Property.

(a) Notwithstanding the provisions set forth in Section 1 hereinabove, in the event sixty-seven percent (67%) of the Owners, other than the Declarant, and sixty-seven percent (67%) of the first Mortgagees (based upon one [1] vote for each first Mortgage owned) have given their prior written approval, the Owners may elect to not rebuild or restore the Corporation Property and to disburse the available insurance proceeds to the general fund to the Corporation.

(b) In the event the owners shall have so voted to not rebuild the Corporation Property, the Corporation Property shall be cleared and landscaped and the cost thereof shall be paid for out of the available insurance proceeds prior to their distribution to the general fund of the Corporation.

(c) In the event the Owners shall have so voted to not rebuild the Corporation Property, unless the City shall agree to the contrary, it shall be the obligation of the Corporation and each of the Owners to rebuild the private streets, if any, utilities and open spaces, which comprise the

Corporation Property, if any, at least to the extent said streets, utilities and open spaces were accepted initially by the City in lieu of payment of fees due pursuant to law.

Section 3. Excess Insurance Proceeds. All insurance proceeds shall be payable to the Corporation for the benefit of the Owners and their respective Mortgagees. In the event any excess insurance proceeds remain after restoring the destroyed Corporation Property pursuant to this Article, the Board of Directors shall retain such sums in the general fund of the Corporation. Any distribution of funds in connection with the termination of the Project shall be allocated pro rata among all of the Condominiums in the Project based on the square footage of each Condominium. Any such distribution shall be subject to the prior rights of Mortgagees.

ARTICLE XIV

CONDEMNATION

Section 1. Distribution of Awards. Subject to the limitations set forth in the Article herein entitled "Mortgagee Protection," a condemnation award affecting all or any portion of the Corporation Property of the Project which is not apportioned among the Owners by court judgment shall be distributed to the Corporation and deposited in the general fund of the Corporation.

Section 2. Board of Directors as Attorney-in-Fact. All Owners, to the extent applicable, if at all, hereby appoint the Board of the Corporation as their special attorney-in-fact to handle the negotiations, settlements and agreements pertaining to any condemnation affecting only the Corporation Property. The special power of attorney shall not apply to the Secretary of the Department of Veterans Affairs, an Officer of the United States of America. No Owner may participate as a party, or otherwise, in any proceedings related to such condemnation.

ARTICLE XV

COVENANT AGAINST PARTITION

Section 1. General Covenant Against Partition. Except as otherwise provided in this Section, the Common Area shall remain undivided and there shall be no judicial partitions thereof. Nothing herein shall be deemed to prevent partition of a co-tenancy in a Condominium.

Section 2. Judicial Partition of the Project. The Owner of a Condominium in the Project may maintain a partition action as to the entire Project as if the Owners of all the Condo-

miniums in the Project were tenants-in-common in the entire Project in the same proportion as their interests in the Common Area. The court shall order partition under this Article only by sale of the entire Project and only upon the showing of one (1) of the following:

(a) More than three (3) years before the filing of the action, the Project was damaged or destroyed so that a material part was rendered unfit for its prior use, and the Project has not been rebuilt or repaired substantially to its state prior to the damage or destruction;

(b) Three-fourths (3/4) or more of the Project is destroyed or substantially damaged, and at least sixty-seven percent (67%) of the Owners (other than Declarant) and sixty-seven percent (67%) of the first Mortgagees (based upon one [1] vote for each first Mortgage owned) oppose repair or restoration of the Project; or

(c) The Project has been in existence more than fifty (50) years, is obsolete and uneconomical, and at least sixty-seven percent (67%) of the Owners (other than Declarant) and sixty-seven percent (67%) of the first Mortgagees (based upon one [1] vote for each first Mortgage owned) oppose repair or restoration of the Project.

Section 3. Board of Directors' Power of Sale in Event of Judicial Partition. Declarant, for itself and on behalf of each and every present and subsequent Owner of one (1) or more Condominiums within the Project, hereby appoints the Board as its and their attorney-in-fact to sell the entire Project for the benefit of all of the Owners thereof when partition of the Project may be had pursuant to this Declaration, which power shall: (a) be binding upon all of the Owners, whether they assume the obligations of these restrictions or not; (b) be exercisable by a vote of at least seventy-five percent (75%) of the voting power of the Board; and (c) be exercisable only after recordation of a certificate by the Board, which shall provide that said power is properly exercisable hereunder, and which certificate shall be conclusive evidence thereof in favor of any person relying thereon in good faith; provided, however, said power of attorney shall not apply to the Secretary of the Department of Veterans Affairs, an Officer of the United States of America.

ARTICLE XVI

INSURANCE

Section 1. Required Insurance Coverage. The Corporation, acting by and through the Board, shall obtain for the Corporation, and shall maintain and pay the premiums for the following insurance coverage:

(a) Casualty and Fire Insurance. A policy or policies of casualty and fire insurance, with extended coverage endorsement in an amount equal to as near as possible one hundred percent (100%) of the current replacement cost (without deduction for depreciation or co-insurance) of the Corporation Property, together with all Improvements located therein (except Improvements made by an Owner to the Exclusive Use Corporation Property) and including those portions of the Condominium Units (except in the Retail Condominium Units) consisting of fixtures, built-in or set-in appliances, cabinets and initial basic floor coverings as initially installed thereof in accordance with the plans and specifications for the Project submitted by Declarant and approved by the City (excluding all individual Owner upgrades to any of the foregoing and Improvements within the Retail Condominium Units). Said policies shall be primary and maintained for the benefit of the Corporation, the Owners and the Mortgagees, as their interests shall appear, and shall waive the right of subrogation against Owners, if reasonably obtainable. If reasonably obtainable, the deductible shall be the lesser of Ten Thousand Dollars (\$10,000) or one percent (1%) of the policy face amount. Such policy must be written by an insurance carrier that meets the requirements of FNMA and/or FHLMC, as applicable. The coverage does not need to include land, foundations, excavations, or other items normally excluded from such coverage. Such policy or policies must contain, if required and if reasonably obtainable:

- (1) An Agreed Amount and Inflation Guard Endorsement;
- (2) Construction Code Endorsements (such as Demolition Cost Endorsement);
- (3) Contingent Liability From Operation of Building Laws Endorsement;
- (4) Increased Construction Endorsement if there is a construction code provision which would become operative and require changes to undamaged portions of the Corporation Property; and
- (5) Any other special Condominium Endorsements that may be available or required.

(b) Public Liability Insurance. A policy or policies of comprehensive public liability insurance (with cross-

liability endorsement, if obtainable) insuring the Corporation, the Board, the Owners, the City and the Declarant, and the agents and employees of each of the foregoing, against any liability to the public or to any Owner, his family, tenants, lessees and their respective guests and invitees, arising from or incident to the ownership, occupation, use, maintenance and/or repair of the Corporation Property, and from lawsuits related to employment contracts in which the Corporation is a party. The limits of liability under this Section shall be set by the Board and shall be reviewed at least annually by the Board, and increased or decreased at the discretion of the Board; provided, however, that said limits shall not be less than Two Million Dollars (\$2,000,000.00) for bodily injury, including deaths of persons and property damage arising out of a single occurrence; provided further, if FHLMC and/or FNMA participate in the financing of Condominiums in the Project, said limits shall not be less than the minimum limits required under the then current FHLMC and/or FNMA regulations.

(c) Worker's Compensation Insurance. Worker's compensation insurance to the extent necessary to comply with any applicable laws.

(d) Fidelity Bonds. Officers' and Directors' errors and omissions insurance, and fidelity bonds naming all persons signing checks or otherwise possessing fiscal responsibilities on behalf of the Corporation, including, but not limited to, officers, directors, the Board, trustees and employees of the Corporation, and officers, employees and agents of any management company employed by the Corporation who handle or are responsible for the administration of Corporation funds, if obtainable. Such coverage shall be in an amount deemed reasonably appropriate by the Corporation, but shall not be less than the estimated maximum funds in custody of the Corporation (or its management company), or twenty-five percent (25%) of the estimated annual operating expenses of the Project, plus reserves, whichever is greater. In addition, if the Corporation enters into an agreement for professional management of the Project, the Corporation shall require such company to submit evidence of its fidelity bond coverage to the same extent as the Corporation's coverage. The Corporation shall be named as an additional obligee in the management agent's bond.

Section 2. Optional Insurance Coverage. The Corporation, acting at its option and by and through the Board, may purchase such other insurance as it may deem necessary or appropriate, including, but not limited to, officers and directors errors and omissions insurance, earthquake insurance, flood insurance. As currently written, California Civil Code Section 1365.7, sets forth a conditional exemption from personal liability for volunteer officers and directors of an association which manages a common

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interest development that is "exclusively residential." Since the Project may contain commercial as well as residential Condominiums, the Board may wish to consider the applicability or inapplicability of the statute in determining the extent, limits, and deductibles of insurance to be maintained by the Corporation.

Section 3. Notice of Cancellation of Insurance. All policies of insurance (including fidelity bonds) maintained by the Corporation, pursuant to this Article, shall contain a provision that coverage under said policies may not be canceled, terminated, allowed to expire by their own terms or be substantially modified by any party without at least thirty (30) days prior written notice to the Board and to each Owner, and such first Mortgagees (or servicers) who are named in the mortgage clause and/or have filed a written request with the Corporation for such notice. A list of the Owners and such first Mortgagees shall be made available by the Corporation to the insurance carrier upon request.

Section 4. Review of Coverage. The Board shall annually determine whether the amounts and types of insurance coverage that it has obtained pursuant to this Article shall provide adequate coverage for the Project, based upon the then current construction costs, insurance practices in the area in which the Project is located, and all other factors which may indicate that either additional insurance coverage or increased coverage under existing policies is necessary or desirable to protect the interests of the Corporation, the Owners and their respective Mortgagees. If the Board determines that increased coverage or additional insurance is appropriate, it shall obtain same.

Section 5. Waiver by Owners. As to all policies of insurance maintained by the Corporation which will not be voided or impaired thereby, each Owner hereby waives and releases all claims against the Corporation, the Board and the Declarant, and the agents and employees of each of the foregoing, and all other Owners with respect to any loss covered by such insurance, whether or not caused by the negligence of, or breach of, any agreement by said persons, but only to the extent of the insurance proceeds received in compensation for such loss.

Section 6. Premiums, Proceeds and Settlement. Insurance premiums for all blanket insurance coverage and any other insurance coverage which the Board has determined is necessary to protect the interests of the Corporation, the Owners and their respective Mortgagees, shall be a Common Expense to be included in the Regular Assessments levied by the Corporation (the difference between the cost of insurance for the Corporation Property due to the commercial use of Condominium Units and the public parking spaces in the subterranean garage and what the cost would have been if the Project were used for residential purposes exclusively has already been taken into account in computing the Parking Assessment Component and Retail Assessment Component of Regular Assessments,

be reduced by reason of insurance carried by any Owner, such Owner shall assign the proceeds of such insurance carried by him to the Corporation to the extent of such reduction for application by the Board to the same purposes as the reduced proceeds are to be applied.

Section 9. Trustee for Policies. The Corporation is hereby appointed and shall be deemed trustee for the interests of all insureds under the policies of insurance maintained by the Corporation. All insurance proceeds under such policies shall be paid to the Board, as trustees, and the Board shall have full power to receive such funds on behalf of the Corporation, the Owners and their respective Mortgagees, and to deal therewith as provided for in this Declaration.

Section 10. Mortgage Clause. All insurance policies should have the "standard mortgage clause," or equivalent endorsement, providing that coverage of a Mortgagee under the insurance policy will not be adversely affected or diminished by an act or neglect of the Mortgagor, which is commonly accepted by private institutional mortgage investors in the area in which the Project is located, unless such coverage is prohibited by applicable law. Mortgages owned by FNMA must name as a Mortgagee either FNMA or the servicers for the Mortgages held by FNMA encumbering the Condominiums. When a servicer is named as the Mortgagee, its name should be followed by the phrase "its successors and assigns." If the Mortgage is owned in whole by FHLMC, the name of the servicer of the Mortgage followed by the phrase "its successors and assigns, beneficiary" should be named as Mortgagee instead of FHLMC. The mortgage clause should be endorsed to fully protect FHLMC's interests or the interest of FHLMC and the servicer where applicable. If FHLMC must be named as Mortgagee, the endorsement should show the servicer's address in lieu of FHLMC's address. A mortgage clause in favor of Mortgagees holding Mortgages on Condominiums is not required on a policy insuring the Corporation Property.

Section 11. Compliance With Requirements of FHLMC and FNMA. Notwithstanding the provisions of this Article, the Corporation shall obtain and maintain in effect such policies of insurance meeting all requirements of FHLMC and FNMA established by those entities for condominium projects for so long as any of such agencies continue to be a Mortgagee, Owner, insurer or guarantor of a Mortgage in the Project, except to the extent such coverage is not available or has been waived, in writing, by such agencies.

Section 12. Required Waiver. All policies of hazard and physical damage insurance may provide, only if available at a reasonable cost to the Corporation as determined by the Board, in its sole discretion, for waiver of the following rights, to the extent that the respective insurers would have the rights without such waivers:

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(a) Any defense based on co-insurance;

(b) Any right of set-off, counterclaim, apportionment, proration or contribution by reason of other insurance not carried by the Corporation;

(c) Any invalidity, other adverse effect or defense on account of any breach of warranty or condition caused by the Corporation, any Owner or any tenant of any Owner, or arising from any act, neglect or omission of any named insured, or the respective agents, contractors and employees of any insured;

(d) Any right of the insurer to repair, rebuild or replace, and, in the event the Condominium is not repaired, rebuilt or replaced following loss, any right to pay under the insurance an amount less than the replacement value of the improvements insured or the fair market value thereof;

(e) Notice of the assignment of any Owner of its interest in the insurance by virtue of a conveyance of any Condominium; and

(f) Any right to require any assignment of any Mortgage to the insurer.

Section 13. Annual Notification of Insurance. The Corporation shall, upon issuance or renewal of insurance, but no less than annually, notify its Members as to the amount and type of insurance carried by the Corporation, and it shall accompany this notification with statements to the effect that the Corporation is or is not insured to the levels specified by this Article, and that if not so insured, Owners may be individually liable for the entire amount of a judgment, and if the Corporation is insured to the levels specified in Section 1 above, then Owners may be individually liable only for their proportional share of Assessments levied to pay the amount of any judgment which exceeds the limits of the Corporation's insurance. The Corporation shall further prepare and distribute to all its Members a summary of the Corporation's insurance coverage pursuant to Section 1365 of the California Civil Code.

ARTICLE XVII

MORTGAGEE PROTECTION

Section 1. Mortgagee Protection Provisions. Notwithstanding any other provisions in this Declaration to the contrary, in order to induce FHLMC and FNMA, and other lenders and investors, to participate in the financing of the sale of Condominiums in the Project, the following provisions contained within this Article are added hereto, and to the extent these added provisions conflict

with any other provisions in this Declaration, these added provisions shall control. The Declaration, the Articles and the By-Laws for the Corporation are hereinafter collectively referred to in this Article as the "constituent documents." As used herein, an "Eligible Mortgage Holder" shall mean and refer to the holder, insurer or guarantor of a first Mortgage on a Condominium who has filed with the Corporation a written request for notice of certain information as provided herein. An Eligible Mortgage Holder must send a written request for such information to the Corporation, stating its name and address and the number or address of the Condominium Unit on which it has (or insures or guarantees) the Mortgage.

(a) The right of an Owner to sell, transfer or otherwise convey his Condominium shall not be subject to any right of first refusal or any similar restriction in favor of the Corporation;

(b) The lien of the Assessments provided for herein shall be subordinate to the lien of any first Mortgage now or hereafter recorded upon any Condominium. The sale or transfer of any Condominium shall not affect the Assessment lien; however, the sale or transfer of any Condominium pursuant to judicial or nonjudicial foreclosure of a first Mortgage or pursuant to any remedies provided for in the Mortgage shall extinguish the lien of such Assessments as to payments which became due prior thereto. No sale or transfer shall relieve such Condominium from liability for Assessments due thereafter. Any first Mortgagee who obtains title to a Condominium pursuant to the remedies provided in the Mortgage, or foreclosure of the Mortgage, or any purchaser at a foreclosure sale of a first Mortgage will not be liable for any unpaid Assessments or charges which occurred prior to the acquisition of title to such Condominium by the Mortgagee (except for claims for a share of such Assessments or charges resulting from a reallocation of such Assessments or charges to all Condominiums, including the mortgaged Condominium);

(c) Except as may otherwise be provided herein or by statute in case of condemnation or substantial loss to the Corporation Property, unless sixty-seven percent (67%) of the Owners other than Declarant, or sixty-seven percent (67%) of the first Mortgagees (based upon one [1] vote for each Unit encumbered by said Mortgagee's first Mortgage) have given their prior written approval, neither the Corporation nor the Owners shall be entitled to:

(1) By act or omission, seek to abandon or terminate the Condominium Project;

(2) Record or file any amendment which would change the pro rata interest or obligations of any Con-

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dominium for purposes of: (i) levying Assessments or charges, or allocating distributions of hazard insurance proceeds or condemnation awards, or (ii) determining the pro rata share of ownership of each Condominium Unit in the Common Area;

(3) Partition or subdivide any Condominium, except as provided in the Article herein entitled "Covenant Against Partition"; provided, however, that no Condominium may be partitioned or subdivided without the prior written approval of the first Mortgagee for such Condominium;

(4) By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer any or all of the Corporation Property. The granting of easements for public utilities or for other public purposes consistent with the intended uses of the Corporation Property under this Declaration and the granting of exclusive easements to Owners over portions of the Corporation Property to conform the boundaries of the Corporation Property to the as built location of authorized Improvements, shall not be deemed a transfer within the meaning of this clause;

(5) Use hazard insurance proceeds for losses to the Corporation Property for other than repair, replacement or reconstruction, subject to the provisions of this Declaration;

(6) Effect any decision of the Corporation to terminate professional management and assume self-management of the Project, if professional management was previously required by a holder, insurer or guarantor of any first Mortgage;

(7) By act or omission, change, waive or abandon any provisions of this Declaration, or enforcement thereof, pertaining to architectural design of the Condominiums or the maintenance and operation of the Corporation Property within the Project, including, without limitation, sidewalks, fences, and landscaping within the Project; and

(8) Fail to maintain fire insurance and extended coverage on the insurable Corporation Property on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value thereof.

(d) All taxes, Assessments and charges which may become liens prior to the first Mortgage under local law shall

relate only to individual Condominiums, and not to the Project as a whole;

(e) No provision of the constituent documents shall be interpreted to give the Owner of a Condominium, or any other party, priority over any rights of the first Mortgagee of the Condominium pursuant to its Mortgage in the case of a distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Condominium Units and/or the Corporation Property;

(f) The Assessments provided for in the constituent documents shall include an adequate reserve fund for maintenance, repairs and replacement of those elements of the Corporation Property that must be replaced on a periodic basis, and shall be payable in regular installments, rather than by Special Assessments;

(g) Each Eligible Mortgage Holder shall be entitled to timely written notice of any:

(1) Condemnation, eminent domain proceeding, or casualty loss that affects either a material portion of the Project or the Condominium Unit securing its Mortgage;

(2) Substantial damage or destruction to the Project, or any portion thereof, when such loss exceeds Ten Thousand Dollars (\$10,000.00);

(3) Default in the performance by an individual Owner of any obligation under the constituent documents (including, but not limited to the nonpayment of Assessments) which is not cured within sixty (60) days after the Corporation learns of such default by the Owner of the Condominium on which it holds the Mortgage;

(4) Lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Corporation;

(5) Abandonment or termination of the Project;
and

(6) Proposed action that requires the consent of a specified percentage of Eligible Mortgage Holders.

(h) Any agreement for professional management of the Project or any agreement whereby the Declarant will provide services to the Corporation may not exceed one (1) year, renewable by agreement of the parties for successive one (1) year periods, unless approved by either a vote or written

assent of a majority of the Corporation's voting power, in which case the maximum term of the management contract is three (3) years. Any such agreement must provide for termination by either party with or without cause and without payment of a termination fee on at least thirty (30) days' written notice, but not more than ninety (90) days. In the event Declarant executes a contract with a professional management company prior to the Owners' election of at least a majority of the Board, the contract must allow termination by the Board, without payment of a termination fee, at any time subsequent to the Owners being elected to a majority of positions on the Board;

(i) In the event of substantial damage to or destruction of any Condominium Unit or any part of the Corporation Property, each Eligible Mortgage Holder for such Condominium will be entitled to timely written notice of any such damage or destruction;

(j) Each Eligible Mortgage Holder will, upon request, be entitled to:

(1) Examine current copies of the books, records and financial statements of the Corporation during normal business hours;

(2) Obtain from the Corporation an annual audited financial statement of the Project for the previous fiscal year (without expense to the holder, insurer, or guarantor requesting said statement). As set forth in the Article herein entitled "Powers and Duties of the Corporation," an annual report shall be available within one hundred twenty (120) days after the close of the fiscal year. If for any reason, the report is not audited, it shall be accompanied by a certificate from an authorized officer of the Corporation that the report was prepared without audit from the books and records of the Corporation, and the Eligible Mortgage Holder may have an audited financial statement prepared at its own expense; and

(3) Receive written notice of all meetings of the Corporation and be permitted to designate a representative to attend all such meetings.

(k) Each Owner shall notify the Corporation, in writing, within ten (10) days after the close of escrow for the purchase of his Condominium of the name and address of his first Mortgagee, and thereafter, each Owner shall promptly notify the Corporation of any changes of name or address for his first Mortgagee;

(l) Each Owner hereby authorizes a first Mortgagee on a Condominium to furnish information to the Board concerning the status of any such first Mortgage;

(m) In the event any portion of the Common Property encroaches upon any Condominium Unit or any Condominium Unit encroaches upon the Common Property as a result of the construction initially performed by Declarant, reconstruction, repair, shifting, settlement or movement of any portion of the Project, a valid easement for the encroachment and for the maintenance of the same shall exist so long as the encroachment exists; and

(n) First Mortgagees of Condominium Units may, jointly or singularly, pay taxes or other charges which are in default and which may have become a lien on the Common Property, and may pay overdue premiums on hazard insurance policies or secured new hazard insurance coverage on the lapse of a policy for the Common Property, and first Mortgagees paying such payments shall be owed immediate reimbursement therefor from the Corporation. Upon demand by any first Mortgagee, the Board shall execute, on behalf of the Corporation, an agreement establishing the right of all first Mortgagees to such reimbursement.

Section 2. Violation of Mortgagee Protection Provisions. No breach of any of the foregoing Protective Covenants shall cause any forfeiture of title or reversion, or bestow any right of re-entry whatsoever, but in the event that any one (1) or more of these Protective Covenants shall be violated, the Declarant, its successors and assigns, or the Corporation, or any Owner of a Condominium in the Project, may commence a legal action in any court of competent jurisdiction to enjoin or abate said violation and/or to recover damages; provided, however, that any such violation shall not defeat or render invalid the lien of any Mortgage made in good faith and for value as to said Condominium. Said Protective Covenants shall be binding upon and effective against any Owner of said Condominium, or a portion thereof, whose title thereto is acquired by foreclosure, a trustee sale or otherwise.

Section 3. Effect of Amendments. Except as otherwise provided herein, no amendment of this Declaration or the Articles or the By-Laws of the Corporation shall affect the rights of any Mortgagee whose lien was created prior to recordation of such amendment.

Section 4. Amendments to Conform With Mortgagee Requirements. It is the intent of Declarant that this Declaration and the Articles and By-Laws of the Corporation, and the Project in general, meet all requirements necessary to purchase, guarantee, insure and subsidize any Mortgage of a Condominium in the Project

by the FHLMC and the FNMA. In furtherance of said intent, Declarant may amend this Declaration without the consent of the Members at any time after the close of escrow for the first sale of a Condominium in the Project by recording a written instrument setting forth the amendment, provided that the amendment is necessary to cause this Declaration to comply with the requirements of the DRE, FHLMC, FNMA and/or GNMA; provided, however, that any such amendment shall be effective only if Declarant mails (by certified or registered mail with a "return receipt" requested) a copy of the amendment to all of the foregoing entities which are, or have agreed to be, a holder, insurer or guarantor of a first Mortgage, and does not, within sixty (60) days thereafter, receive a notice of disapproval from any such entity. Said amendments shall not be recorded by Declarant until after the expiration of such sixty (60) day period.

ARTICLE XVIII

ENFORCEMENT OF BONDED OBLIGATIONS

Section 1. Enforcement of Bonded Obligations. In the event that any Improvements to the Corporation Property have not been completed prior to the first close of escrow for a Residential Condominium following the issuance of a Final Subdivision Public Report by the DRE, and the Corporation is the obligee under a bond or other arrangement (hereinafter referred to as the "Bond") to secure a performance of the commitment of Declarant to complete such Improvements, the following provisions shall apply:

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

(b) In the event that the Board determines not to initiate action to enforce the obligations under the Bond, or in the event the Board fails to consider and vote on such question as provided above, the Board shall call a special meeting of the Members for the purpose of voting to override such decision or such failure to act by the Board. Such meeting shall be called according to the provisions of the By-Laws dealing with meetings of the Members, but in any event, such meeting shall be held not less than thirty-five (35) days nor more than forty-five (45) days after receipt by the Board of a petition for such meeting signed by Members representing

five percent (5%) of the total voting power of the Corporation.

(c) The only Members entitled to vote at such meeting of Members shall be the Owners, other than Declarant. A vote at such meeting of a majority of the voting power of such Members, other than the Declarant, to take action to enforce the obligations under the Bond shall be deemed to be the decision of the Corporation, and the Board shall thereafter implement such decision by initiating and pursuing appropriate action in the name of the Corporation.

ARTICLE XIX

GENERAL PROVISIONS

Section 1. Enforcement.

(a) The Corporation, the City, the Agency or the Owner of any Condominium in the Project, including the Declarant, shall have the right, but not the obligation, to enforce, by proceedings at law or in equity, all of the Protective Covenants now or hereafter imposed by this Declaration and the By-Laws, respectively (and the Rules and Regulations duly adopted by the Corporation), including, without limitation, the right to prosecute a proceeding at law or in equity against the person or persons who have violated, or are attempting to violate, any of said Protective Covenants, to enjoin or prevent them from doing so, to record a notice of non-compliance, to cause said violation to be remedied and/or to recover damages for said violation; provided, however, that with respect to Assessment liens, the Corporation shall have the exclusive right to the enforcement thereof.

(b) The result of every act or omission whereby any of the Protective Covenants contained in this Declaration or the provisions of the By-Laws are violated, in whole or in part, is hereby declared to be and constitutes a nuisance, and every remedy allowed by law or equity against a nuisance shall be applicable against every such result and may be exercised by any Owner, by the City, or by the Corporation, or by its successors in interest.

(c) The remedies herein provided for breach of the Protective Covenants contained in this Declaration or the provisions of the By-Laws shall be deemed cumulative, and none of such remedies shall be deemed exclusive.

(d) The failure of the Corporation or any Owner to enforce any of the Protective Covenants contained in this Declaration, the provisions of the By-Laws or any Rules or

Regulations shall not constitute a waiver of the right to enforce the same thereafter.

(e) Prior to filing a civil action by either the Corporation or by an Owner solely for declaratory relief or injunctive relief, or for declaratory relief or injunctive relief in conjunction with a claim for monetary damages other than Corporation Assessments, related to the enforcement of the Corporation governing documents, the parties may be required to comply with Civil Code Section 1369.510, et seq., if applicable. Failure to comply with the prefiling requirements of Section 1369.510 et seq. of the Civil Code may result in the loss of the right to sue regarding enforcement of the Corporation governing documents. Upon motion by any party for attorneys' fees and costs as the prevailing party, the court, in determining the amount of the award, may consider a party's refusal to participate in alternative dispute resolution prior to the filing of the action.

(f) A breach of the Protective Covenants contained in this Declaration or of the provisions of the By-Laws shall not affect or impair the lien or charge of any bona fide Mortgage or deed of trust made in good faith and for value on any Condominium; provided, however, that any subsequent Owner of such property shall be bound by said Protective Covenants and the provisions of the By-Laws, whether or not such Owner's title was acquired by foreclosure, a trustee's sale or otherwise.

(g) The Board, for and on behalf of the Corporation, may assess monetary penalties against an Owner as a Compliance Assessment and/or temporarily suspend said Owner's voting rights and right to use the recreational facilities, if any, for the period during which any Assessment against said Owner's Condominium remains unpaid; provided, however, the requirements for Notice and Hearing set forth in the By-Laws shall be followed with respect to the accused Owner before a decision to impose discipline is reached.

(h) The Board, for and on behalf of the Corporation, may temporarily suspend an Owner's voting rights and right to use the recreational facilities, if any, for a period not to exceed thirty (30) days for any infraction of the Corporation's Rules and Regulations; provided, however, the requirements for Notice and Hearing set forth in the By-Laws shall be followed with respect to the accused Owner before a decision to impose discipline is reached.

Section 2. Severability. Invalidation of any one of these Protective Covenants by judgment or court order shall in no way affect any other provisions hereof, which shall remain in full force and effect.

Section 3. Term. The Protective Covenants set forth in this Declaration shall run with and bind the Project, and shall inure to the benefit of the Corporation and be enforceable by the Board or the Owner of any land subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of fifty (50) years from the date this Declaration is recorded, after which time said Protective Covenants shall be automatically extended for successive periods of ten (10) years, unless an instrument, signed by a majority of the then Owners agreeing to terminate said Protective Covenants, in whole or in part, has been recorded within one (1) year prior to the termination of the initial fifty (50) year term, or within one (1) year prior to the termination of any successive ten (10) year period.

Section 4. Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development and maintenance of the Project. The Article and Section headings have been inserted for convenience only and shall not be considered or referred to in resolving questions of interpretation or construction.

Section 5. Singular Includes Plural. Whenever the context of this Declaration may so require, the singular shall include the plural, and the masculine shall include the feminine and neuter.

Section 6. Amendments.

(a) Amendments by Declarant. Prior to the close of escrow for the sale of a Condominium to a member of the public, in accordance with a Final Subdivision Public Report issued by the DRE, this Declaration may be amended, restated or terminated by an instrument executed by Declarant. Notwithstanding any other provisions of this Declaration, for so long as Declarant owns any portion of Lot 1 of Tract 61304, Declarant may unilaterally amend this Declaration to (i) conform this Declaration to the requirements of VA, DRE, FNMA, FHLMC, GNMA, the County, City or any other governmental agency or entity then in effect; (ii) correct typographical or inadvertent errors in the Declaration and/or Exhibits attached thereto, (iii) record maintenance requirements and schedules for any Condominium and/or Corporation Property, and (iv) supplement this Declaration with provisions which pertain to rights and obligations of Declarant, the Corporation or the Owners arising Division 2, Part 2, Title 7 (commencing with Section 895) of the California Civil Code.

(b) Amendments by Corporation. Subject to paragraph (a) above, and all applicable provisions of law (e.g., the provisions of California Civil Code Section 1363.03 regarding secret ballots), this Declaration may be amended only by an affirmative vote of Owners representing not less than sixty-

seven percent (67%) of the Class A voting power and the Class B voting power of the Corporation. At such time when the Class B membership shall cease and be converted to Class A membership, any and all amendments to this Declaration shall be enacted by requiring the vote or written assent of Owners representing both: (a) sixty-seven percent (67%) of the total voting power of the Corporation, and (b) sixty-seven percent (67%) of the votes of Members, other than the Declarant; provided, however, that the percentage of the voting power necessary to amend a specific provision shall not be less than the percentage of affirmative votes prescribed for action to be taken under said provision, and no amendment of a provision of this Declaration which requires the approval or consent of Declarant (e.g., provisions pertaining to the resolution of Disputes, Maintenance Guidelines, Maintenance Manual, Maintenance Recommendations, etc.). Any Owner or the Corporation may petition the Superior Court of Los Angeles County for an order reducing the necessary percentage required under this Section to amend this Declaration; provided, however, that under no circumstances shall any provision requiring the consent of the Declarant or Merchant Builder be amended without such consent. The procedure for effecting this petition is set forth in Section 1356 of the California Civil Code, as the same may be amended, from time to time.

(c) Approval of Mortgagees. In addition to the rights of first Mortgagees, as set forth in the Article herein entitled "Mortgagee Protection," in the event that FNMA participates in the financing of Condominiums in the Project, the written consent of not less than fifty-one percent (51%) of the "Eligible Mortgage Holders" (as defined in the Article herein entitled "Mortgagee Protection") shall be required for any amendment of a "material" nature. An amendment which affects or purports to affect any of the following is considered material:

(1) The legal status of the Project as a common interest development;

(2) Voting rights;

(3) Increases in Assessments that raise the previously assessed amount by more than twenty-five percent (25%), assessment liens or the priority of assessment liens, including the levy and collection thereof, enforcement provisions for nonpayment and subordination of liens for nonpayment;

(4) Reductions in reserves for maintenance, repair and replacement of the Corporation Property;

(5) Responsibility for Corporation Property maintenance and repair;

(6) Reallocation of interests in the Corporation Property or rights to use the Corporation Property;

(7) Boundaries of any Condominium Unit;

(8) Convertibility of Corporation Property into Condominium Units or Condominium Units into Corporation Property;

(9) Encroachment by Improvements into Corporation Property;

(10) Expansion or contraction of the Project, or addition, annexation or de-annexation of additional property to or from the Project;

(11) Insurance or fidelity bonds requirements;

(12) Restrictions on the leasing of Condominiums;

(13) Imposition of restrictions on alienation, including, but not limited to, rights of first refusal;

(14) Any decision by the Corporation to establish self-management, if professional management was previously required by an Eligible Mortgage Holder or legal documents governing the Project;

(15) Restoration or repair of the Project in a manner other than as specified in this Declaration;

(16) Any action to terminate the legal status of the Project after substantial destruction or condemnation occurs; and

(17) Mortgagee protection provisions as set forth in that Article hereinabove entitled "Mortgagee Protection," and such other provisions in this Declaration for which the consent of Mortgagees shall be required or which are expressly for the benefit of Mortgagees, insurers or guarantors of Mortgages.

An addition or amendment to this Declaration shall not be considered material if it is for the purpose of correcting technical errors or for clarification only. In the event the Corporation is considering termination of the legal status of the Project for reasons other than the substantial destruction or condemnation of the Project, then sixty-seven percent (67%)

of the Eligible Mortgage Holders must agree to said termination. Notwithstanding the foregoing, in the event any Eligible Mortgage Holders receives a written request, delivered by certified or registered mail with return receipt requested, from the Board to approve any amendment to this Declaration, and such Eligible Mortgage Holder does not deliver a negative response in writing to the Board within thirty (30) days of the mailing of such request by the Board, such Eligible Mortgage Holder shall be deemed to have approved such proposed amendment.

(d) Approval by City. Notwithstanding any other provisions of this Article, prior to effectuating any amendment or supplement hereto, termination, or changes to the rights and obligations affecting the City or Agency herein (including, without limitation, any amendment in which the Corporation relinquishes responsibility for the maintenance of any Common Property, amendment relating to the parking facilities, or waste recycling or substantial modifications of the reserve account), the City and Agency must have approved same. The Declarant or the Corporation shall forward, or cause to be forwarded, to the City and Agency, through the Community Development Director, a written notice of any such amendment or termination prior to its consideration. The City/Agency shall have sixty days to respond, and should it/they fail to respond within that time period, then consent to the proposed amendment or termination shall be deemed provided.

(e) Recordation of Amendments. An amendment made in accordance with the provisions set forth hereinabove shall be effective when executed by the President and Secretary of the Corporation, who shall certify that the amendment has been approved by the membership and, where appropriate, by the first Mortgagees, in the percentages set forth hereinabove, and recorded in the Office of the County Recorder. Upon such recordation, the amendment shall be effective and binding upon all Owners and all Mortgagees, regardless of whether such Owner or such Mortgagee consented to such amendment.

Section 7. Encroachments. None of the rights and obligations of the Owners created herein or by the deed shall be altered in any way by encroachments due to settlement or shifting of structures or any other cause (except intentional or negligent acts of the Owners, other than the Declarant). There shall be valid easements for the maintenance of said encroachments so long as they shall exist; provided, however, that in no event shall a valid easement for encroachment be created in favor of an Owner if said encroachment occurred due to the willful conduct of said Owner.

Section 8. Notices. Any notice permitted or required to be delivered as provided herein shall be in writing and may be delivered either personally or by mail. If delivery is made by

first class, registered or certified mail, it shall be deemed to have been delivered forty-eight (48) hours after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to any person at the address given by such person to the Corporation for the purpose of service of such notice, or to the Condominium Unit of such person if no address has been given to the Corporation. If such notice is not sent by first class, regular or certified mail, it shall be deemed to have been delivered when received. Such address may be changed, from time to time, by notice in writing to the Corporation.

Section 9. Attorneys' Fees. Except as otherwise provided herein (e.g., resolution of Disputes whereby each party is responsible for payment of his attorney fees and there is no right for the prevailing party to recover attorney fees, without the right to reimbursement from the other party and notwithstanding which party may be the "prevailing party"), or in the Limited Warranty, in the event the Board, Corporation, or any Owner of a Condominium shall commence legal proceedings against the Owner of any other Condominium to enforce the covenants of this Declaration, or to declare rights hereunder as the result of any breach, or claim of breach, of said covenants, the prevailing party shall recover the cost of the suit, arbitration, or alternative dispute resolution, in addition to its costs of suit, including reasonable attorneys' fees, as may be fixed by the court. In addition, if any Owner defaults in making a payment of Assessments and the Corporation has obtained the services of an attorney in connection therewith, the Owner covenants and agrees to pay to the Corporation any costs or fees incurred, including reasonable attorneys' fees, regardless of whether dispute proceedings are instituted.

Section 10. Mergers or Consolidations. Upon a merger or consolidation of the Corporation with another association, the Corporation's properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association or, alternatively, the properties, rights and obligations of another association may, by operation of law, be added to the properties, rights and obligations of the Corporation as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer and enforce the Protective Covenants established by this Declaration governing the Project, together with the covenants and restrictions established upon any other property as one plan.

Section 11. No Representations or Warranties. No representations or warranties of any kind, express or implied, have been given or made by Declarant, or its agents or employees, in connection with the Project, or any portion thereof, its physical condition, zoning, compliance with applicable laws, fitness for intended use, or in connection with the subdivision, sale, operation, maintenance, cost of maintenance, taxes or regulation thereof as a condominium project, except as specifically and

expressly set forth in this Declaration, and except as may be filed by Declarant, from time to time, with the DRE.

Section 12. Notice of Nonadversarial Procedure in Right to Repair Law. Notice is hereby given to all Owners of the existence of the nonadversarial procedure for the resolution of disputes set forth in Chapter 4 of Division 2, Part 2, Title 7, commencing with Section 895, of the California Civil Code (the "Right to Repair Law") and that such procedures may impact the legal rights of Owners.

Section 13. Election Not to Engage in Nonadversarial Procedure Provided in the Right to Repair Law. Declarant has elected not to engage in the nonadversarial procedure for the resolution of disputes set forth in Chapter 4 of the Right to Repair Law. Instead, Declarant intends to seek to enforce the nonadversarial procedures and dispute resolution procedures contained in this Declaration, as the same may be amended from time to time following approval by Declarant, or in the purchase and sale contract between Declarant and an Owner. Notwithstanding the foregoing, nothing in this election shall be deemed to constitute a waiver of Declarant's rights, if any, to require the Corporation or any Owner to comply with the procedures of the Calderon Act (set forth at Civil Code Section 1375) or to enforce any provision of law relating to the resolution of disputes other than California Civil Code Section 914 of The Right to Repair Law.

Section 14. No Enhanced Protection Agreement. No provisions within the Declaration shall be interpreted to constitute, an "enhanced protection agreement," as defined in Section 901 of the California Civil Code.

Section 15. Maintenance Standards. The Corporation and each Owner shall maintain everything he/she/it/they is/are obligated to maintain in a manner consistent with the provisions herein and in the Declaration and in conformance with any "Maintenance Recommendations/Schedules" (i.e., procedures, standards, and/or schedules for the maintenance and operation which may be provided to said Owner and/or the Corporation by Declarant, as such procedures, standards, and/or schedules may be updated and revised as appropriate), and commonly accepted maintenance standards. Unless otherwise provided in such Maintenance Recommendations/Schedules or, herein, each Owner and the Corporation, as applicable, shall determine the level and frequency of maintenance. The Board shall provide to Declarant, for a period of ten (10) years following the last close of escrow for a Lot in Phase 1, and within thirty (30) days after the Corporation's receipt of a written request therefor from the Declarant, the report noted in Article X, Section 2 of this Declaration (if such report is prepared).

Section 16. Agent. The following individual ("Agent") is currently Declarant's agent for notice of claims pursuant to the nonadversarial dispute resolution procedures adopted by Declarant (notice to Grantor does not constitute notice of a claim, or any other notice, under California Civil Code Sections 895 et seq.):

Name: Stephen E. Olson
c/o The General Counsel
(Legal Department)
Address: The Olson Company
3020 Old Ranch Parkway, Suite 400
Seal Beach, CA 90740-2751

Section 17. Nondiscrimination. Each Owner, by acceptance of a deed to a Condominium, and the Corporation, by acceptance of a deed to the Corporation Property, covenants and agrees for itself, its successors, its assigns, and every successor in interest to such property or any part thereof, that there shall be no discrimination against or segregation of any person, or group of persons, on account of race, color, religion, national origin, sex, sexual orientation, AIDS, AIDS-related condition, age, marital status, disability or handicap, or Vietnam Era veteran status in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the such property, nor shall the Owner or Corporation itself, or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees of such property.

All deeds, leases or contracts pertaining to the rental, sale or lease of the such property shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

a. In deeds: "The grantee covenants by and for himself, his heirs, executors, administrators and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, religion, national origin, sex, sexual orientation, AIDS, AIDS-related condition, age, marital status, disability or handicap, or Vietnam Era veteran status in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the land conveyed, nor shall the grantee himself or any person claiming under or through him, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the land conveyed. The foregoing covenants shall run with the land."

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b. In leases: "The lessee covenants by and for himself, his heirs, executors, administrators, and assigns, and all persons claiming under or through them, and this lease is made and accepted upon and subject to the following conditions: There shall be no discrimination against or segregation of any person or group of persons on account of race, color, religion, national origin, sex, sexual orientation, AIDS, AIDS-related condition, age, marital status, disability or handicap, or Vietnam Era veteran status in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the land leased, nor shall the lessee himself, or any person claiming under or through him, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the land leased."

c. In contracts pertaining to the realty: "There shall be no discrimination against or segregation of any person or group of persons on account of race, color, religion, national origin, sex, sexual orientation, AIDS, AIDS-related condition, age, marital status, disability or handicap, or Vietnam Era veteran status in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the land, nor shall the transferee himself or any person claiming under or through him, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenant, lessees, sublessees, subtenants or vendees of the land."

Section 18. Project Disclosures.

(a) Conditions of Approval. The Project is subject to all terms and conditions of approval set forth in the DDA, the City's resolutions approving the tentative map of Tract No. 61304 and the development of the Project, and the Agreement Containing Covenants Affecting Real Property, Parking Easements and Covenants Agreement, Pedestrian Easement and Covenants Agreement, and other documents that have been recorded against the Project. Neither this Declaration nor any contract of sale, lease, or other written document or any means or method shall be established, or shall attempt to establish, any requirement, restriction, or limitation on the Declarant, or any person, individual or entity, which would operate, directly or indirectly, to prevent or preclude any other developers of the Property or Project, or any person, individual, or entity, in complying with all applicable provisions of the tentative map of Tract No. 61304 approved by the City, the DDA, the agreements recorded in the County Recorder's Office regarding the development and use of the Project, and other City ordinances, rules, policies, or regulations.

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(b) Mixed-Use Project. If completed as planned, the Project will contain both commercial and residential Condominium Units. The Retail Condominium Units may be used for restaurant, retail, and other commercial uses, and Owners and other occupants of the Condominium Units may experience significant noise (e.g., relating to truck deliveries, trash pick-up, elevator shafts, electrical rooms, fitness club, alarms, air traffic, vehicular traffic, transformers, mechanical systems, water systems, sewer systems, exhaust venting, condenser units, walking on hard surfaces, music, and voices), bright lights (e.g., exterior night lighting from within and outside of the Project), traffic congestion, odors (e.g., from restaurants and neighbors cooking), fumes, air pollution, trash, debris, criminal activity, panhandling, trespassing, vermin, and other adverse impacts relating to the mixed use of the Project.

(c) Urban Environment. Living in an attached Condominium building within a densely populated community entails living in very close proximity to other persons and businesses, with attendant limitations on solitude. Owners will hear noise from adjacent residences within the Project, including, but not limited to, noise from showers, bathtubs, sinks, toilets or other sources of running water. Also, Owners may hear noise from items such as vacuum cleaners, stereos, or televisions, or from people running, walking or exercising. Finally, Owners can expect to hear noise from adjacent residential and commercial areas. Owners may also experience light entering the residences from street lights located in close proximity to the windows and doors of the residences. Seller has no control over the transmission of noise or light and their potential effects on residences within the Project.

(d) General Public's Right to Use Walkway Between Condominium Buildings. As required by the Agency, the general public has the right to use the walkway between the two Condominium buildings in the Project between the hours of 8:00 a.m. and 10:00 p.m.. The general public has no right to use, and the Corporation shall have the right to lock the gates to, the walkway between the hours of 10:00 p.m. and 8:00 a.m.. The hours for the general public's use of the walkway are subject to annual review, and may be revised, as deemed necessary, by the City's Director of Planning and Building at the request of the Corporation.

(e) Noise and Odors. Owners and their families, guests, and invitees will experience noise and odors from the following activities, including, but not limited to:

1. Sounds emanating from elevator shafts, electrical rooms, transformers, mechanical systems, water systems, sewer systems, exhaust venting, condenser units, garage fans/venting, footsteps on hard surfaces, music, talking, and any other human or animal sounds generated by Owners and guests, truck

deliveries, trash pickup, fitness club, alarms, public restroom facilities, air traffic and vehicular and other pedestrians in and around the Project.

2. Odors emanating from neighbors cooking, the restaurant cooking, fumes from delivery and trash trucks, and the like.

(f) Prohibition Against Certain Interior Modifications: Owners are strictly prohibited from making any modifications (whether structural or otherwise) to the interior of any Condominium Unit that would in any manner alter or impact any fire, life, and safety mechanisms as well as any sound attenuation measures installed by Declarant and/or Declarant's agents and representatives.

(g) Downtown Redevelopment Project Area. The project is situated within the Downtown Redevelopment Project Area of the City. Owners and other residents of the Project may experience, and/or be exposed to, significant noise, odors, fumes, air pollution, vibrations, traffic congestion, bright lights, and other adverse impacts relating to the redevelopment and construction of other property in the Downtown Redevelopment Project Area.

(h) Public Parking Spaces in Subterranean Garage. As required by the Agency, certain parking spaces within the subterranean garage in the Project are public parking spaces. Owners and residents of the Project may not park in the public parking spaces. However, a percentage of the public parking spaces shall be available for guest parking on a first-come, first-serve basis. The hours of operation of the public parking spaces shall be 8:00 a.m. to 1:00 a.m. on Sundays through Thursdays and holidays on which the Long Beach City Hall is closed and 8:00 a.m. to 2:00 a.m. on Fridays and Saturdays. Owners and other residents of the Project may experience and/or be exposed to significant noise, odors, fumes, air pollution, traffic congestion, parking problems (e.g., members of the general public improperly parking in Owners' private parking spaces), bright lights, vibrations, disruptive behavior, criminal activity, and other adverse impacts relating to the general public's use of the public parking spaces in the subterranean garage.

(i) Long Beach Airport. The Project is presently located in the vicinity of an airport (e.g., Long Beach Airport, Compton Airport, etc.). For that reason, the Project may be subject to some of the annoyances or inconveniences associated with proximity to airport operations (for example: noise, vibration, or odors). Individual sensitivities to those annoyances can vary from person to person. Each Owner may wish to, and should, consider what airport annoyances, if any, are associated with the Project before an Owner completes the purchase of a Condominium and determine whether such location and airport annoyances are acceptable.

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(j) Access to the Project. Pedestrian access into the Condominium buildings may be controlled by entry doors located at the lobby and garage entrances, elevators requiring keys to reach certain portions of the buildings, and gated entrances to the parking garage (collectively, "Access Points"). Staffing is planned for the Access Points. However, Declarant may provide interim staffing of Access Points at its sole cost and sole discretion as part of the marketing and development operations for the Project. **Interim staffing of Access Points may be modified or eliminated at any time without notice.** Declarant has reserved the right to limit the operation of any Access Point during the period when Declarant is offering Condominiums for sale. Until that last Close of Escrow occurs in the Project, Access Points may be open to the general public. Access Points and any staffing thereof are not intended to provide security or privacy for persons, personal property or Condominiums within the Project. Declarant and the Corporation do not undertake to provide security or privacy for the Project or Owners nor do they make any representations or warranties concerning the privacy, security and safety of the Project or Owners. Any security service provided by the Corporation or any improvement constructed or maintained by the Corporation for the purposes of providing additional security to the Project and its occupants and users are not intended to provide security for Persons, personal property or Condominiums within the Project. Declarant and the Corporation do not undertake to provide security for the Project nor do they make any representations or warranties whatsoever concerning the privacy and safety of the Project. Neither the Corporation or Declarant shall be liable to any Person and each Owner waives any claim against the Corporation and Declarant, for (i) any unauthorized or criminal entry of third parties into the Properties, any Unit within the Project or any Improvements within the Project, (ii) any damage or injury to Persons, or (iii) any loss of property in and about the Project, any Unit within the Project or any Improvements within the Project, by or from any unauthorized or criminal acts of third parties, regardless of any action, inaction, failure, breakdown, malfunction or insufficiency of the security services and improvements provided by the Corporation or Declarant.

(k) Parking. Due to construction activities, initial owners and other residents of the Project may not have access to their assigned parking spaces within the subterranean garage for up to one (1) year after purchase of their Condominiums and may be required to park in open (i.e., unassigned) parking spaces during that time period.

(l) Waiver. Each Owner, for and on behalf of himself and the members of his family, his tenants, lessees, guests and invitees, expressly approve all of the foregoing conditions and

risks, and waives all causes of action and covenants not to sue the City, the Declarant, and their respective directors, officers, members, employees, agents and consultants for any damages or injuries which may arise from or relate to any of such conditions and/or risks.

Section 19. Priorities and Inconsistencies. If there are conflicts or inconsistencies between this Declaration and either the Articles or By-Laws of the Corporation, the terms and provisions of this Declaration shall prevail, save and except for the provisions of the Articles of Incorporation. If there are any inconsistencies between this Declaration and either the "Agreement Containing Covenants Affecting Real Property (Housing Component)" or the "Grant of Easement and Agreement Containing Covenants Affecting Real Property" (collectively the "Agency Covenants"), then the Agency Covenants shall prevail.

Section 20. Davis-Stirling Act. Notwithstanding the provisions set forth in this Declaration, various laws (including, but not limited to, the Davis-Stirling Common Interest Development Act, Sections 1350, et seq., of the California Civil Code, and the Federal Fair Housing Act, Title 42 United States Code, Sections 3601, et seq., as such laws may be amended, from time to time), may supplement or override the provisions of this Declaration. This Declaration shall be interpreted and construed to be consistent with such applicable laws, as same may be amended, from time to time, and, accordingly, Declarant makes no representations or warranties regarding the future enforceability of the provisions of this Declaration.

Section 21. Declarant's Representative. Commencing on the date on which Declarant no longer has an elected representative on the Board, and continuing until the date that is ten (10) years after the date of the last close of escrow in the Project, the Declarant shall be entitled to have a representative ("Declarant's Representative") present at all meetings of the Members and the Board. For so long as Declarant's Representative is entitled to attend such meetings, the Corporation and/or Members, as appropriate, shall provide Declarant with written notice of all meetings of the Board as if Declarant were an Owner/Member, and the Corporation shall provide Declarant's Representative with the minutes for the meetings of Owners, the Board and committees. The Declarant's Representative shall be present in an advisory capacity only and shall not be a Board member or have any right to vote on matters coming before the Board or any liability as a Board member. This Section may not be amended without the prior written approval of the Declarant, which approval may be withheld in Declarant's sole and absolute discretion.

Section 22. RETAIL CONDOMINIUM UNITS AND PARKING CONDOMINIUM UNITS ONLY - AS-IS PROVISION; DISCLAIMER OF WARRANTIES; RELEASE OF CLAIMS; COVENANT NOT TO SUE. EXCEPT AS OTHERWISE SET

FORTH IN AN EXPRESS LIMITED WARRANTY PROVIDED BY SELLER TO THE INITIAL OWNER OF A RETAIL CONDOMINIUM UNIT OR A PARKING CONDOMINIUM UNIT, UPON ACCEPTANCE OF A DEED TO A RETAIL CONDOMINIUM UNIT OR PARKING CONDOMINIUM UNIT IN THE PROJECT, EACH OWNER OF SUCH RETAIL CONDOMINIUM UNIT OR PARKING CONDOMINIUM UNIT, ON BEHALF OF ITSELF AND ITS RESPECTIVE SUCCESSORS IN INTEREST, HEIRS, ASSIGNS, AND TENANTS, COVENANTS AND AGREES AS FOLLOWS:

(a) AS-IS PROVISION. THE OWNER IS ACQUIRING THE RETAIL CONDOMINIUM UNIT OR PARKING CONDOMINIUM UNIT (AS APPLICABLE) IN ITS AS-IS, WHERE-IS, EXISTING CONDITION, SUBJECT TO ALL OBSERVABLE AND NON-OBSERVABLE DEFECTS AND DEFICIENCIES THEREIN. THE DECLARANT MAKES NO REPRESENTATIONS OR WARRANTIES TO THE OWNER, EXPRESS OR IMPLIED, CONCERNING ANY ASPECT OF THE RETAIL CONDOMINIUM UNIT, THE PARKING CONDOMINIUM UNIT, THE CORPORATION PROPERTY (INCLUDING, WITHOUT LIMITATION, ANY RETAIL EXCLUSIVE USE CORPORATION PROPERTY), THE PROJECT, TRACT 61304 OR ANY BUILDINGS OR OTHER IMPROVEMENTS CONSTRUCTED THEREON. WITHOUT ANY LIMITATION OF THE FOREGOING, DECLARANT MAKES NO REPRESENTATION OR WARRANTY CONCERNING THE DESIGN, FITNESS FOR RETAIL, COMMERCIAL, OR ANY OTHER USE, THE SQUARE FOOTAGE, THE FUTURE AMOUNT OF COMMON OR SPECIAL ASSESSMENTS, THE DESIGN, QUALITY, CONSTRUCTION, WORKMANSHIP OR VALUE OF ANY RETAIL CONDOMINIUM UNIT OR PARKING CONDOMINIUM UNIT, THE CORPORATION PROPERTY (INCLUDING, WITHOUT LIMITATION, ANY RETAIL EXCLUSIVE USE CORPORATION PROPERTY), THE PROJECT, TRACT 61304 OR ANY BUILDINGS OR OTHER IMPROVEMENTS CONSTRUCTED THEREON, THE FINANCIAL STATUS OF THE CORPORATION, THE PRESENCE OR ABSENCE OF THERMAL AND SOUND INSULATING MATERIALS, AVAILABLE PARKING, CRIMINAL ACTIVITY IN THE VICINITY OF THE PROJECT, OR SECURITY OF THE PROJECT. IN ADDITION, DECLARANT HAS NOT MADE, DOES NOT MAKE, AND SPECIFICALLY NEGATES AND DISCLAIMS, ANY REPRESENTATIONS, WARRANTIES, PROMISES, COVENANTS, AGREEMENT OR GUARANTEES OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE, OF, AS TO, CONCERNING OR WITH RESPECT TO (I) THE CONDITION OF TITLE TO THE CONDOMINIUM UNIT; (II) THE SUITABILITY OF THE CONDOMINIUM UNIT OR THE CORPORATION PROPERTY FOR THE OWNER; (III) THE HABITABILITY, MERCHANTABILITY, MARKETABILITY, PROFITABILITY, QUALITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE CONDOMINIUM OR THE CORPORATION PROPERTY; (IV) THE COMPLIANCE OF OR BY THE CONDOMINIUM UNIT, THE CORPORATION PROPERTY OR THE PROJECT WITH ANY LAWS, RULES, ORDINANCES OR REGULATIONS OF ANY APPLICABLE GOVERNMENTAL AUTHORITY OR BODY; (V) COMPLIANCE OF OR BY THE CONDOMINIUM UNIT, CORPORATION PROPERTY OR PROJECT WITH ANY ENVIRONMENTAL PROTECTION, POLLUTION OR LAND USE LAWS, RULES, REGULATIONS, ORDER OR REQUIREMENTS, INCLUDING, BUT NOT LIMITED TO, THE ENDANGERED SPECIES ACT, TITLE III OF THE AMERICANS WITH DISABILITIES ACT OF 1990 OR ANY OTHER LAW, RULE OR REGULATION GOVERNING ACCESS BY DISABLED PERSONS, THE FEDERAL WATER POLLUTION CONTROL ACT, ANY REGIONAL WATER QUALITY CONTROL BOARD EXERCISING JURISDIC-

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TION OVER THE PROPERTY, THE FEDERAL RESOURCE CONSERVATION AND RECOVERY ACT, THE U.S. ENVIRONMENTAL PROTECTION AGENCY REGULATIONS AT 40 C.F.R., PART 261, THE COMPREHENSIVE ENVIRONMENTAL RESPONSE COMPENSATION AND LIABILITY ACT OF 1980, AS AMENDED, THE RESOURCES CONSERVATION AND RECOVERY ACT OF 1976, THE CLEAN WATER ACT, THE SAFE DRINKING WATER ACT, THE HAZARDOUS MATERIALS TRANSPORTATION ACT, THE TOXIC SUBSTANCE CONTROL ACT, AND REGULATIONS PROMULGATED UNDER ANY OF THE FOREGOING; (VI) THE CONFORMITY OF THE IMPROVEMENTS TO ANY PLANS OR SPECIFICATIONS FOR THE CONDOMINIUM UNIT, CORPORATION PROPERTY, OR PROJECT; (VII) THE CONFORMITY OF THE CONDOMINIUM UNIT, THE CORPORATION PROPERTY, OR THE PROJECT TO PAST, CURRENT OR FUTURE APPLICABLE ZONING OR BUILDING REQUIREMENTS; (VIII) THE FACT THAT ALL OR A PORTION OF THE CONDOMINIUM UNIT, CORPORATION PROPERTY OR PROJECT MAY BE LOCATED IN AN EARTHQUAKE, SEISMIC ZONE OR FLOOD HAZARD ZONE; (IX) THE EXISTENCE OR LACK OF VESTED LAND USE, ZONING OR BUILDING ENTITLEMENTS AFFECTING THE CONDOMINIUM UNIT, CORPORATION PROPERTY, OR PROJECT; (X) WARRANTIES WITH RESPECT TO THE USES PERMITTED ON, THE DEVELOPMENT REQUIREMENTS FOR, OR ANY OTHER MATTER OR THING RELATING TO THE CONDOMINIUM UNIT, CORPORATION PROPERTY OR PROJECT OR ANY PORTION THEREOF, INCLUDING WITHOUT LIMITATION, SOIL, COMPACTION, DRAINAGE, SEISMIC, HAZARDOUS MATERIALS, COMPLIANCE WITH ENVIRONMENTAL REQUIREMENTS, UTILITIES, ACCESS, AND THE ECONOMIC OR OTHER RETURN THAT MAY BE DERIVED FROM OWNERSHIP, DEVELOPMENT, IMPROVEMENT OR USE OF THE CONDOMINIUM UNIT, CORPORATION PROPERTY, OR PROJECT; (XII) OWNER ALSO ACKNOWLEDGES THAT SOME DEFECTS MAY BECOME APPARENT ONLY AFTER THE OWNER'S ACQUISITION OF THE CONDOMINIUM UNIT AND HEREBY RELEASES DECLARANT FROM BLAME AND ALL LIABILITY FOR SUCH LATENT DEFECTS; AND (XII) EXCEPT AS OTHERWISE EXPRESSLY STATED HEREIN, WITH RESPECT TO ANY OTHER MATTER CONCERNING THE CONDOMINIUM UNIT, CORPORATION PROPERTY AND PROJECT (INCLUDING, WITHOUT LIMITATION, ANY CONTRACTS, LEASES, FIXTURES, EQUIPMENT, PERMITS, PERSONAL PROPERTY, SERVICE AND REPAIR CONTRACTS, INTANGIBLES), INCLUDING ANY AND ALL SUCH MATTERS REFERENCED, DISCUSSED OR DISCLOSED IN THIS DECLARATION OR ANY OTHER DOCUMENTS DELIVERED BY DECLARANT TO THE OWNER, IN ANY PUBLIC RECORDS OF ANY GOVERNMENTAL AGENCY OR ENTITY OR UTILITY COMPANY, OR IN ANY OTHER DOCUMENTS DELIVERED BY DECLARANT TO THE OWNER.

(b) DISCLAIMER OF ALL WARRANTIES. DECLARANT EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES, GUARANTIES, PROMISES AND REPRESENTATIONS, WHETHER EXPRESS OR IMPLIED, PERTAINING TO EACH RETAIL CONDOMINIUM UNIT, PARKING CONDOMINIUM UNIT, CORPORATION PROPERTY, THE PROJECT, TRACT 61304, AND ANY BUILDING OR OTHER IMPROVEMENT CONSTRUCTED THEREON, INCLUDING, WITHOUT LIMITATION, ALL WARRANTIES CONCERNING THE NATURE, CONDITION, DESIGN, WORKMANSHIP, FITNESS FOR OCCUPANCY, QUALITY, MERCHANTABILITY, OR CONSTRUCTION OF THE CONDOMINIUM UNIT, CORPORATION PROPERTY, PROJECT, TRACT 61304 AND ANY BUILDING OR OTHER IMPROVEMENT CONSTRUCTED THEREON. EACH OWNER

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OF A CONDOMINIUM UNIT ACCEPTS SUCH DISCLAIMER AS A CONDITION OF ITS ACQUISITION OF THE CONDOMINIUM UNIT IN THE PROJECT.

(c) GENERAL RELEASE OF ALL CLAIMS. EACH OWNER OF A RETAIL CONDOMINIUM UNIT AND/OR PARKING CONDOMINIUM UNIT, ON BEHALF OF ITSELF AND ITS SUCCESSORS IN INTEREST, HEIRS, ASSIGNS, AND TENANTS, RELEASES AND DISCHARGES DECLARANT AND ITS MEMBERS, PRINCIPALS, AFFILIATES, EMPLOYEES, ATTORNEYS, CONTRACTORS, SUBCONTRACTORS, AGENTS, AND REPRESENTATIVES FROM ANY AND ALL ACTIONS, CAUSES OF ACTION, CHOSSES IN ACTION, CLAIMS, DEBTS, DEMANDS, LIABILITIES, COSTS AND EXPENSES OF ANY NATURE OR KIND ARISING OUT OF OR IN ANY WAY RELATING TO ANY ASPECT OF THE CONDOMINIUM UNIT, CORPORATION PROPERTY, THE PROJECT, TRACT 61304 AND/OR ANY BUILDING OR OTHER IMPROVEMENTS CONSTRUCTED THEREON, INCLUDING, WITHOUT LIMITATION, CONSTRUCTION DEFECT CLAIMS (COLLECTIVELY, CLAIMS), REGARDLESS OF WHETHER SUCH CLAIMS ARE KNOWN OR UNKNOWN OR SUSPECTED OR UNSUSPECTED BY THE OWNER AT THE TIME IT ACQUIRES AN INTEREST IN THE PROJECT. IN ADDITION, EACH OWNER WAIVES AND RELINQUISHES ANY AND ALL RIGHTS AND BENEFITS AFFORDED BY SECTION 1542 OF THE CALIFORNIA CIVIL CODE, WHICH READS AS FOLLOWS:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

EACH OWNER UNDERSTANDS THAT THE FACTS IN RESPECT OF WHICH THE FOREGOING RELEASE IS GIVEN MAY TURN OUT TO BE OTHER THAN OR DIFFERENT FROM THE FACTS KNOWN OR BELIEVED TO BE TRUE BY THE OWNER AT THE TIME OF ITS ACQUISITION OF AN OWNERSHIP INTEREST IN THE PROJECT, AND HEREBY ACCEPTS AND ASSUMES THE RISK OF THE FACTS TURNING OUT TO BE DIFFERENT AND AGREES THAT THE FOREGOING RELEASE SHALL BE IN ALL RESPECTS EFFECTIVE AND NOT SUBJECT TO TERMINATION OR RESCISSION BY VIRTUE OF ANY SUCH DIFFERENCE IN FACT(S).

(d) COVENANT NOT TO SUE. EACH OWNER, ON BEHALF OF ITSELF, AND ITS SUCCESSORS IN INTEREST, HEIRS, ASSIGNS, AND TENANTS, COVENANTS AND AGREES THAT IT SHALL FOREVER REFRAIN AND FORBEAR FROM COMMENCING, INSTITUTING, OR PROSECUTING ANY LAWSUIT, ACTION, OR OTHER PROCEEDING OF ANY KIND OR NATURE (INCLUDING, WITHOUT LIMITATION, EQUITABLE PROCEEDINGS AND ARBITRATION PROCEEDINGS) AGAINST DECLARANT AND/OR DECLARANT'S MEMBERS, PRINCIPALS, AFFILIATES, EMPLOYEES, ATTORNEYS, CONTRACTORS, SUBCONTRACTORS, AGENTS, AND REPRESENTATIVES, ARISING OUT OF OR IN ANY WAY RELATING TO THE RETAIL CONDOMINIUM UNIT, PARKING CONDOMINIUM UNIT, CORPORATION PROPERTY, PROJECT, TRACT 61304 AND/OR ANY BUILDING OR OTHER IMPROVEMENT CONSTRUCTED THEREON.

(e) TERMINATION AND AMENDMENT. NO PORTION OF THIS SECTION 22 MAY BE REVOKED, TERMINATED, AMENDED OR MODIFIED WITHOUT THE EXPRESS WRITTEN APPROVAL OF THE DECLARANT.

Section 23. Additional Rights of Agency and City. Notwithstanding any other provision in this Declaration, as set forth in the Agreement Containing Covenants Affecting Real Property recorded against the Project in the County Recorder's Office, the following provisions shall apply to this Project until the termination of the Redevelopment Plan:

(a) Maintenance of the Property. The Corporation and Owners (e.g., the Owners of Retail Condominium Units), and their respective successors and assigns, shall maintain the Improvements and landscaping within the Project in accordance with the "Reasonable Standards," as hereinafter defined. Said Improvements shall include, but not be limited to, buildings, sidewalks, pedestrian lighting, landscaping, irrigation of landscaping, and any and all improvements within the Project. To accomplish such maintenance, the Corporation and Owners shall either staff or contract with qualified and if required by law, licensed personnel, to perform the maintenance work, including the provision of labor, equipment, materials, support facilities, and any and all other items necessary to comply with the requirements of this Agreement. The obligations of the Corporation and Owners regarding maintenance of the Project in accordance with this subparagraph (a) are referred to herein as the "Corporation/Owner Obligations."

(b) Reasonable Standards. The following standards ("Reasonable Standards") shall be complied with by the Corporation and Owner and their respective maintenance staff, contractors or subcontractors:

(1) Landscape maintenance shall include, but not be limited to: watering/irrigation; fertilization; mowing; edging weeding; removal and replacement of dead landscaping material; trimming of grass; tree and shrub pruning.

(2) Clean-up maintenance shall include, but not be limited to: maintenance of all sidewalks, paths and other paved areas in a clean and weed-free condition; maintenance of all such areas clear of dirt, mud, trash, debris or other matter which is unsafe or unsightly; removal of all trash, litter and other debris from Improvements and landscaping.

(3) The Improvements shall be maintained in conformance and in compliance with the approved construction and architectural plans and design

scheme, as the same may be amended from time to time with the approval of the Agency, and in accordance with the following provisions:

(a) Buildings. The buildings' skin and trim shall be kept in good condition. Any deterioration or damage to the buildings shall be repaired immediately. Any painting accomplished to repair deterioration or damages, or to cover graffiti, shall match the existing paint color. Any proposed repainting of the building with a color other than the existing color shall be approved by the Agency prior to the painting being completed. Any damage to the ceramic tile shall be repaired or replaced immediately with matching tile. No wires, piping or other items shall be installed on the building faces except as approved through the design review process described in the DDA.

(b) Windows and Doors. All windows and doors shall be kept in good working order. Any damaged glazing shall be replaced immediately. Doors and window mullions shall be maintained free from deterioration and repaired or replaced if damaged.

(c) Lighting. All lighting shall be kept in good working order at all times. Any worn out light bulbs shall be replaced immediately. Lighting standards shall be repaired or replaced with identical or substantially similar lighting in the case of deterioration or damage.

(d) Awnings. All awnings shall be cleaned with soap and water every six months to remove dirt, grime and dust. Awnings shall be repaired as necessary or replaced with identical awnings of the same material and color to match existing awnings in case of deterioration or damage. Any deterioration of or damage to the awning supports shall be repaired or replaced immediately.

(e) Signage. All permanent building signage shall be kept in good working order at all times. Any unworking light bulbs shall be replaced immediately. Permanent building signage shall be repaired as necessary or replaced with identical materials as constructed due to deterioration or damage.

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No temporary signs or banners shall be allowed to be placed on the building fronts. No signage shall be painted on any doors, windows or building surface. Any signs that are removed must have the facade patched and painted to match the existing surface.

(f) Screening (Grille Doors). All door and trash enclosure screening shall be kept in good working order at all times. The screening shall be repaired as necessary or replaced with identical materials and paint color as installed. No security bars or screening shall be allowed to be placed on the exterior of the building or over the doors or windows except as expressly approved by the Executive Director of the Agency.

(g) Trash. The common trash areas shall be cleaned consistently, with all trash placed in designated bins and other areas kept free from trash and debris. Common trash areas shall be washed down a minimum of once per month.

(c) Failure to Maintain Improvements. In the event the Corporation or Owner does not maintain the Project and Improvements, including the parking facilities, in the manner set forth herein and in accordance with Reasonable Standards, the Agency and/or the City shall have the right to enter the Project and maintain such Improvements, or to contract for the correction of such deficiencies, after written notice to the Corporation or Owner (as applicable). However, prior to taking any such action, the Agency agrees to notify the Corporation or Owner (as applicable) in writing if the condition of said Improvements does not meet with Reasonable Standards and to specify the deficiencies and the actions required to be taken by the Corporation or Owner (as applicable) to cure the deficiencies. Upon notification of any maintenance deficiency, the Corporation or Owner (as applicable) shall have thirty (30) days within which to commence, and thereafter diligently correct, remedy or cure the deficiency. If the written notification states the problem is urgent and relates to public health and safety, the Corporation or Owner (as applicable) shall have forty-eight (48) hours to commence to rectify the problem.

(d) Right to Enter and Maintain. In the event the Corporation or Owner (as applicable) fails to correct, remedy, or cure or has not commenced correcting, remedying or curing such maintenance deficiency after notification and after the period of correction has lapsed, then the Agency and/or City shall have the right to enter the Property and maintain such

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Improvements. The Corporation or Owner (as applicable) shall pay to the Agency and/or City such charges and costs incurred by the Agency and/or City in curing such maintenance deficiency. Until so paid, the Agency and/or City shall have a lien on the property of the Corporation (i.e., Corporation Property) or Owner (e.g., Retail Condominium Unit), as applicable, as provided by these Covenants for the amount of such charges or costs.

(e) Lien for Owner's Obligations. If the Agency exercises its right to maintain such improvements, the Corporation or Owner (as applicable) shall pay the Agency such reasonable charges and costs incurred for such maintenance. Until so paid, the Agency shall have a lien on the property of the Corporation (i.e., Corporation Property) or Owner (e.g., Retail Condominium Unit), as applicable, for the amount of such charges or costs, which lien shall be perfected by the recordation of "Notice of Claim or Lien" against the Property.

(1) Upon recordation of a Notice of a Claim of Lien against such property, such lien shall constitute a lien on the fee estate in and to the Property prior and superior to all other monetary liens except (i) all taxes, bonds, assessments, and other levies which, by law, would be superior thereto; and (ii) the lien or charge of any mortgage, deed of trust, or other security interest then of record made in good faith and for value, it being understood that the priority of any such lien for costs incurred to comply with these covenants shall date from the date of the recordation of the Notice of Claim of Lien.

(2) Any such lien shall be subject and subordinate to any lease or sublease of the interest of the Corporation or Owner (as applicable) in such property or any portion thereof and to any easement affecting such property or any portion thereof entered into at any time (either before or after) the date of recordation of such a Notice.

(3) Any lien created pursuant to this subparagraph may be enforced in any manner permitted by law, including judicial foreclosure or nonjudicial foreclosure. Any nonjudicial foreclosure shall be conducted by the trustee named in the Notice of Claim of Lien or by a trustee substituted pursuant to Paragraph 2934a of the California Civil Code, in accordance with the provisions of Paragraphs 2924, 2924b and 2924c of the California Civil Code.

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(4) If the sums specified in the Notice of Claim of Lien are paid before the completion of any judicial or nonjudicial foreclosure, the Agency shall record a notice of satisfaction and release of the lien. Upon receipt of a written request by the Corporation or Owner (as applicable), the Agency shall also record a notice of rescission of the Notice of Claim of Lien.

(5) Upon foreclosure of any mortgage of deed of trust made in good faith and for value and recorded prior to the recordation of any unsatisfied notice of Claim of Lien, the foreclosure-purchaser shall take title to the affected property free of any lien imposed by the Agency that has accrued up to the time of the foreclosure sale, and upon taking title to the affected property, such foreclosure-purchaser shall only be obligated to pay reasonable costs associated with these covenants accruing after the foreclosure-purchaser acquires title to the affected property.

(6) If the Property is ever legally divided with the written approval of the Agency (if required pursuant to the Agreement) and fee title to various portions of the Property is held under separate ownerships, then the burdens of the maintenance obligations set forth herein and in these covenants and the charges levied by the Agency to reimburse the Agency for the cost of undertaking such maintenance obligations of the Corporation or Owner, and its successors and assigns, and the lien of such charges shall be apportioned among the fee owners of the various portions of the Property under different ownership according to the square footage of the floor area contained in the respective portions of the Property owned by them. Upon apportionment, no separate owner of a portion of the Property shall have any liability for the apportioned liabilities of any other separate owner of another portion of the Property, and the lien shall be similarly apportioned and shall only constitute a lien against the portion of the Property owned in fee by the owner who is liable for the apportioned charges levied by the Agency and secured by the apportioned lien and against no other portion of the Property.

(7) By acceptance of a deed to the Corporation Property or a Retail Condominium Unit, the Corporation and each Owner acknowledges and agrees Agency may also pursue any and all other remedies available in law or equity in the event

Owner fails to remedy any maintenance deficiency after notice and within the period of correction.

(8) The Corporation and each Owner shall be liable for any and all attorney's fees and other legal costs or fees incurred in collecting said maintenance costs.

[signatures to follow]

006 2764924

IN WITNESS WHEREOF, Declarant has executed this instrument on the day and year first above written.

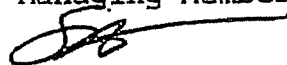
"DECLARANT"

OLSON 737-LONG BEACH 2, LLC,
a California limited liability
company

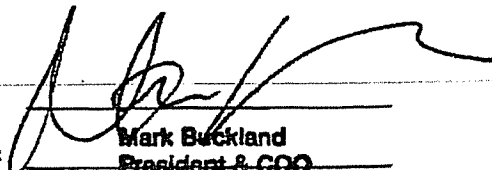
BY: OLSON URBAN HOUSING,
LLC, a Delaware limited
liability company
Its: Sole Member

BY: THE OLSON COMPANY, a
California corporation
Its: Managing Member

Dated: 10-31-06

By: 
Its: Scott Hornan
Executive VP & CFO

Date: 10-31-06

By: 
Its: Mark Buckland
President & COO

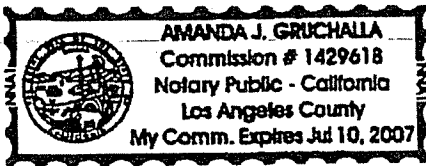
STATE OF CALIFORNIA)
)
COUNTY OF ORANGE) ss.

On October 31, 2006, before me, Amanda J. Gruchalla, a Notary Public for the State of California, personally appeared Mark Buckland and Scott Homan, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities and that by their signatures on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.

Amanda J. Gruchalla

Amanda J. Gruchalla
Notary Public
State of California



(SEAL)

CONSENT OF LIENHOLDER AND
SUBORDINATION OF LIEN

The undersigned beneficiary under that certain Deed of Trust recorded on September 2, 2005 as Instrument No. 2005-2126510, in the Official Records of Los Angeles County, California, hereby consents to the recordation of the attached "Declaration of Covenants, Conditions and Restrictions, and Reservation of Easements for 133 Promenade Walk" ("Declaration"), and agrees that the lien of the Deed of Trust shall be junior and subordinate and subject to the Declaration and to any easements to be conveyed to 133 Promenade Walk Corporation in accordance with the terms of the Declaration, and to any amendments or modifications to the Declaration which may be required to comply with any law, statute or regulation of any public agency or any requirement of FNMA or FHLMC.

DATED: October 30, 2006

"LIENHOLDER"

REDEVELOPMENT AGENCY OF THE CITY
OF LONG BEACH, CALIFORNIA,
a public body, corporate and politic

By: 

Its: Executive Director

By: _____

Its: _____

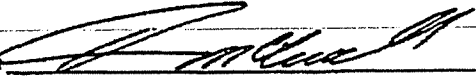
CONSENT OF LIENHOLDER AND
SUBORDINATION OF LIEN

The undersigned beneficiary under that certain Deed of Trust recorded on September 2, 2005 as Instrument No. 2005-2126509, in the Official Records of Los Angeles County, California, hereby consents to the recordation of the attached "Declaration of Covenants, Conditions and Restrictions, and Reservation of Easements for 133 Promenade Walk" ("Declaration"), and agrees that the lien of the Deed of Trust shall be junior and subordinate and subject to the Declaration and to any easements to be conveyed to 133 Promenade Walk Corporation in accordance with the terms of the Declaration, and to any amendments or modifications to the Declaration which may be required to comply with any law, statute or regulation of any public agency or any requirement of FNMA or FHLMC.

DATED: 10/30/2006

"LIENHOLDER"

UNION BANK OF CALIFORNIA, N.A.
a national banking association

By: 

Its: Vice president

By: 

Its: 

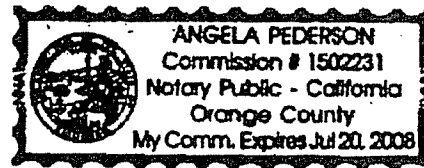
NOTARY ACKNOWLEDGMENT - CALIFORNIA

State of California)
County of Orange _____)

On October 30, 2006, before me, Angela Pederson, Notary Public, personally appeared Darren McCall, [] personally known to me or [] proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Signature Angela Pederson (SEAL)



06 2764954

EXHIBIT "A"

LEGAL DESCRIPTION

(DRE Marketing Phases)

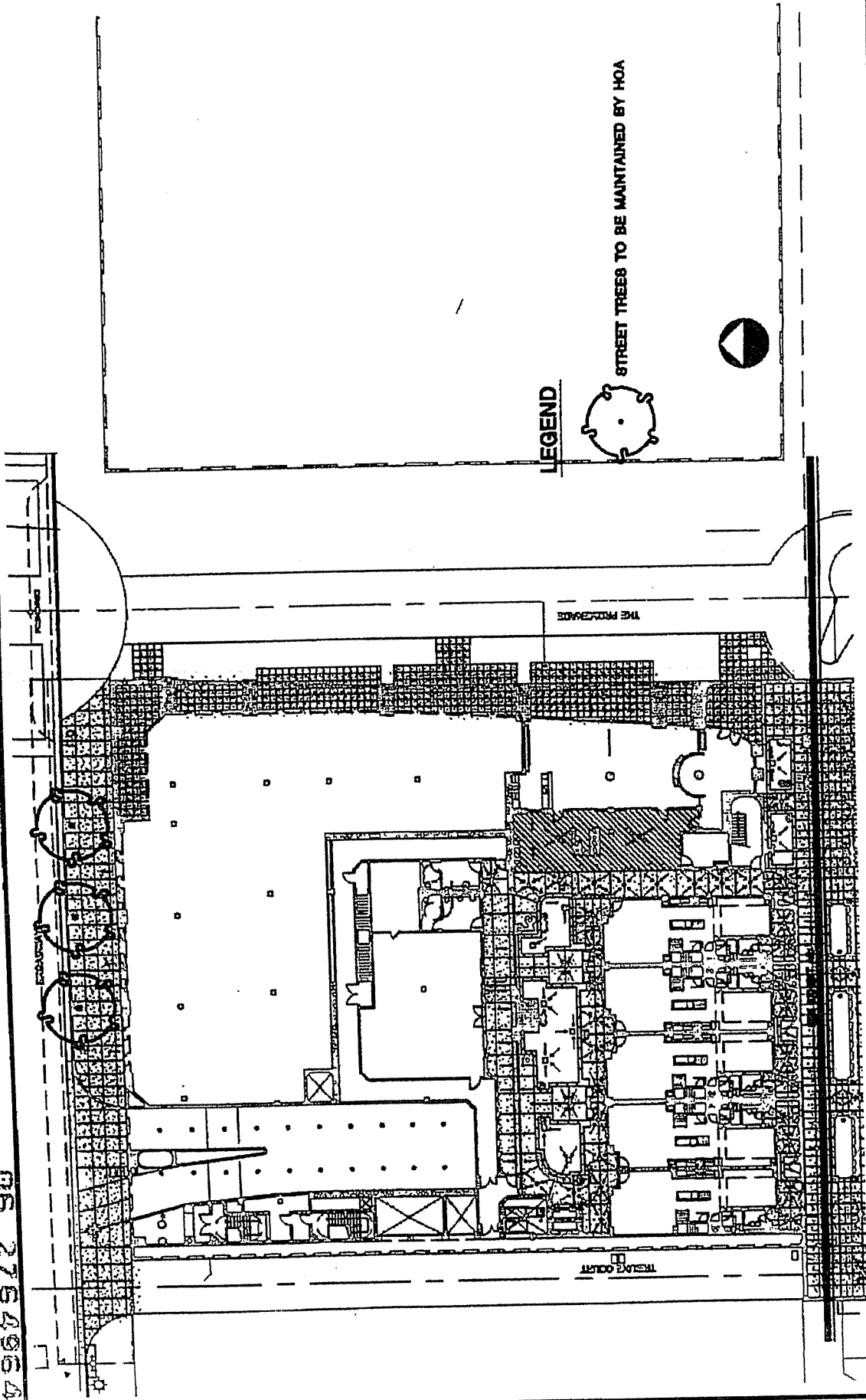
All that certain real property located in the City of Long Beach, County of Los Angeles, State of California, more particularly described as:


Module B (Common Area), the Corporation Property, and Condominium Units 101 through 112, inclusive, 114, 115, 301 through 305, inclusive, 307, 310 through 312, inclusive, 314, 315, 401 through 405, inclusive, 407, 408, 410 through 412, inclusive, 414, and 415, as depicted and described on the Condominium Plan ("Condominium Plan") recorded concurrently herewith as a portion of Lot 1 of Tract 61304, as per map filed in Book 1326, Pages 60 to 62, inclusive, in the Office of the County Recorder of Los Angeles County, California; and a nonexclusive easement for ingress, egress, access, maintenance, irrigation, and drainage, in, on, over, under, across, and through those portions of the real property described on Exhibit "A-1" attached hereto, and incorporated by reference, for purposes of maintaining the street trees along the public streets adjacent to the Project as depicted on said Exhibit "A-1;" - DRE marketing Phase 1;

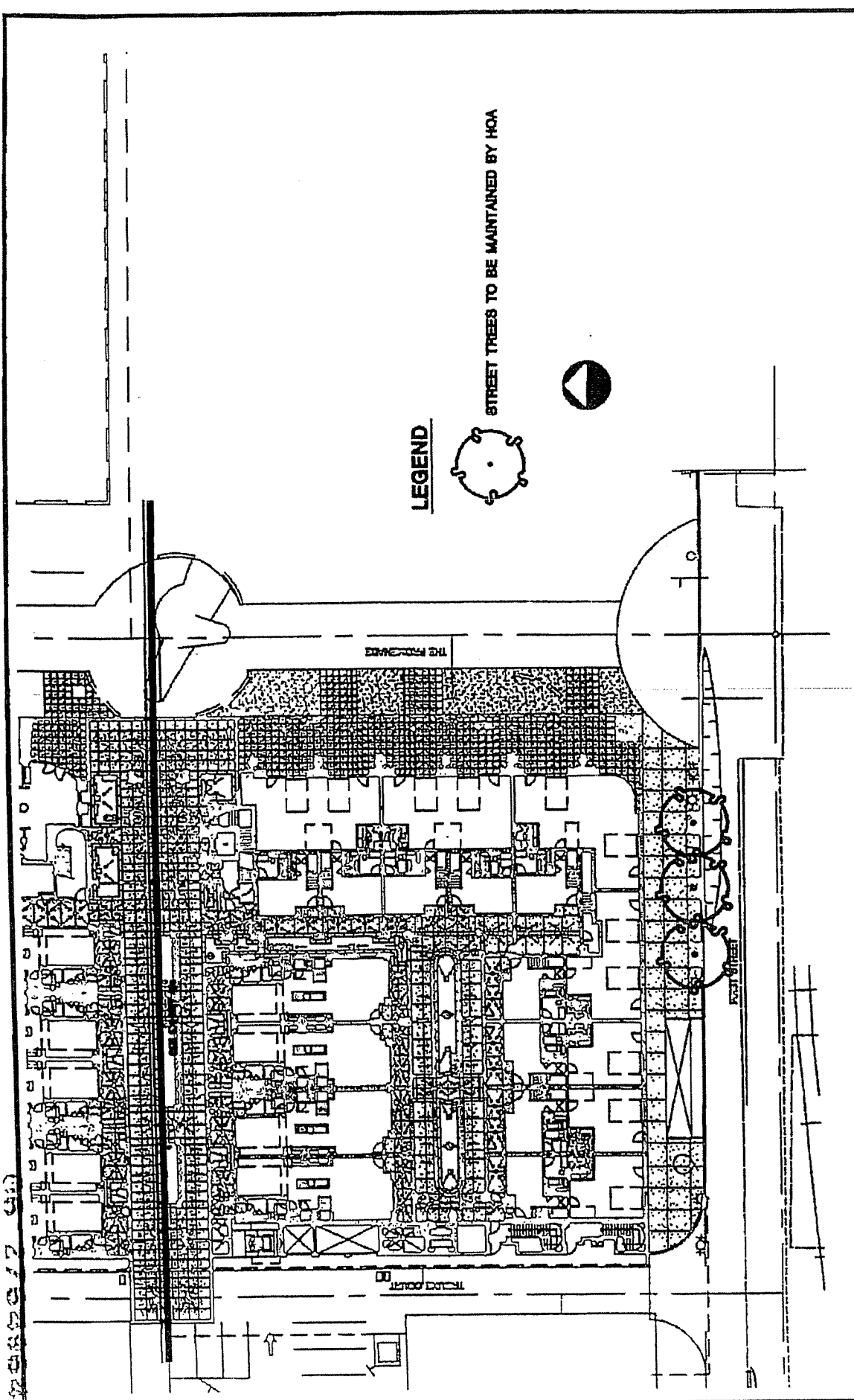
Condominium Units 116 through 120, inclusive, 316 through 320, inclusive, and 416 through 420, inclusive, as depicted and described on the Condominium Plan as a portion of Lot 1 of Tract 61304, as per map filed in Book 1326, Pages 60 to 62, inclusive, in the Office of the County Recorder of Los Angeles County, California - DRE marketing Phase 2; and

Condominium Units 321 through 335, inclusive, 420 through 435, inclusive, and 521 through 535, inclusive, as depicted and described on the Condominium Plan as a portion of Lot 1 of Tract 61304, as per map filed in Book 1326, Pages 60 to 62, inclusive, in the Office of the County Recorder of Los Angeles County, California - DRE marketing Phase 3.

2764964 03



 <p>HRP Studio ValleyCrest DesignGroup PLANNING LANDSCAPE ARCHITECTURE URBAN DESIGN</p>	<p>133 PROMENADE WALK</p> <p>133 THE PROMENADE Long Beach, California 90802</p> <p>THE OLBON COMPANY</p>	<p>LEGEND</p>	<p>EXHIBIT A1</p> <p>STREET TREES MAINT. BY HOA</p> <p>SHEET NUMBER</p>
---	---	---------------	---



LEGEND



STREET TREES TO BE MAINTAINED BY HOA




<p>EXHIBIT A1</p>	<p>LEGEND</p>	<p>133 PROMENADE WALK</p>	<p>STREET TREES MAINT. BY HOA</p> <p>SHEET NUMBER</p>		<p>133 THE PROMENADE Long Beach, California 90802</p> <p>THE OLSON COMPANY</p>
		 <p>HRPStudio ValleyCrest DesignGroup PLANNING LANDSCAPE ARCHITECTURE LIFEPLAN DESIGN</p>			

EXHIBIT "B"
Intentionally Omitted

018 2734884

EXHIBIT "C"
Intentionally Omitted

50018.091-12596.FCM 110106

EXHIBIT "D"

Intentionally Omitted

09 27 2006

The Olson Company
 Parking and Storage assignment

Exhibit E

LOT #		Parking (LL)	Parking (UL)	Storage Space #
1	133 Promenade N., # 101	21	174	25
2	133 Promenade N., # 102	22	175	16
3	133 Promenade N., # 103	23	176	17
4	133 Promenade N., # 104	24	177	68
5	133 Promenade N., # 105	25	208	76
6	133 Promenade N., # 106	26	209	14
7	133 Promenade N., # 107	27, 18	210	77
8	133 Promenade N., # 108	28	211	100
9	133 Promenade N., # 109	29	212	101
10	133 Promenade N., # 110	30	213	74
11	133 Promenade N., # 111	31,32		51
12	133 Promenade N., # 112	33,34		53
13	133 Promenade N., # 114	35,114		55
14	133 Promenade N., # 115	115,116		57
15	133 Promenade N., # 301	63,64		19
16	133 Promenade N., # 302	66		20
17	133 Promenade N., # 303	65		21
18	133 Promenade N., # 304	104, 105		22
19	133 Promenade N., # 305	56,57		18
20	133 Promenade N., # 307	58,59		1
21	133 Promenade N., # 310	60,61		102
22	133 Promenade N., # 311	108,109		23
23	133 Promenade N., # 312	107		24
24	133 Promenade N., # 314	117		38
25	133 Promenade N., # 315	118		78
26	133 Promenade N., # 401	52,53		94
27	133 Promenade N., # 402	50,51,62		96
28	133 Promenade N., # 403	48,49		98
29	133 Promenade N., # 404	46,47		100
30	133 Promenade N., # 405	19,20		2
31	133 Promenade N., # 407	16,17		90
32	133 Promenade N., # 408	14,15		92
33	133 Promenade N., # 410	12,13		15
34	133 Promenade N., # 411	10,11		95
35	133 Promenade N., # 412	9,45		97
36	133 Promenade N., # 414	110,111		99
37	133 Promenade N., # 415	112,113		101
38	133 Promenade N., #116	90, 91		52
39	133 Promenade N., #117	125,126		54
40	133 Promenade N., #118	127,128		56
41	133 Promenade N., #119	129,130		58
42	133 Promenade N., #120	131,132		60
43	133 Promenade N., #316	119, 75		46
44	133 Promenade N., #317	120		47

05 2762964

Exhibit E
 Parking (LL) Parking (UL) Storage Space #

45	133 Promenade N., #318	121		48
46	133 Promenade N., #319	122		49
47	133 Promenade N., #320	106,92		50
48	133 Promenade N., #416	123,124		82
49	133 Promenade N., #417	102,103		83
50	133 Promenade N., #418	67,68		84
51	133 Promenade N., #419	100,101		85
52	133 Promenade N., #420	69,70		86
53	133 Promenade N., #321	150,151		6
54	133 Promenade N., #322	158, 159		59
55	133 Promenade N., #323	152,153		61
56	133 Promenade N., #324	146,145		62
57	133 Promenade N., #326	143,144		63
58	133 Promenade N., #327	38,39		64
59	133 Promenade N., #328	41,42		40
60	133 Promenade N., #329	98		37
61	133 Promenade N., #330	97		26
62	133 Promenade N., #331	96, 142		27
63	133 Promenade N., #333	95		28
64	133 Promenade N., #334	94		31
65	133 Promenade N., #325	78,79		88
66	133 Promenade N., #332	93		45
67	133 Promenade N., #335	80,81		66
68	133 Promenade N., #421	76,77		87
69	133 Promenade N., #422	164,165		8
70	133 Promenade N., #423	1,2		9
71	133 Promenade N., #424	162,163		10
72	133 Promenade N., #426	154,155		11
73	133 Promenade N., #427	156,157		65
74	133 Promenade N., #428	43,44		39
75	133 Promenade N., #429	5		70
76	133 Promenade N., #430	6		71
77	133 Promenade N., #431	7		72
78	133 Promenade N., #433	8		73
79	133 Promenade N., #434	99		75
80	133 Promenade N., #425	160,161		89
81	133 Promenade N., #432	149		44
82	133 Promenade N., #435	3,4		81
83	133 Promenade N., #521	140,141		7
84	133 Promenade N., #522	147,148		12
85	133 Promenade N., #523	71,72		13
86	133 Promenade N., #524	73,74		32
87	133 Promenade N., #526	88, 89		33
88	133 Promenade N., #527	133,134		29
89	133 Promenade N., #528	84,85		69
90	133 Promenade N., #529	135		41
91	133 Promenade N., #530	136		42
92	133 Promenade N., #531	137		34
93	133 Promenade N., #533	138		35
94	133 Promenade N., #534	139		36
95	133 Promenade N., #525	82,83		91
96	133 Promenade N., #532	40		43

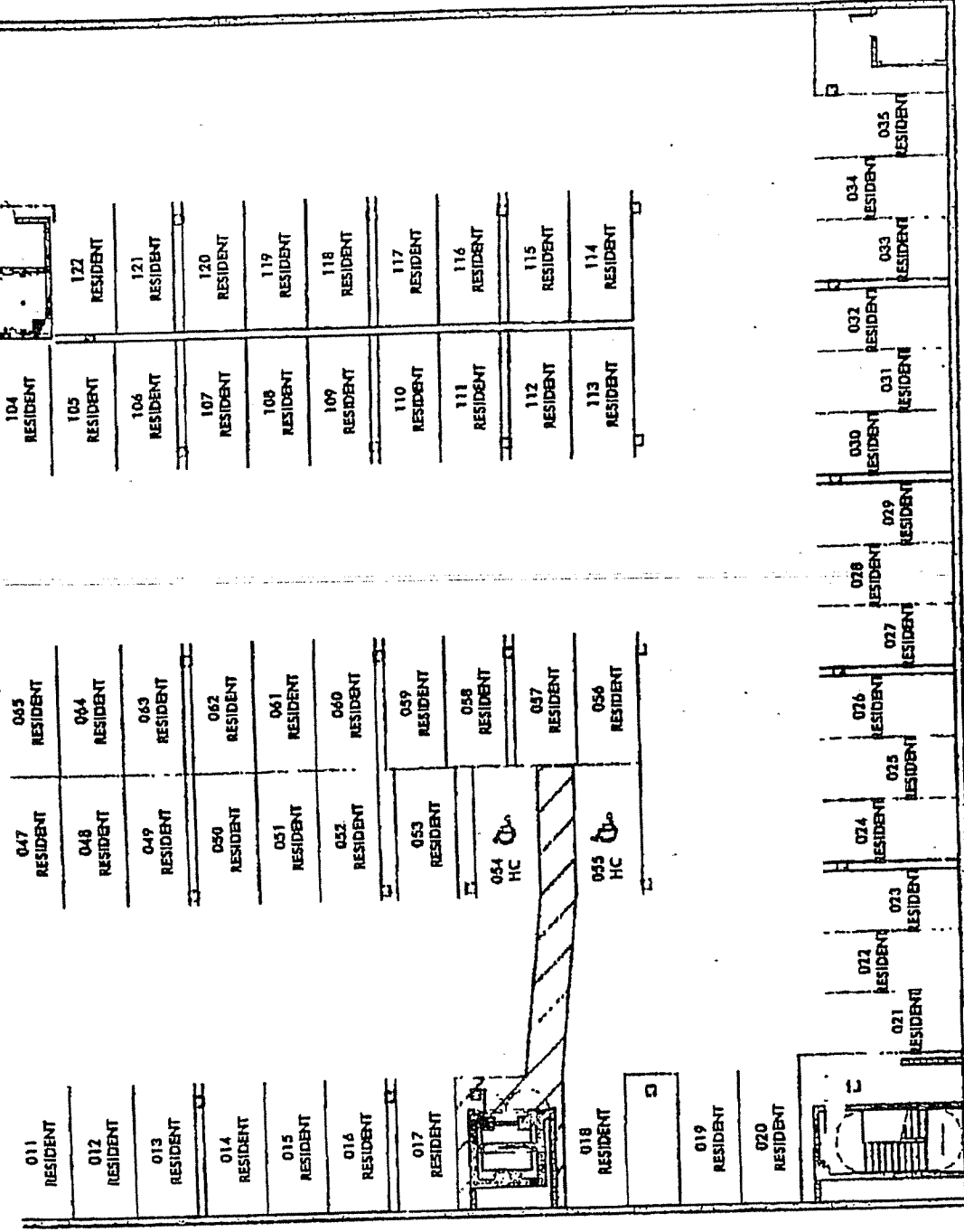
09 276499

Exhibit E
Parking (LL) Parking (UL) Storage Space #

97	133 Promenade N., #535	86,87	93
----	------------------------	-------	----

06 27E2954

SEE SHEET 2



133 PROMENADE WALK

133 THE PROMENADE
Long Beach, California
90802

THE OLSON COMPANY

EXHIBIT E

LOWER LEVEL
PARKING PLAN

10/19/06

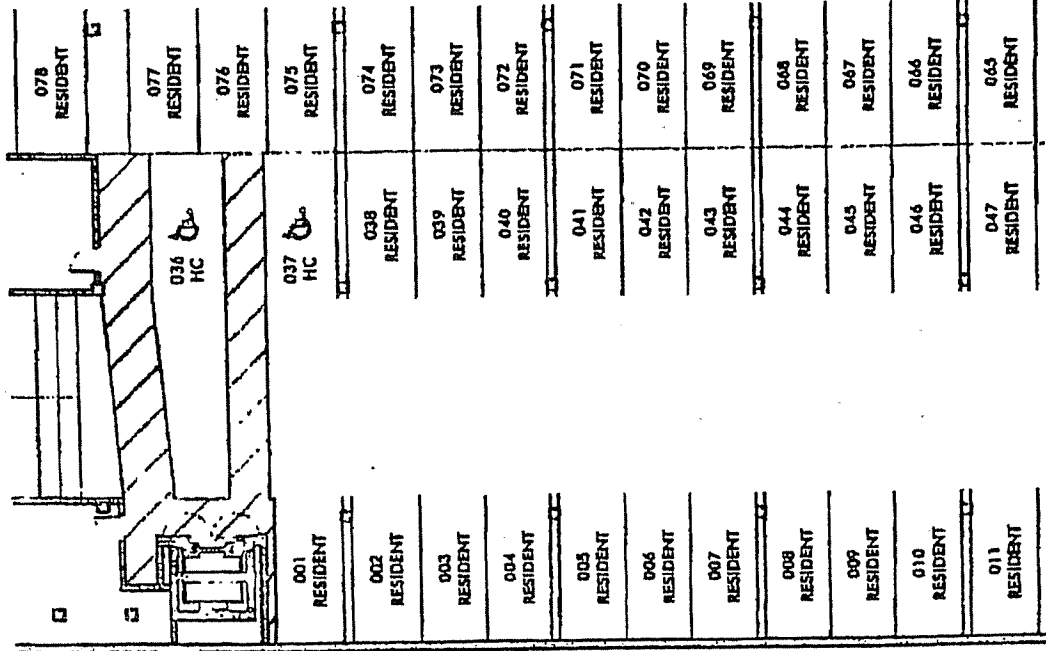
SHEET NUMBER: 4 of 9

LEGEND

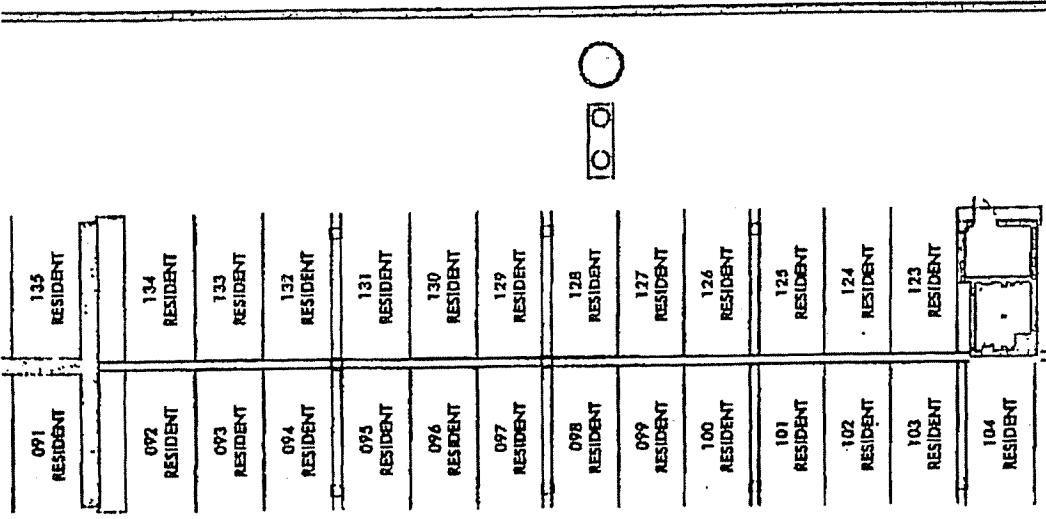
001	PARKING SPACE No.
RESIDENT	ASSIGNMENT TYPE

NGA
NESTOR + GAFFNEY
ARCHITECTURE LLP

SEE SHEET 3



SEE SHEET 1



133 PROMENADE WALK

133 THE PROMENADE
Long Beach, California
90802

THE OLSON COMPANY

LEGEND

001 PARKING SPACE No.

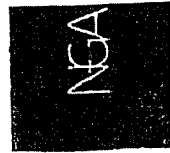
RESIDENT ASSIGNMENT TYPE

EXHIBIT E

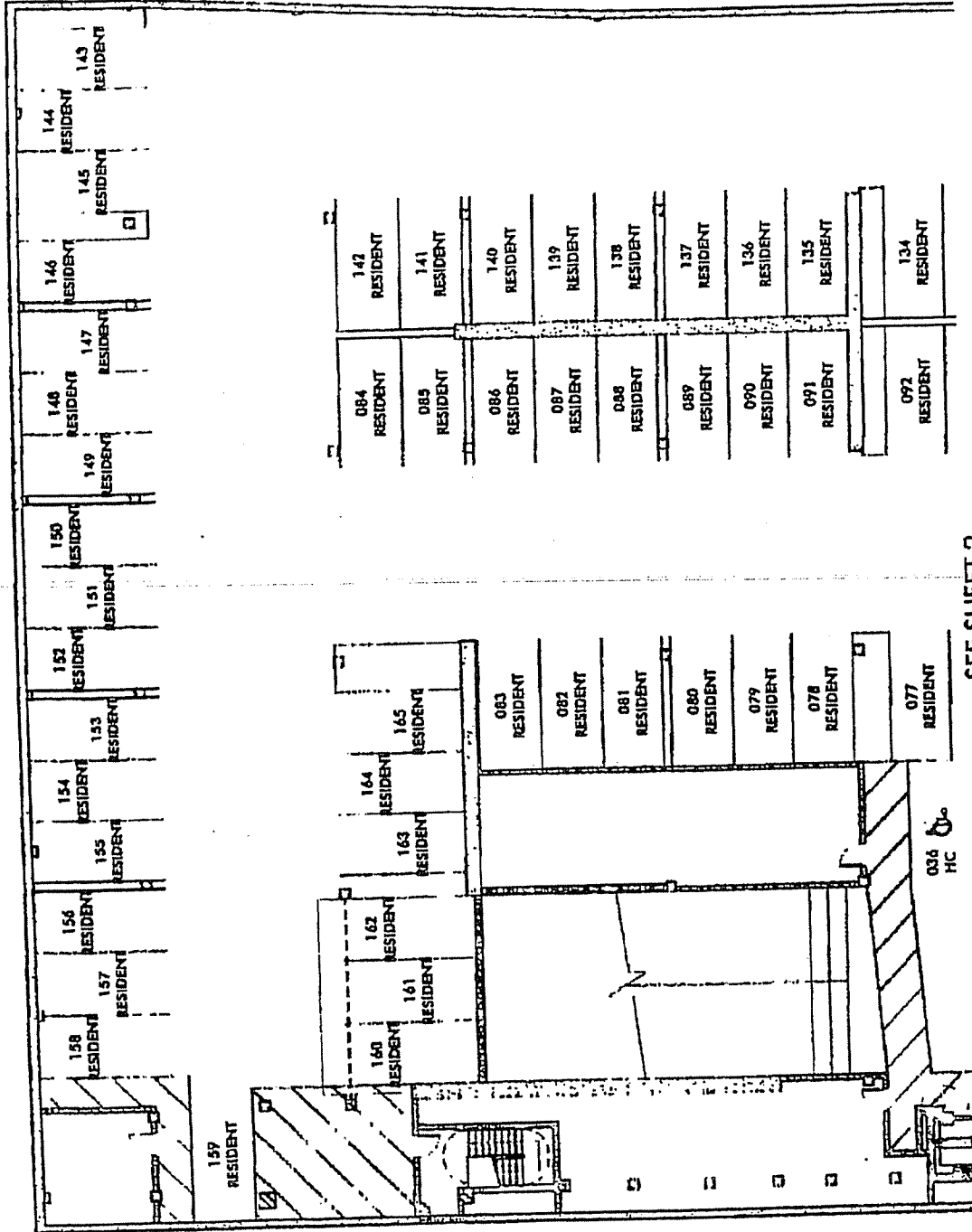
LOWER LEVEL
PARKING PLAN

SHEET NUMBER: 5 of 9

10/19/06



NESTOR + GAFFNEY
ARCHITECTURE LLP



SEE SHEET 2

EXHIBIT E

**LOWER LEVEL
PARKING PLAN**

SHEET NUMBER: 6 of 9 10/19/06

LEGEND

001	PARKING SPACE No.
RESIDENT	ASSIGNMENT TYPE

**133 PROMENADE
WALK**

133 THE PROMENADE
Long Beach, California
90802

THE OLSON COMPANY



**NESTOR + GAFFNEY
ARCHITECTURE LLP**

SEE SHEET 5

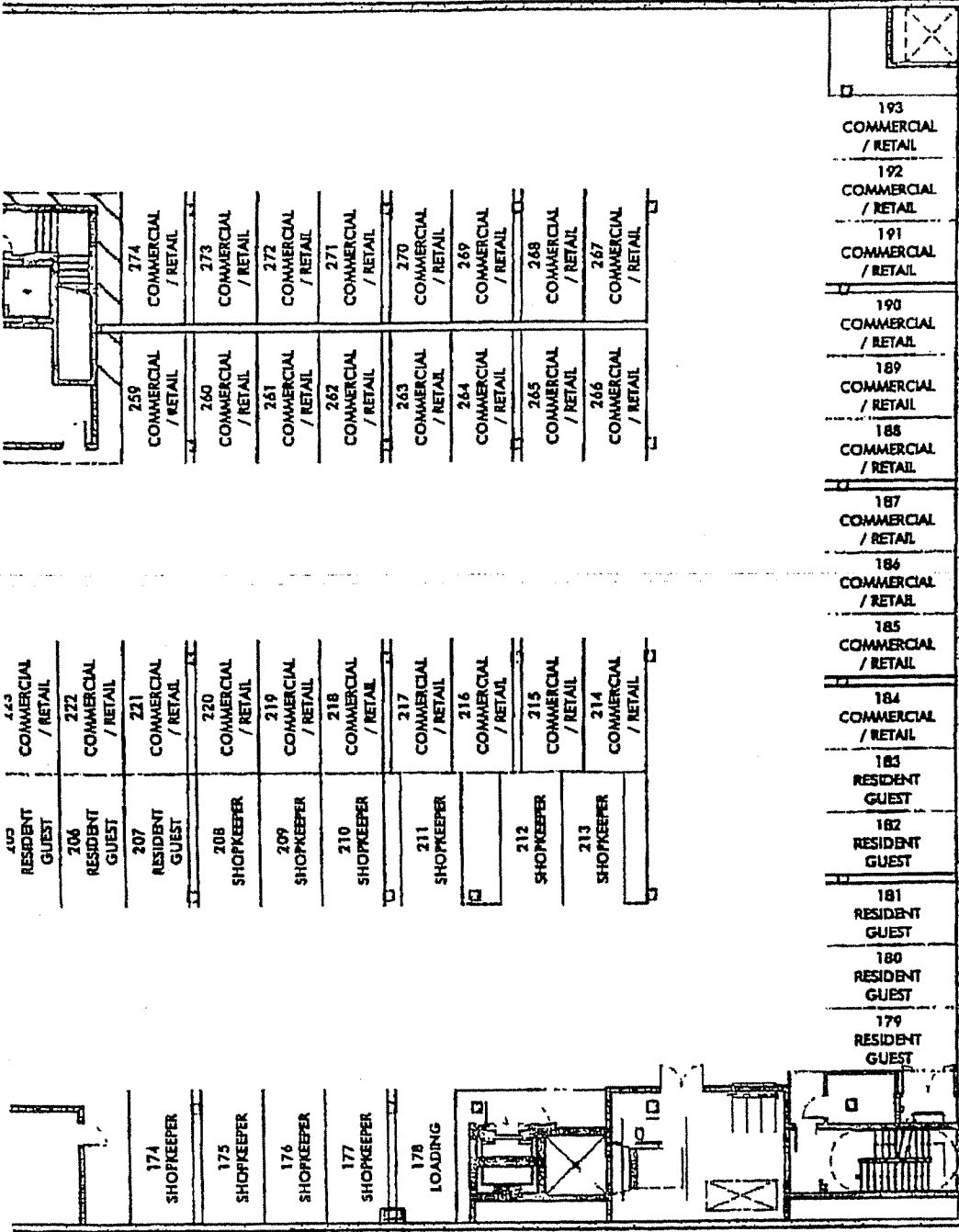


EXHIBIT E

UPPER LEVEL
PARKING PLAN

10/19/06

SHEET NUMBER: 7 of 9

LEGEND

001	PARKING SPACE No.
LOADING	ASSIGNMENT TYPE

133 PROMENADE WALK

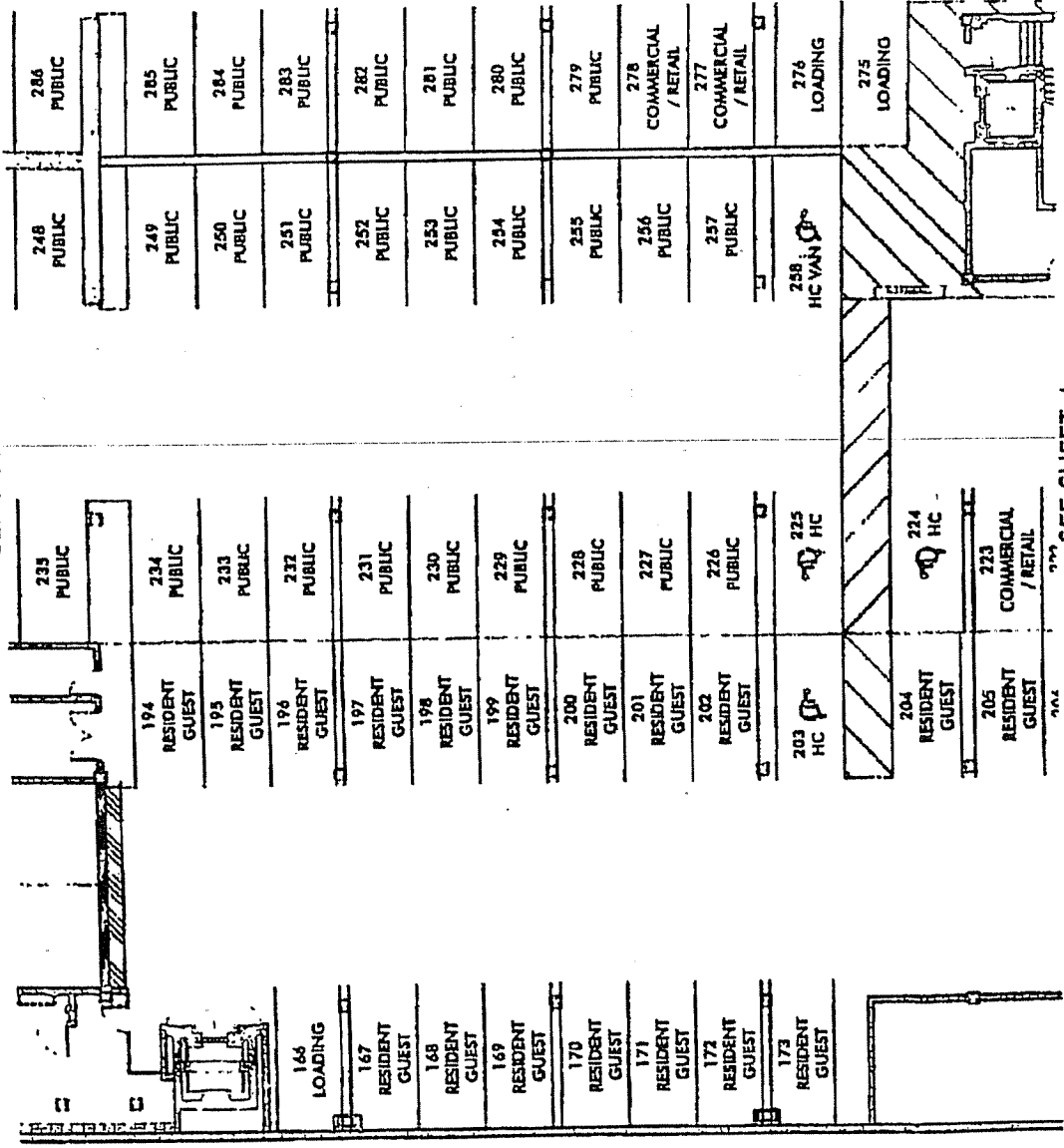
133 THE PROMENADE
Long Beach, California
90802

THE OLSON COMPANY



NESTOR + GAFFNEY
ARCHITECTURE LLP

SEE SHEET 6



SEE SHEET 4

EXHIBIT E

UPPER LEVEL
PARKING PLAN

10/19/06

SHEET NUMBER: 8 of 9

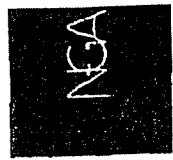
LEGEND

PARKING SPACE No.	ASSIGNMENT TYPE
001	PUBLIC

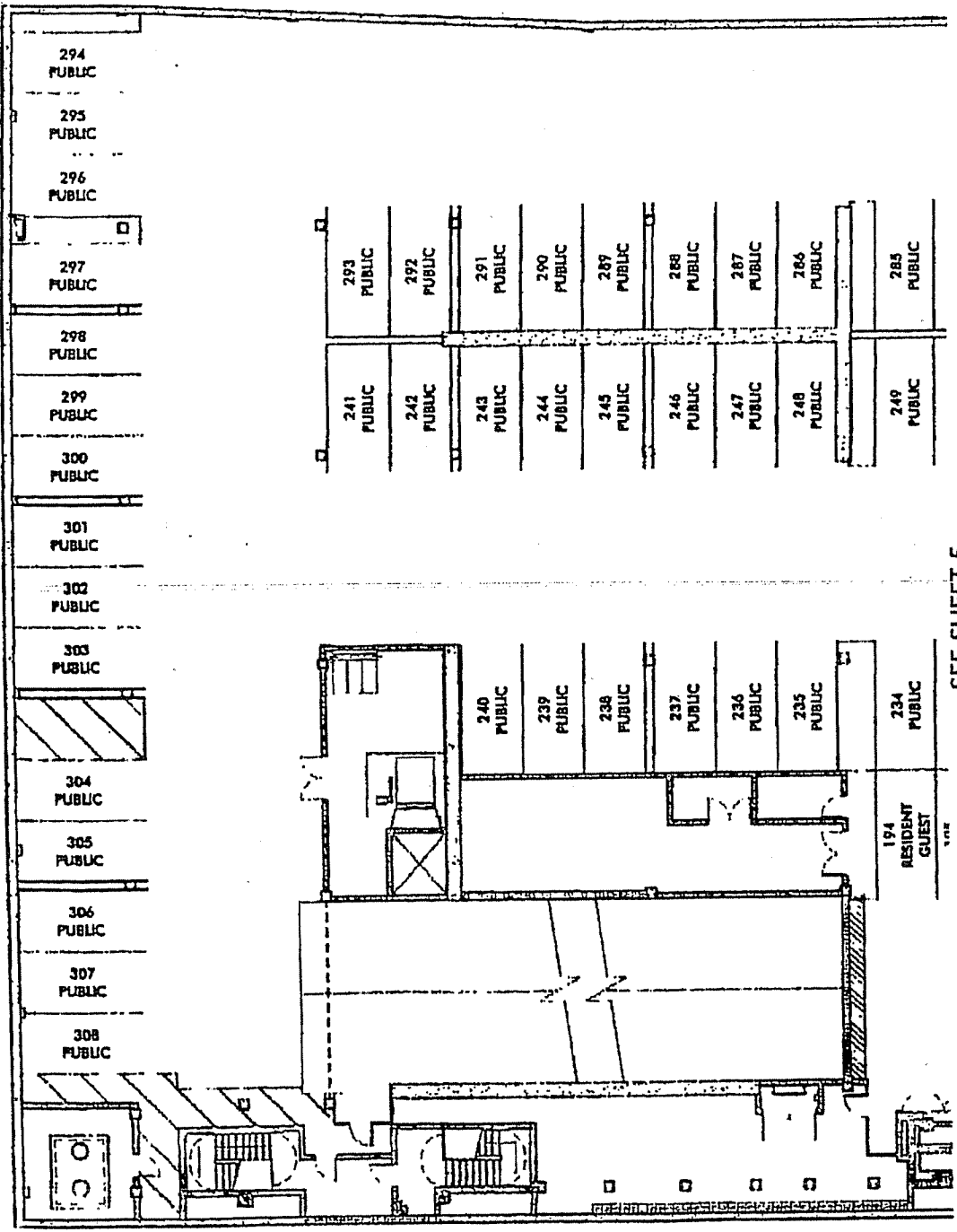
133 PROMENADE WALK

133 THE PROMENADE
Long Beach, California
90802

THE OLSON COMPANY



NESTOR + GAFFNEY
ARCHITECTURE LLP



SEE SHEET 5

EXHIBIT E

**UPPER LEVEL
PARKING PLAN**

SHEET NUMBER: 9 of 9 10/19/06

LEGEND

PARKING SPACE No.	ASSIGNMENT TYPE
001	PUBLIC

**133 PROMENADE
WALK**

133 THE PROMENADE
Long Beach, California
90802

THE OLSON COMPANY



**NESTOR + GAFFNEY
ARCHITECTURE LLP**

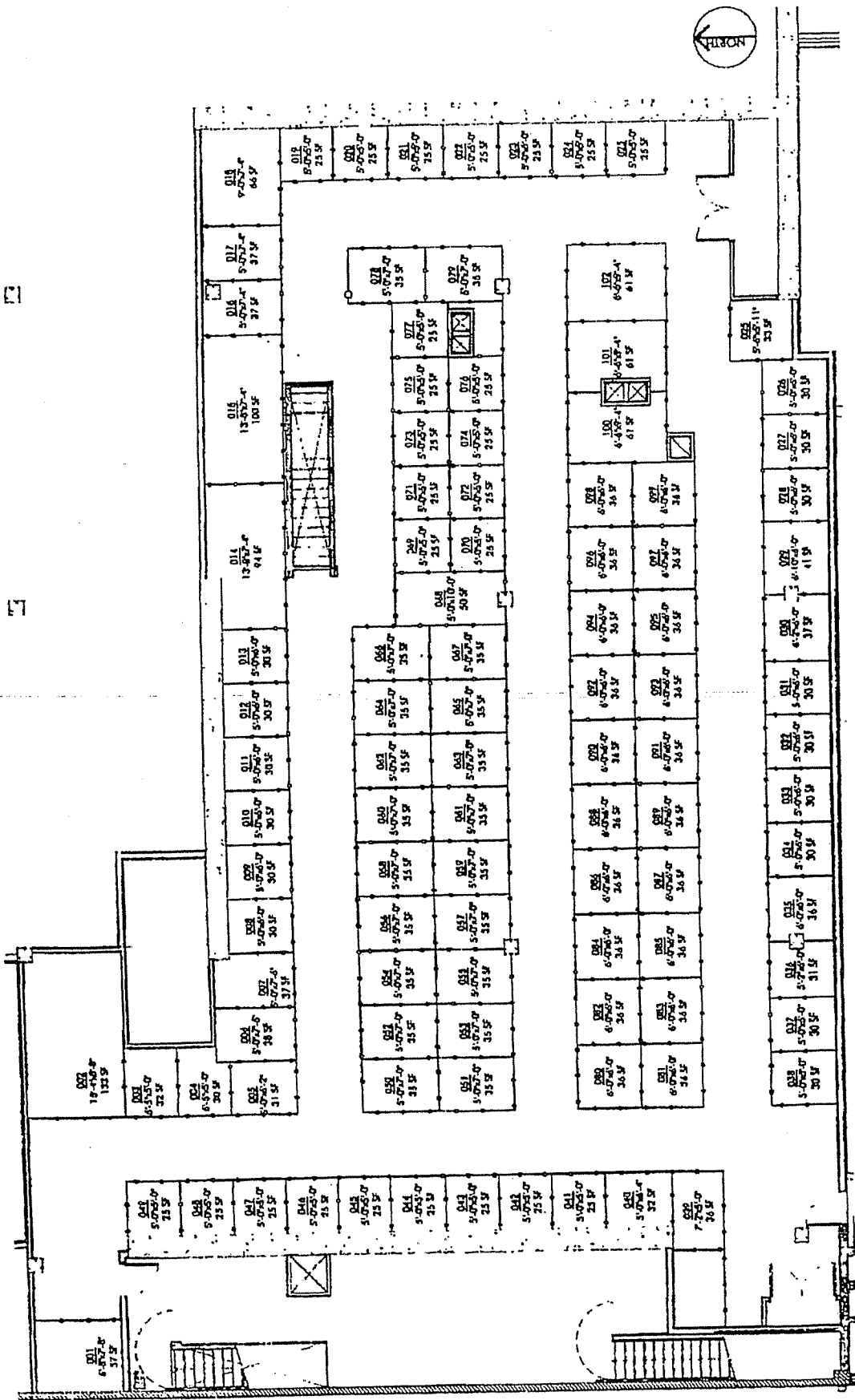


EXHIBIT "E-1"

RESIDENTIAL STORAGE

SHEET NUMBER: 1 OF 1

10/19/06

LEGEND

033	STORAGE LOCKER NO.
5'-0"x6'-0"	APPROX. LOCKER DIMENSIONS
30 SF	APPROX. LOCKER SIZE
LINE OF LOCKER ENCLOSURE	

133 PROMENADE WALK

133 THE PROMENADE
Long Beach, California
90802

THE OLSON COMPANY

NESTOR + GAFFNEY ARCHITECTURE LLP




BROADWAY

THE PROMENADE

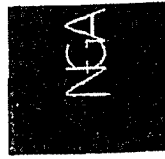
NOTE: ALL DOORS TO
RETAIL-ONLY ACCESS
CORRIDOR FROM RESIDENTIAL
ARE EMERGENCY EGRESS
ONLY AND SHALL SOUND
ALARM UPON USE

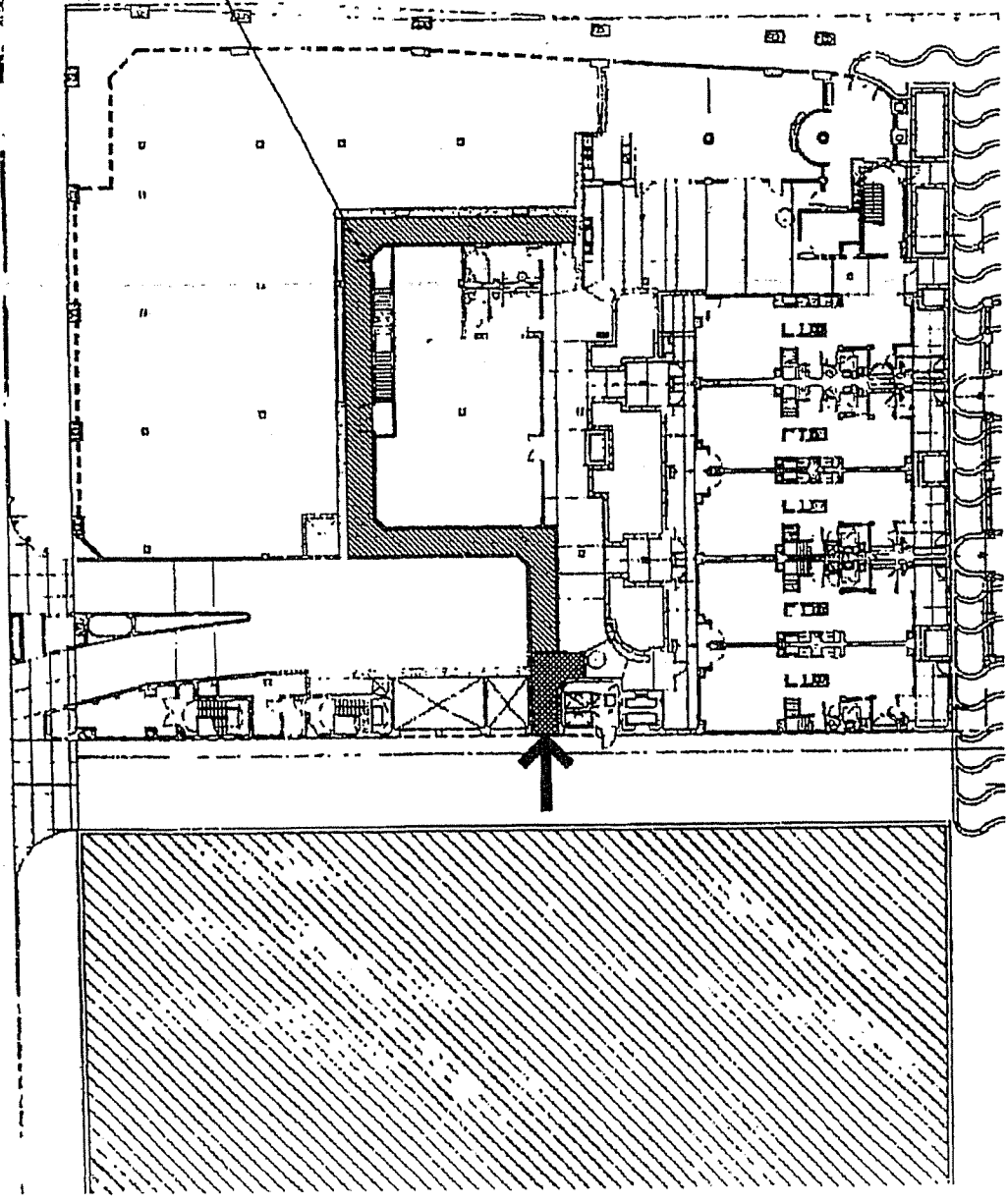


EXHIBIT "F"
RETAIL LOADING
AND CORRIDOR
SHEET NUMBER: 1 OF 1
10/19/06

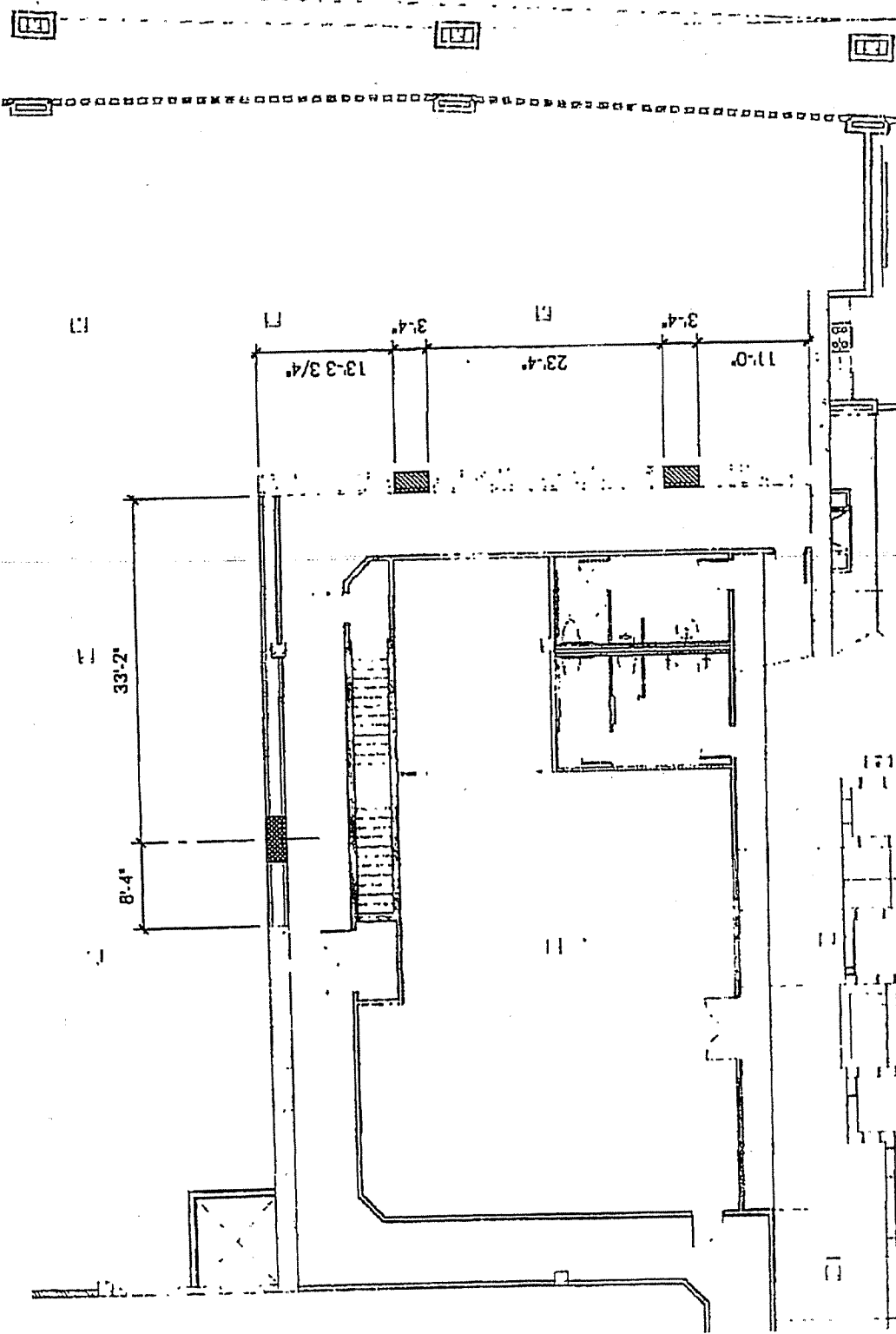
LEGEND	
	ACCESS CORRIDOR - FOR RETAIL USE ONLY
	ACCESS CORRIDOR - SHARED USE RETAIL / RESIDENTIAL
	RETAIL LOADING POINT

133 PROMENADE
WALK
133 THE PROMENADE
Long Beach, California
90802
THE OLSON COMPANY


NESTOR + GAFFNEY
ARCHITECTURE LLP



06 2764934



133 PROMENADE WALK
 133 THE PROMENADE
 Long Beach, California
 90802
 THE OLSON COMPANY

LEGEND



	CORRIDOR ACCESS LOCATION R.O. = 3'-4" W X 8'-2" H
	CORRIDOR ACCESS LOCATION MAXIMUM R.O. = 4'-4" W

EXHIBIT "F-1"
RETAIL CORRIDOR ACCESS LOCATIONS
 SHEET NUMBER: 1 OF 1
 10/19/06

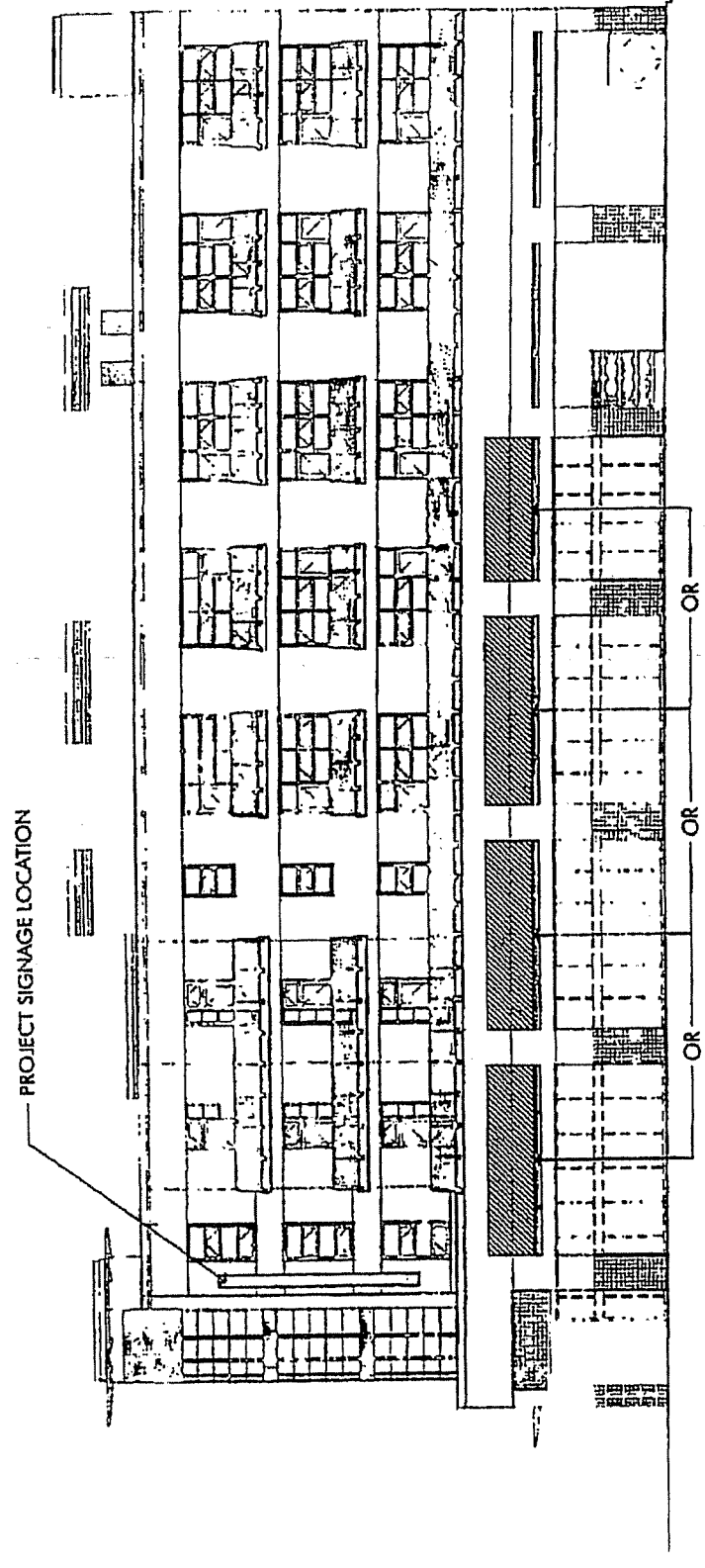
NGA
 NESTOR + GAFFNEY
 ARCHITECTURE LLP

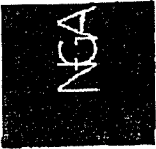
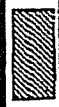
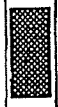
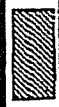
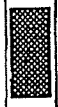
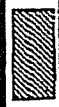
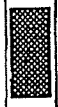
2006/04/25

COMMERCIAL TENANT SIGNAGE:
 COMMERCIAL SIGNAGE WILL CONSIST OF SUNSHADE OR BUILDING MOUNTED LETTERS. LETTERS TO BE INDIVIDUAL OPEN CHANNEL LETTERS WITH EXPOSED NEON TUBING SET WITHIN CHANNELS. CHANNEL LETTERS WILL BE PAINTED ACCENTED COLOR, NEON TO BE WHITE OR OTHER COLORS ACCEPTABLE TO THE CITY. MAXIMUM LETTER HEIGHT TO BE 24 INCHES. FONT WILL BE FUTURA LIGHT OR DEVELOPER-APPROVED CORPORATE LOGO-TYPE FOR REGIONAL OR NATIONAL TENANT.

SIGNAGE WILL BE PERMITTED AT THE RATE OF ONE SIGN PER RETAIL FRONTAGE FACE. CORNER LOCATIONS SHALL BE PERMITTED TO HAVE ONE ADDITIONAL SIGN THAT WILL BE DESIGNED INTO THE CORNER ELEVATION. MATERIALS, COLORS, AND SIZE TO BE CONSISTANT WITH THAT DESCRIBED ABOVE.

COMMERCIAL SIGNAGE WILL BE LIMITED TO THE FIRST FLOOR EYEBROW OR CANOPY AREA ONLY. ALL SIGNAGE SUBJECT TO APPROVAL BY THE CITY OF LONG BEACH.



 NESTOR + GAFFNEY ARCHITECTURE LLP	133 PROMENADE WALK 133 THE PROMENADE Long Beach, California 90802 THE OLSON COMPANY	LEGEND <table border="1"> <tr> <td></td> <td>BUILDING-MOUNTED SIGNAGE - RETAIL USE</td> </tr> <tr> <td></td> <td>SUNSHADE-MOUNTED SIGNAGE - SHOPKEEPER USE</td> </tr> </table>		BUILDING-MOUNTED SIGNAGE - RETAIL USE		SUNSHADE-MOUNTED SIGNAGE - SHOPKEEPER USE	EXHIBIT G COMMERCIAL SIGNAGE BROADWAY ELEVATION SHEET NUMBER: 1 OF 4 10/19/06
		BUILDING-MOUNTED SIGNAGE - RETAIL USE					
	SUNSHADE-MOUNTED SIGNAGE - SHOPKEEPER USE						

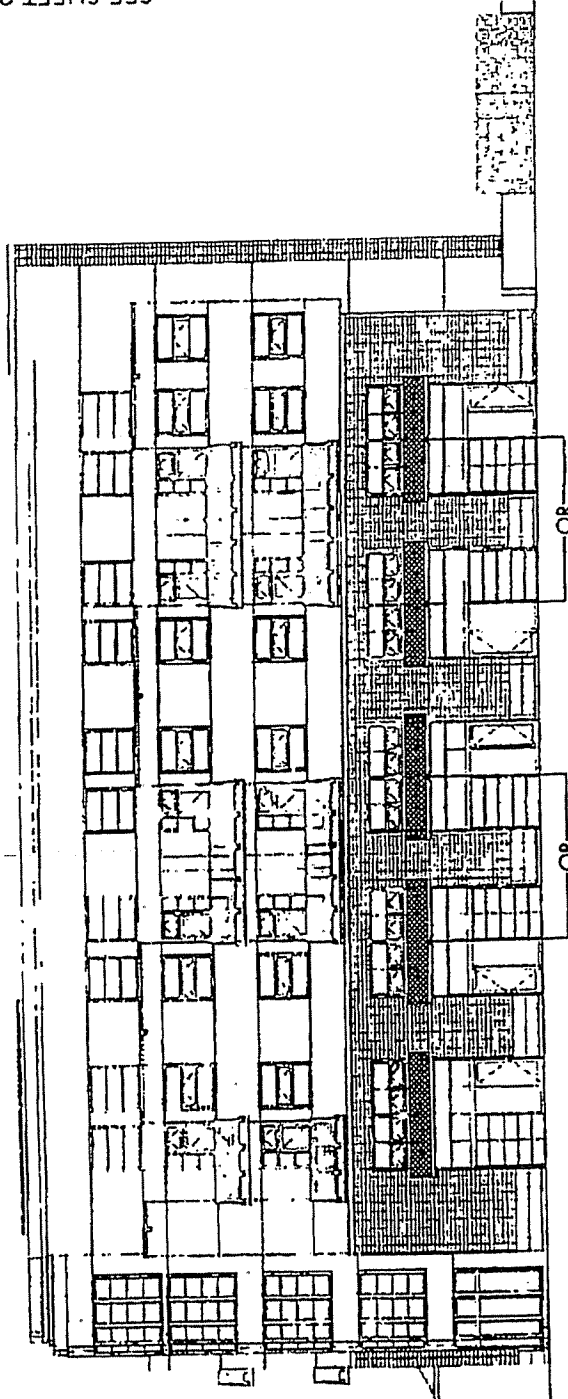
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COMMERCIAL TENANT SIGNAGE:
COMMERCIAL SIGNAGE WILL CONSIST OF SUNSHADE OR BUILDING MOUNTED LETTERS. LETTERS TO BE INDIVIDUAL OPEN CHANNEL LETTERS WITH EXPOSED NEON TUBING SET WITHIN CHANNELS. CHANNEL LETTERS WILL BE PAINTED ACCENTED COLOR, NEON TO BE WHITE OR OTHER COLORS ACCEPTABLE TO THE CITY. MAXIMUM LETTER HEIGHT TO BE 24 INCHES. FONT WILL BE FUTURA LIGHT OR DEVELOPER-APPROVED CORPORATE LOGO-TYPE FOR REGIONAL OR NATIONAL TENANT.

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COMMERCIAL SIGNAGE WILL BE LIMITED TO THE FIRST FLOOR EYEBROW OR CANOPY AREA ONLY. ALL SIGNAGE SUBJECT TO APPROVAL BY THE CITY OF LONG BEACH.

SEE SHEET 3



133 PROMENADE

WALK

133 THE PROMENADE
Long Beach, California
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THE OLSON COMPANY

LEGEND



	BUILDING-MOUNTED SIGNAGE - RETAIL USE
	SUNSHADE-MOUNTED SIGNAGE - SHOPKEEPER USE

EXHIBIT G

COMMERCIAL SIGNAGE

PROMENADE ELEVATION

SHEET NUMBER: 2 OF 4

10/19/06



NESTOR + GAFFNEY
ARCHITECTURE LLP

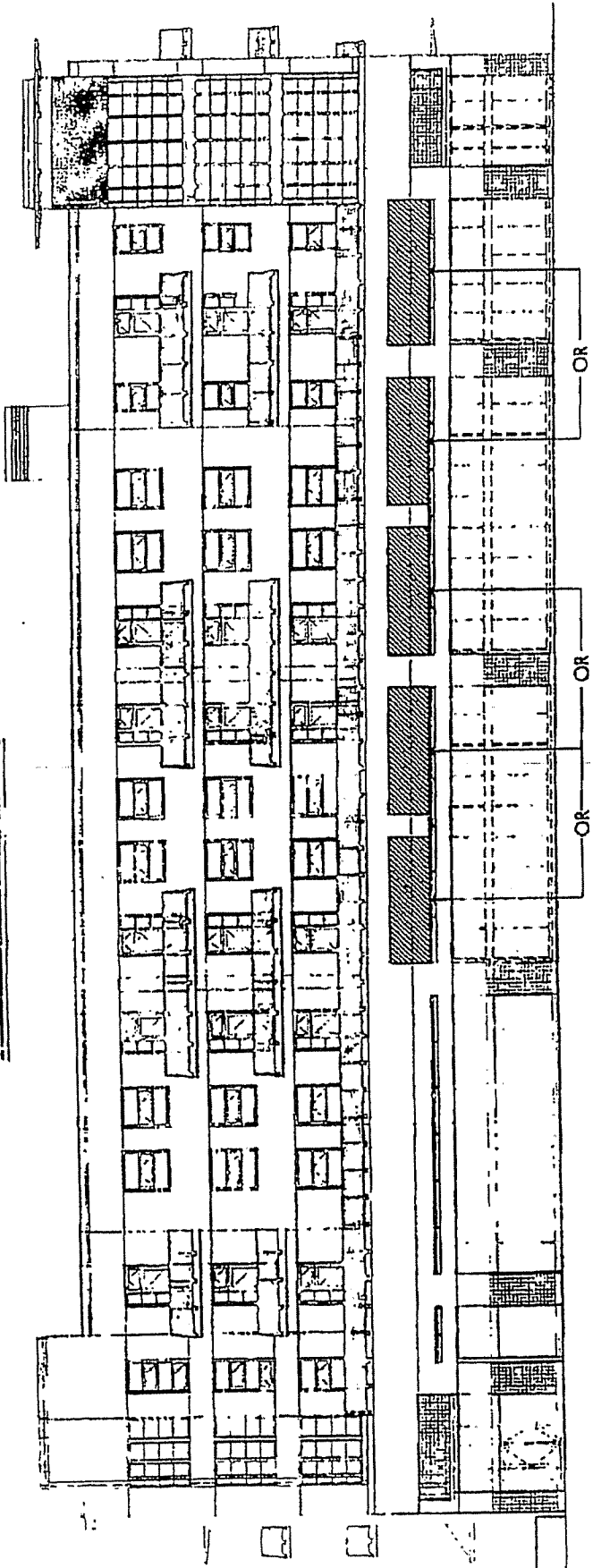
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COMMERCIAL SIGNAGE WILL BE LIMITED TO THE FIRST FLOOR EYEBROW OR CANOPY AREA ONLY. ALL SIGNAGE SUBJECT TO APPROVAL BY THE CITY OF LONG BEACH.

SEE SHEET 2



133 PROMENADE
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 133 THE PROMENADE
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 THE OLSON COMPANY

LEGEND



	BUILDING-MOUNTED SIGNAGE - RETAIL USE
	SUNSHADE-MOUNTED SIGNAGE - SHOPKEEPER USE

EXHIBIT G
 COMMERCIAL SIGNAGE
 PROMENADE ELEVATION
 SHEET NUMBER: 3 OF 4
 10/19/06



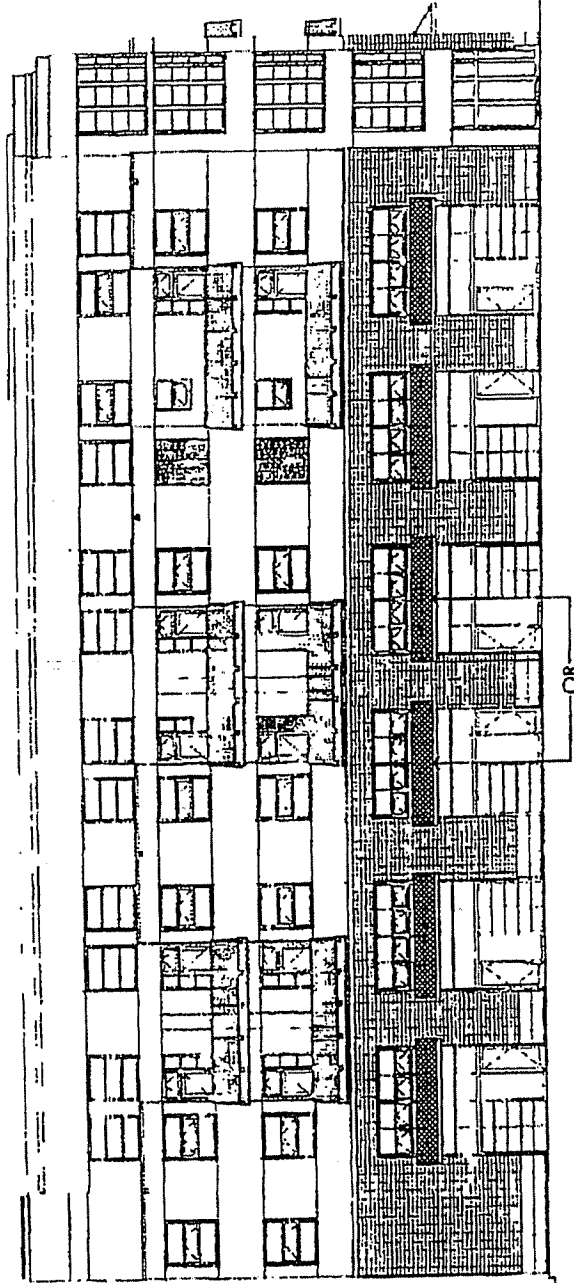
NESTOR + GAFFNEY
 ARCHITECTURE LLP

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COMMERCIAL TENANT SIGNAGE: LETTERS TO BE INDIVIDUAL OPEN CHANNEL LETTERS WITH EXPOSED NEON TUBING
COMMERCIAL SIGNAGE WILL CONSIST OF SUNSHADE OR BUILDING MOUNTED LETTERS. LETTERS TO BE WHITE OR OTHER COLORS ACCEPTABLE TO THE CITY. MAXIMUM LETTER HEIGHT
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133 PROMENADE
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133 THE PROMENADE
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EXHIBIT G

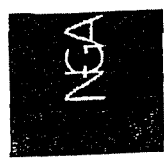
COMMERCIAL SIGNAGE
FIRST ST. ELEVATION

10/19/06

SHEET NUMBER: 4 OF 4

LEGEND

	BUILDING-MOUNTED SIGNAGE - RETAIL USE
	SUNSHADE-MOUNTED SIGNAGE - SHOPKEEPER USE



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ARCHITECTURE LLP

EXHIBIT "H"
Intentionally Omitted.

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EXHIBIT "I"

OUTSIDE BUSINESSES THAT MAY USE RETAIL
EXCLUSIVE USE CORPORATION PROPERTY TRASH AREAS

As required by the Agency, the businesses operating at the following locations shall have the right to maintain and use trash receptacles in the Retail Exclusive Use Corporation Property trash areas depicted in the Condominium Plan for the Retail Condominium Units (and generally described and depicted on Exhibit "J" of this Declaration), on the terms and conditions set forth in this Declaration:

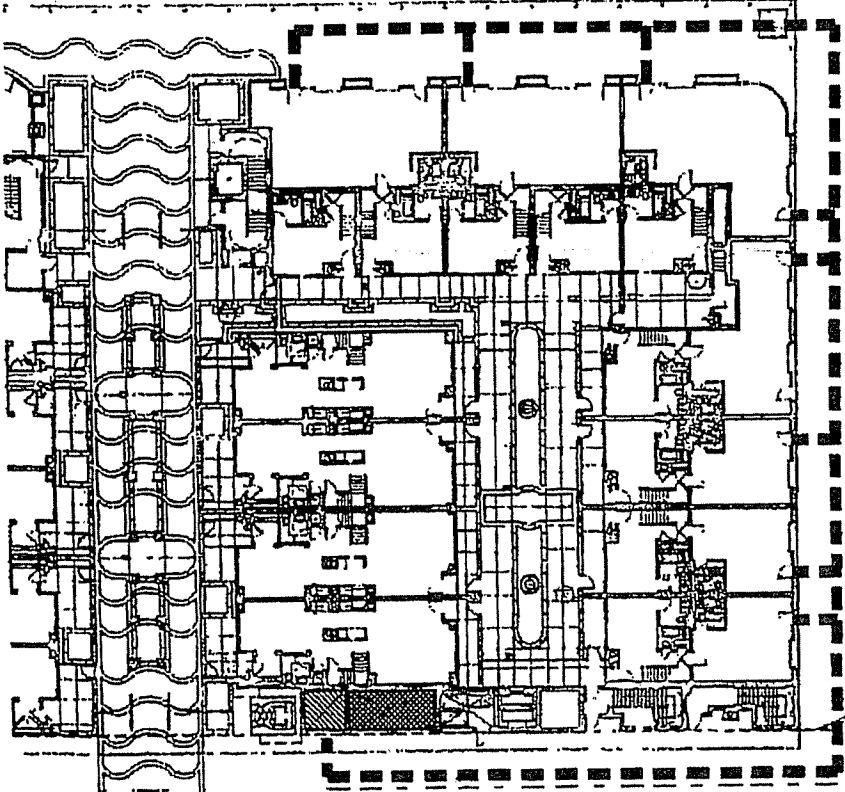
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144 Pine Avenue (APN 7280-027-003)
140 Pine Avenue (APN 7280-027-004)
136 Pine Avenue (APN 7280-027-006)
130 Pine Avenue (APN 7280-027-008)
110 Pine Avenue (APN 7280-027-011)

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133 PROMENADE WALK

SEE SHEET 2

THE PROMENADE



FIRST STREET



133 PROMENADE

WALK

133 THE PROMENADE
Long Beach, California
90802




THE OLSON COMPANY

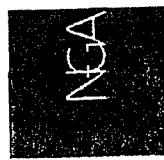
EXHIBIT J

ON-SITE TRASH
ENCLOSURE PLAN

SHEET NUMBER: 1 OF 2 10/19/06

LEGEND

-  TRASH ENCLOSURE FOR SHOPKEEPER USE
-  TRASH ENCLOSURE FOR ON-SITE RETAIL USE
-  PATH OF TRAVEL FOR SHOPKEEPER TRASH ACCESS



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ARCHITECTURE LLP

10/19/06

BROADWAY

THE PROMENADE



SEE SHEET 1

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Long Beach, California
90802

THE OLSON COMPANY




EXHIBIT J

ON-SITE TRASH ENCLOSURE PLAN

SHEET NUMBER: 2 OF 2

10/19/06

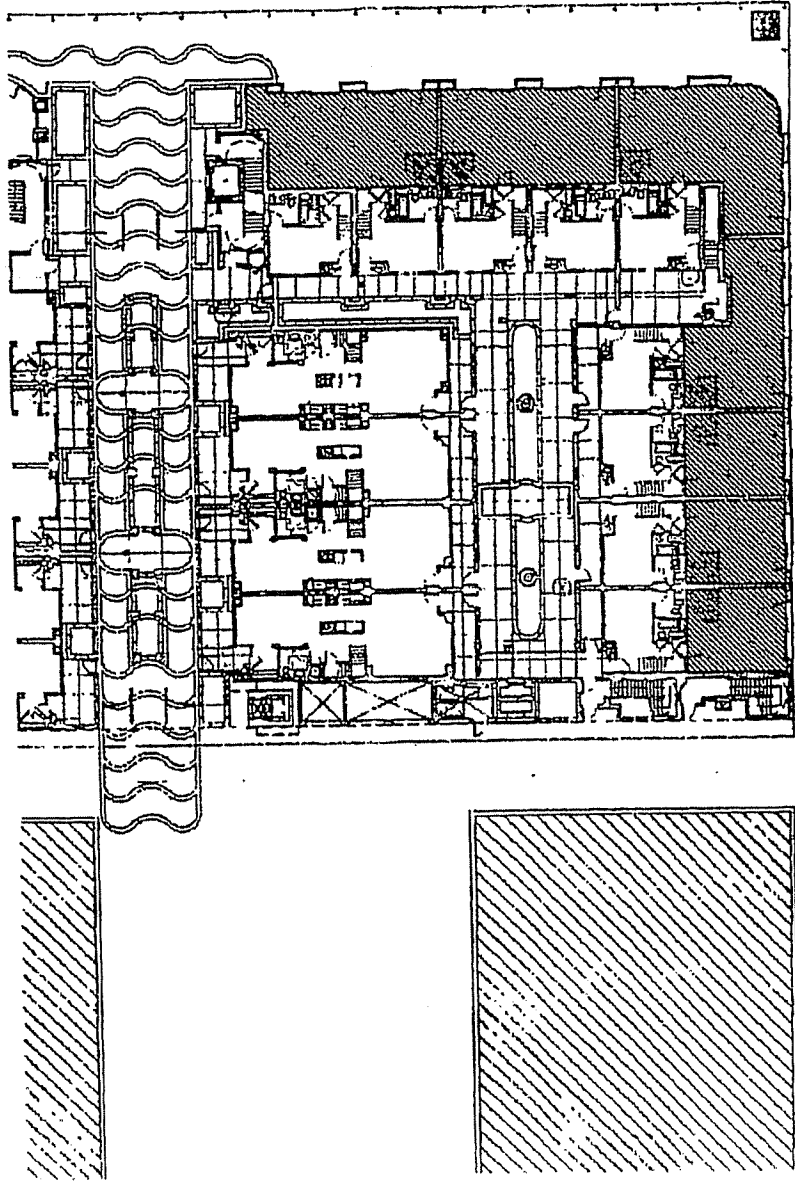
LEGEND

	TRASH ENCLOSURE FOR SHOPKEEPER USE
	TRASH ENCLOSURE FOR ON-SITE RETAIL USE
	PATH OF TRAVEL FOR SHOPKEEPER TRASH ACCESS



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FIRST STREET



133 PROMENADE

WALK

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 90802

THE OLSON COMPANY



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 ARCHITECTURE LLP

LEGEND

COMMERCIAL SPACE AT
 SHOPKEEPER UNITS



EXHIBIT K

SHOPKEEPER UNIT
 COMMERCIAL SPACE

SHEET NUMBER: 1 OF 1

10/31/06

EXHIBIT "L"

PROHIBITED USES/ALLOWABLE USES

No portion of the commercial space, including the Retail Condominium Units and the Shopkeeper Spaces, shall be used for any of the following uses:

1. Medical/Dental Office
2. Chiropractic/Acupuncture Service
3. Massage/Accupressure Service
4. Veterinarian/Kennel/Animal Care Facility
5. Tatoo or Body Piercing Service
6. Fortuneteller
7. Banquet Facility
8. Adult Business
9. Recycling Center
10. Sales, repair or maintenance of vehicles, including automobiles, boats, motorcycles, aircraft, trucks, or recreational vehicles
11. Trade or Private School
12. Religious Institution
13. Cafeteria
14. Theater, auditorium, meeting hall, school, church or other place of public assembly.
15. Gymnasium or health club.
16. Bowling alley, billiard or pool hall, nightclub, dance hall, video game arcade, skating rink, or other place of recreation or amusement.
17. Car wash.
18. Any liquor store or business serving alcoholic beverages (other than a restaurant or other food serving business, such as wine-and-cheese store).
19. Any use or operation which is obnoxious to or out of harmony with the development or operation of a residential/retail project, including, but not limited to, the following:
 - (i) Any noise or sound that is objectionable due to intermittence, beat, frequency, shrillness or loudness;
 - (ii) any obnoxious odor;
 - (iii) use, storage, transportation, handling, manufacture, or emission of any noxious, toxic, caustic or corrosive fuel or gas or other hazardous or toxic substance, except in the ordinary course of operations of a permitted retail business;
 - (iv) emission of microwave, radio wave, or other similar electronic, light or noise radiation at levels which are dangerous to health or which interfere with the proper operation of electronic, telephone, computer or other business equipment of tenants of the Retail Property;
 - (v) any dust, dirt or fly ash in excessive quantities;
 - (vi) any usual fire, explosion or other damaging or dangerous hazard;

- (vii) any warehouse, assembly, manufacturing, distillation, refining, smelting, agriculture or mining operations;
- (viii) any mobile home or trailer court, labor camp, junk yard, stock yard or animal raising (other than pet shops);
- (ix) any above surface drilling for and/or removal of subsurface substances;
- (x) any dumping of garbage or refuse (other than in dumpsters or compactors designed for such purpose);
- (xi) any commercial laundry or dry cleaning plant (as opposed to a retail store with incidental onsite laundry), veterinary hospital, car washing establishment, mortuary or similar service establishment);
- (xii) the operation of a "head shop", so-called, or other business devoted to the sale of articles or merchandise normally used or associated with illegal or unlawful activities, such as but not limited to the sale of paraphernalia used in connection with marijuana, cocaine or other controlled drugs or substances;
- (xiii) a massage parlor, the operation of a business, any portion of which constitutes an "Adult entertainment business" as defined at LBMC §21.15.110;
- (xiv) automotive sales (selling new or used cars, trailers or mobile homes) and service;
- (xv) factory;
- (xvi) industrial usage; and
- (xvii) processing or rendering plant.

The Shopkeeper Units may be improved, used and occupied on the first level, in the work defined space only, for the following types of business:

- Architect/Landscape Architect/Engineer/Land Planner
- Interior Decorator or Designer
- Fine Arts Studio & Sales/Non-Invasive Artist Studio
- Graphic Design Studio & Sales
- Photography Studio/Portraiture & Sales
- Photo Study
- Planner/Business Related Consultant Services
- Attorney/Accountant
- Income Tax Service/Escrow Service/Insurance Agency
- Internet Service Provider/Webmaster
- Consulting and Business Service
- Real Estate Developer/Specialty Contractor
- Licensed Small-Family Child-Care Home
- Barber and Beauty Salon and Sales
- Esthetician
- Personal Fitness Training
- Tutor (one-on-one only)
- Antique Shops
- Bookstore (retail)
- Gift Shop
- Jeweler
- Museums

- Retail sales, apparel, dry goods, and sporting goods
- Stationary
- Other uses as determined by the Board to be similar to and no more detrimental than the existing uses.
- Barber and Beauty Salon
- Fine Arts Studio & Sales/Ceramics and Pottery Studio & Sales/Clothing Design Studio & Sales
- Florist
- Graphic Design Studio & Sales
- Hardware Sales
- Mobile Businesses as Described in "D"
- Music or Dance Instruction
- Shoe Repair
- Tailor
- Tutor (More than one student and one teacher)
- Other uses as determined by the Board to be similar to and no more detrimental than the existing uses.
- Pick-up and Delivery Service
- Cleaning Service
- Pool Maintenance
- Building Contracting
- Gardening and Landscape Service
- Electronic and Computer Equipment Repair and Fix-it Service
- Catering Service (limit to non-commercial facilities)
- Flower Arranging and Plant Service
- Specialty Food Products and Delivery
- Other uses as determined by the Board to be similar to and no more detrimental than the existing uses.
- Outdoor Dining
- Public Markets
- Arts and Crafts
- Shows
- Other similar commercial purposes, on terms and conditions specified in commercial business licenses issued by the City.

Other Permitted Businesses - Notwithstanding the specific permitted uses outlined above, the Board may authorize other uses using reasonable discretion, so long as such other uses are not otherwise precluded by law and provided the Owner has provided the Board with the original written approval by the City, together with all applicable City approvals and required licenses.

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EXHIBIT "M"

MAINTENANCE MATRIX

MAINTENANCE ITEM	RESPONSIBILITIES
Residential Living Element of Unit	The Owner maintains all interior doors and their hardware, interior wall surfaces, dry-wall, cabinets, floor coverings, ceilings, permanent fixtures, appliances, electrical outlets and switches, toilets, smoke detectors (including periodic testing and replacement of batteries) and washing machine water hoses.
Residential Living Element entry door	The Owner maintains the interior surfaces, the handle, locking mechanism, kick plates and the screen door and performs any touch up painting on the exterior surface if necessary before the Corporation's periodic painting.

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Fireplace in the Residential Living Element	The Owner maintains the interior surface of the chimney and firebox, including periodically removing soot, maintains any gas pipes, logs and other contents of the firebox, and maintains the flue.
Sliding glass doors and screen doors serving the Residential Living Element	The Owner maintains all portions of these items, including the locking mechanism, weatherproofing, sheathing, frame and any glass. The Owner paints, stains, seals or otherwise weatherproofs the exterior surfaces.
Windows in the Condominium Units	Each Condominium Owner is responsible for cleaning all windows in his Condominium (except those, if any, maintained by the Corporation) and maintaining all portions of the windows including the frame, screens, locking mechanism for the screen, weather stripping, caulking, panes and sheathing.
Light Fixtures and Fans	The Owner maintains the light fixtures and fans actuated from switches controlled from, or separately metered to, the Owner's Condominium Unit.
Balconies	The Corporation maintains the exterior painted surfaces of solid balcony railings, the exterior and the interior surfaces of open railings (e.g., iron or tubular steel railings), and the structure. The Corporation is also responsible for re-surfacing the floor of the balconies originally installed by Declarant. The Owner maintains any surface on the balcony floor that he has installed. The Owner sweeps the Balcony regularly and keeps it free from debris and reasonably protected against damage. The Owner maintains any hose bibs, electrical outlets and switches.

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Patio	The Corporation maintains the exterior surface and structural integrity of all walls surrounding the Patio and the structure. The Owner maintains any tile, paver or other surface material installed by Owner on the surface of the Patio. The Owner sweeps the Patio regularly and keeps it free from debris and reasonably protected against damage. The Owner maintains any hose bibs, electrical outlets and switches.
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Water pressure regulator, plumbing outlets and fixtures, furnaces, ducts (HVAC, dryer, stove, oven) electrical wiring and circuit breakers.	The Owner maintains the portions within or which exclusively serve the Condominium Unit.
Garage	The Corporation maintains as provided herein.
Telephone wiring exclusively serving a Condominium	The Owner maintains..

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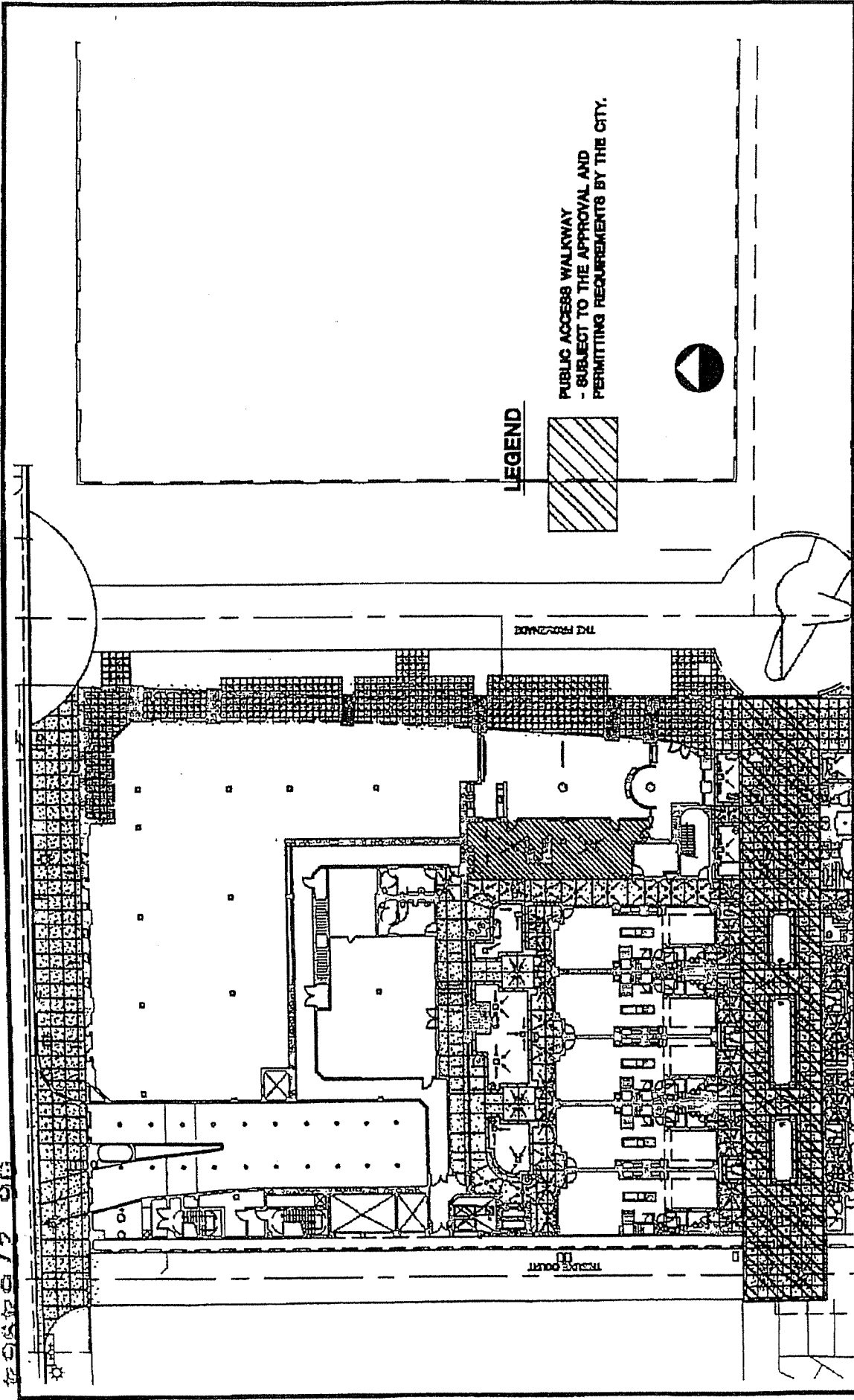
Utilities

The Corporation maintains the utilities serving the Common Property and all utilities which serve individual Condominiums but which are subject to a common meter (i.e., fire sprinkler, main sewer and water line, boiler). In addition, the Corporation maintains that portion of the domestic water line connecting the water meter to the Condominium Unit that is located outside of the condominium buildings. The Corporation shall, among other maintenance obligations, cause the sewer main lines and storm drain lines to be inspected and cleaned at least twice per year. For the storm drain line, it is suggested that this occur once immediately before the first of October (i.e., the beginning of the rainy season) and once in January, or more times per year if required by the City Engineer. Corporation must also vacuum out and clean storm ceptor unit periodically. Owners maintain utilities serving the Condominium Units that are separately metered. This includes all gas lines serving the Condominiums that are not serviced by the gas company, all water lines serving the Condominium beginning at the water shutoff valve that is installed immediately adjacent to the Condominium Unit (if applicable and not inconsistent with the Declaration), and all individual Condominium Unit interior waste water drain lines that connect to the Common Property drain lines serving multiple Units.

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Buildings	The Corporation maintains the structural components (including an inspection and preventive program for the prevention and eradication of infestation by wood destroying pests and organisms), exterior finished surfaces, exterior stucco walls, roofs, chimneys, and front doors of the Residential Condominium Units (except interior finished surface).
All potted plants placed on the Corporation Property by the Corporation.	The Corporation maintains.
Retail Condominium Unit and Retail Exclusive Use Corporation Property	The Owner maintains the entirety of his Retail Condominium Unit, including, without limitation, all fire sprinklers and fire prevention and suppression devices and utilities exclusively serving the Retail Condominium Unit, all Retail Exclusive Use Corporation Property, including, without limitation, outdoor seating areas and trash areas, the corridors providing access to the trash areas, the Designated Loading Areas depicted on Exhibit "F," and all signs relating to the business operations and use of the Retail Condominium Units.
Parking Condominium Units	All parking spaces within the Parking Condominium Units (except to the extent maintained by the Corporation) and any access control gates and other access control systems used in connection therewith as determined by the Board.

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LEGEND



PUBLIC ACCESS WALKWAY
- SUBJECT TO THE APPROVAL AND PERMITTING REQUIREMENTS BY THE CITY.



EXHIBIT N
PUBLIC ACCESS WALKWAY
SHEET NUMBER

LEGEND

133 PROMENADE WALK
133 THE PROMENADE
Long Beach, California
90802
THE OLBSON COMPANY

HRPStudio
ValleyCrest DesignGroup
PLANNING
LANDSCAPE ARCHITECTURE
URBAN DESIGN

SEE SHEET 2

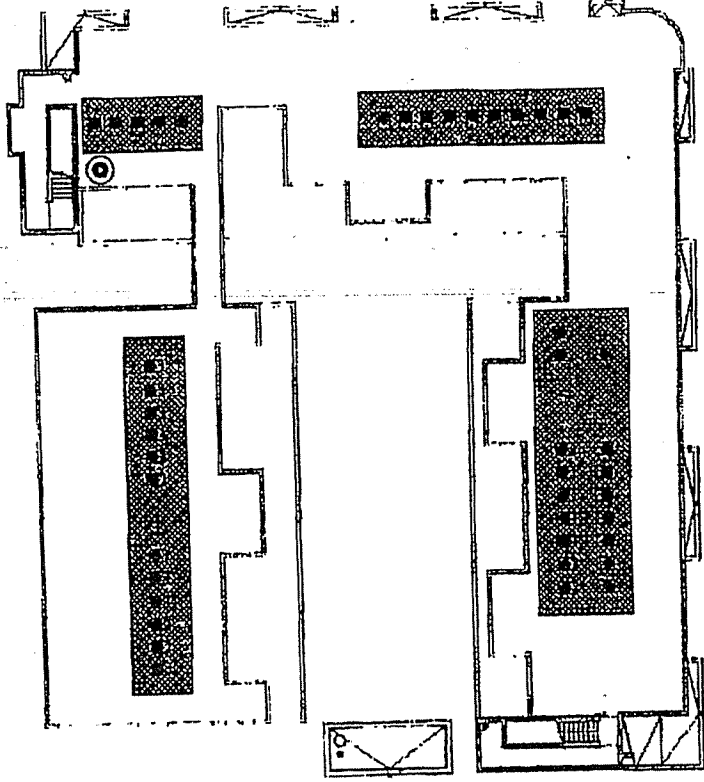





EXHIBIT "0"

RETAIL & RESIDENTIAL
ROOFTOP EQUIPMENT

SHEET NUMBER: 1 OF 2 10/19/06

LEGEND

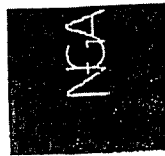
	ROOFTOP MECHANICAL PADS FOR RETAIL USE
	ROOFTOP MECHANICAL PADS FOR RESIDENTIAL CONDENSERS
	DISH FOR SATELLITE TV SERVICE

133 PROMENADE

WALK

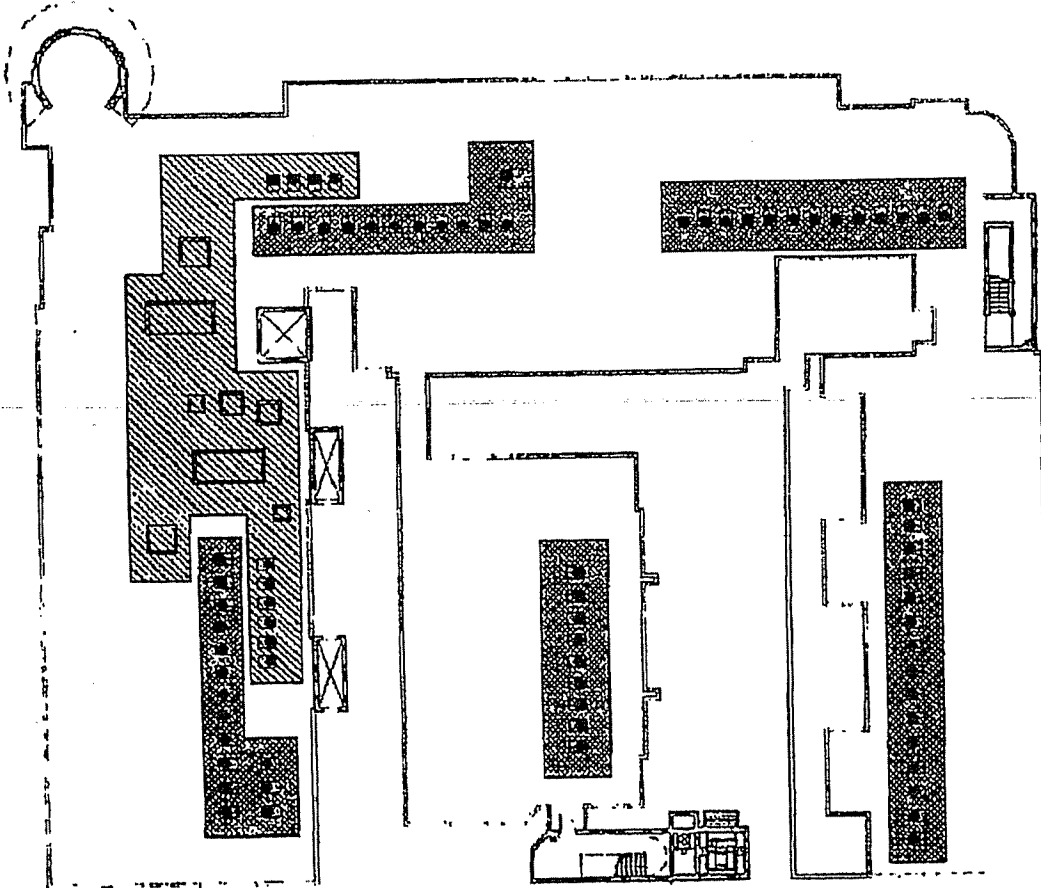
133 THE PROMENADE
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SEE SHEET 1

EXHIBIT "0"

RETAIL & RESIDENTIAL
ROOFTOP EQUIPMENT

SHEET NUMBER: 2 OF 2

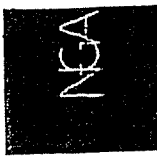
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	ROOFTOP MECHANICAL PADS FOR RETAIL USE
	ROOFTOP MECHANICAL PADS FOR RESIDENTIAL CONDENSERS
	DISH FOR SATELLITE TV SERVICE

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WALK

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90802

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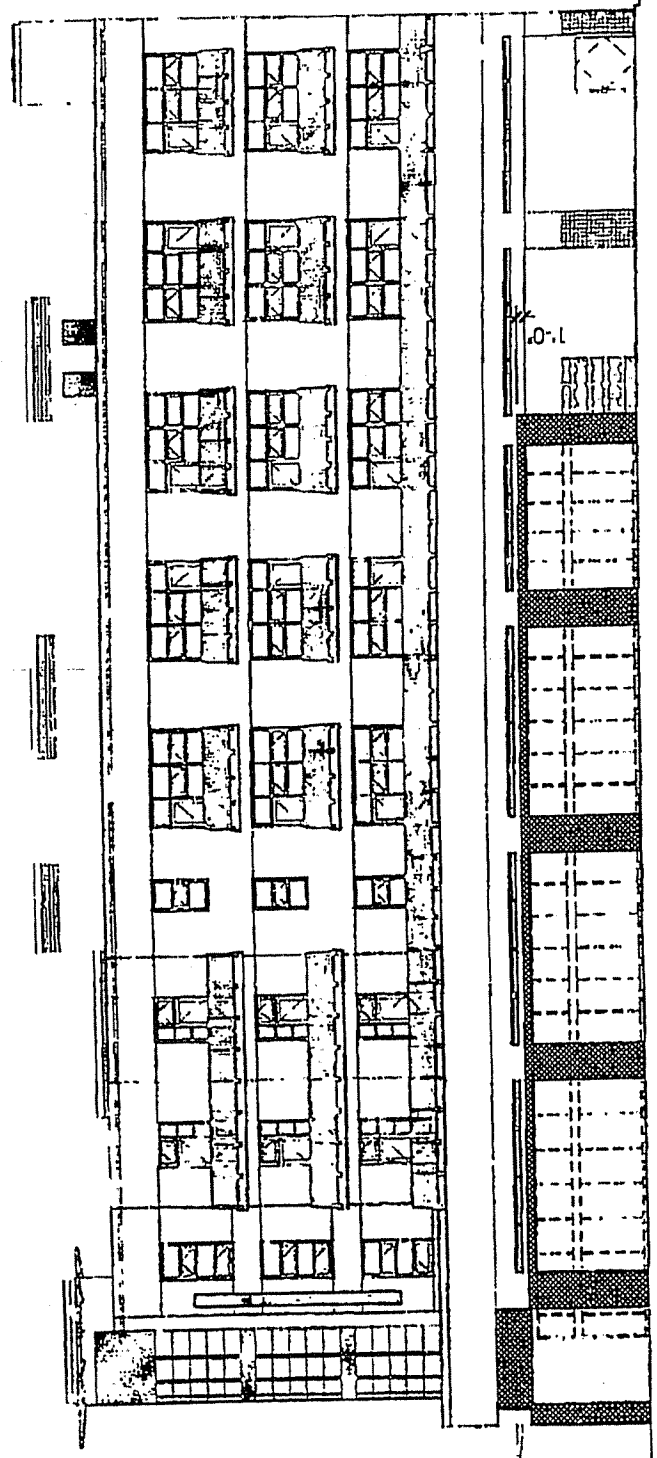
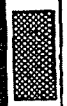
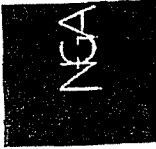


EXHIBIT R
 ALLOWABLE EXTERIOR
 TENANT REVISIONS
 SHEET NUMBER: 1 OF 2
 11/01/06

LEGEND

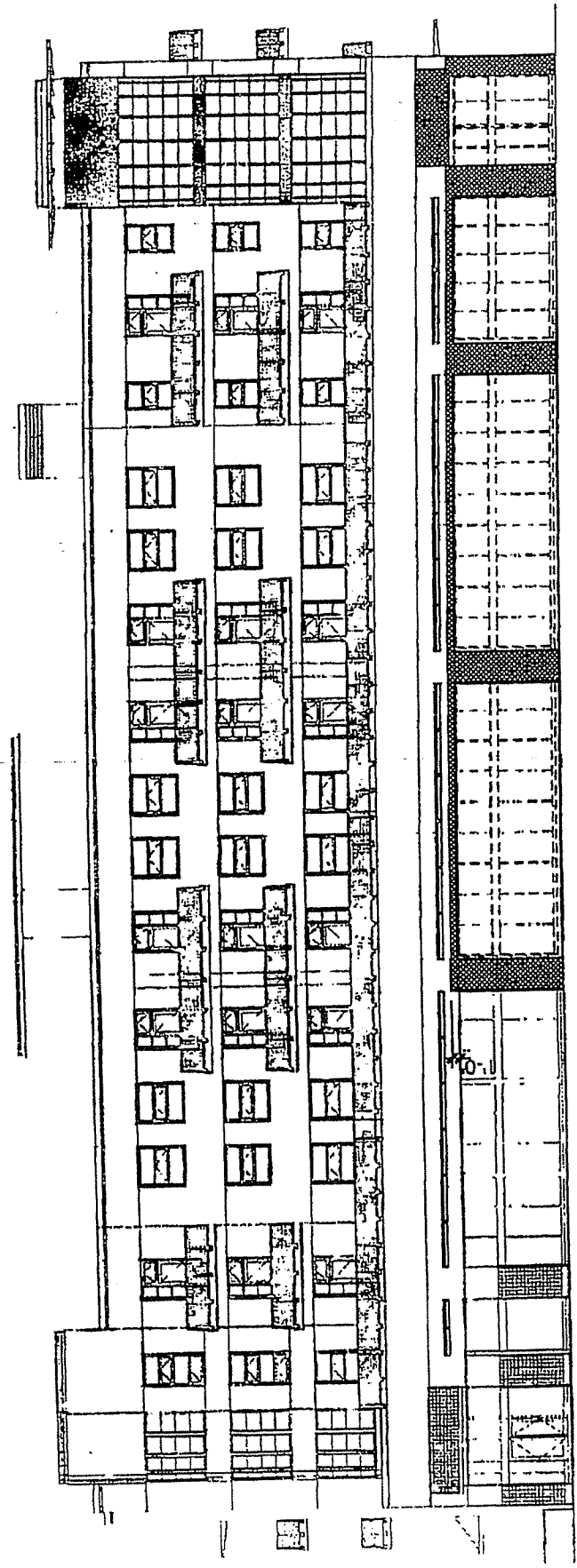
	EXTENT OF AREA FOR CITY APPROVED TENANT REVISIONS

133 PROMENADE
 WALK
 133 THE PROMENADE
 Long Beach, California
 90802
 THE OLSON COMPANY



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 ARCHITECTURE LLP

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133 PROMENADE
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133 THE PROMENADE
Long Beach, California
90802

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LEGEND

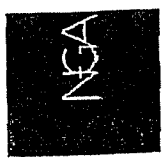
EXTENT OF AREA FOR CITY
APPROVED TENANT REVISIONS

EXHIBIT R

ALLOWABLE EXTERIOR
TENANT REVISIONS

SHEET NUMBER: 2 OF 2

11/01/06



NESTOR + GAFFNEY
ARCHITECTURE LLP

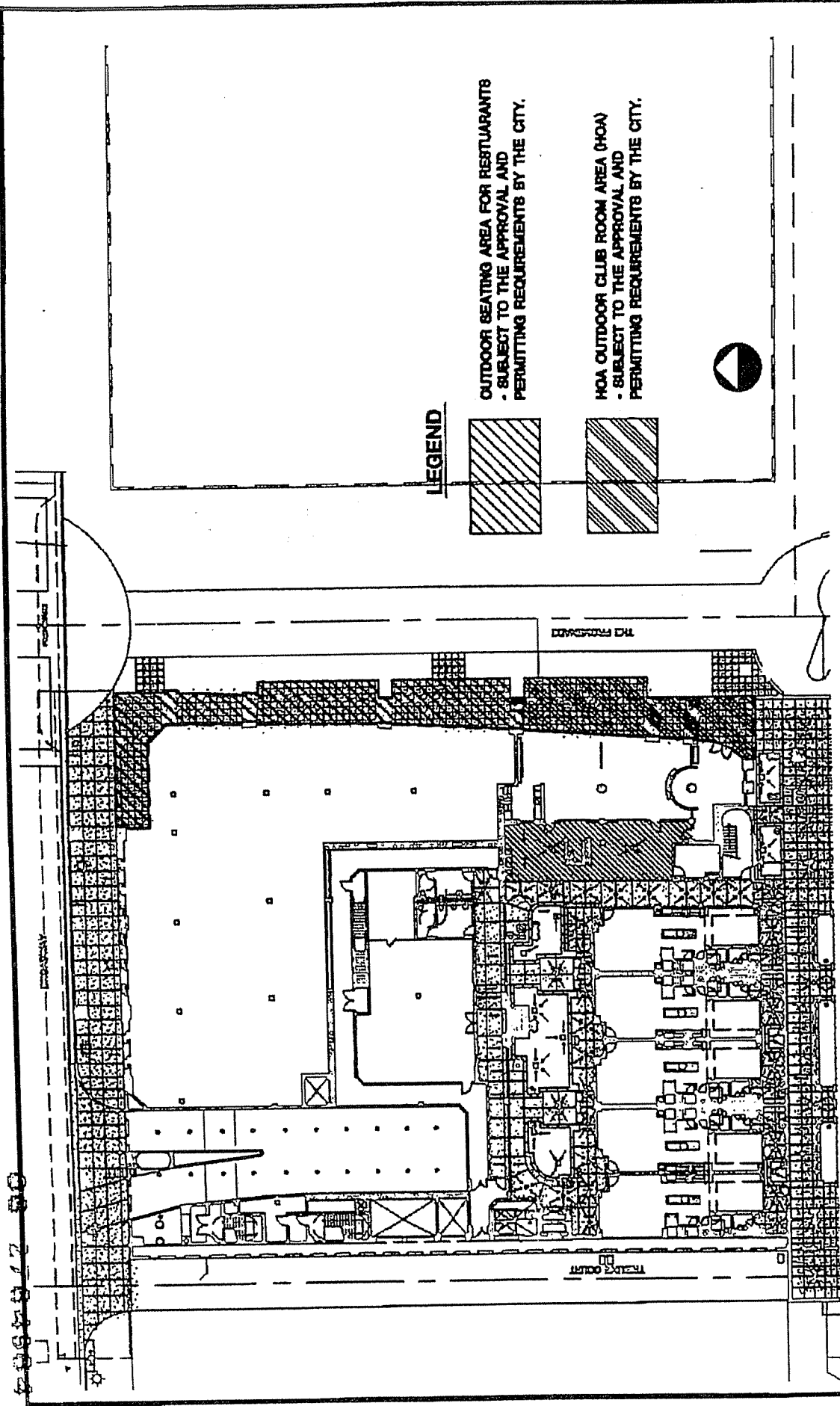


EXHIBIT "Q"

CONTROLLED USE

ALONG PROMENADE

SHEET NUMBER 1

LEGEND

133 PROMENADE WALK

133 THE PROMENADE
Long Beach, California
90802

THE OLSON COMPANY

HRP Studio
ValleyCrest DesignGroup

PLANNING
LANDSCAPE ARCHITECTURE
URBAN DESIGN

Exhibit "P" SAMPLE

HOME BUILDER'S LIMITED WARRANTY

Administered by Professional Warranty Service Corporation

Throughout this **HOME BUILDER'S LIMITED WARRANTY**, referred to hereinafter as the "**LIMITED WARRANTY**", the words "**YOU**" and "**YOUR**" refer to the **HOMEOWNER** and **HOMEOWNERS ASSOCIATION**. The words "**WE**", "**US**" and "**OUR**" refer to the **BUILDER**. The other words and phrases which appear in boldface uppercase type also have special meaning. Refer to the Section **X. Definitions**, so that **YOU** will understand the terminology applicable to this **LIMITED WARRANTY**.

This **LIMITED WARRANTY** establishes an agreed method for determining when a **CONSTRUCTION DEFECT** exists and a clear understanding of **OUR** responsibilities for remedying any such **CONSTRUCTION DEFECT**. This **LIMITED WARRANTY** also helps distinguish a **CONSTRUCTION DEFECT** that is **OUR** responsibility from those minor imperfections that can reasonably be expected in a **HOME** or the **COMMON ELEMENTS** or result from normal wear and tear or are routine **HOMEOWNER** or **HOMEOWNERS ASSOCIATION** maintenance responsibilities.

This **LIMITED WARRANTY** contains the procedures **YOU** must use to notify **US** of a condition in **YOUR HOME** or the **COMMON ELEMENTS**, which **YOU** believe may constitute a **CONSTRUCTION DEFECT**. In the event a condition occurs in the **HOME** or the **COMMON ELEMENTS** that **YOU** believe may constitute a **CONSTRUCTION DEFECT**, **YOU** agree to submit any request for warranty performance under this **LIMITED WARRANTY**. Based on the information **YOU** provide, and where **WE** deem it necessary information obtained from **OUR** onsite investigation inspection and/or testing of the **HOME** or the **COMMON ELEMENTS**, **WE** will determine whether **WE** agree with **YOU** that the condition constitutes a **CONSTRUCTION DEFECT**. If **WE** determine that the condition reported by **YOU** is a **CONSTRUCTION DEFECT**, **WE** will remedy the condition in accordance with the remedies prescribed in this **LIMITED WARRANTY**. **WE** will make this determination in accordance with Section **III, OUR Coverage Obligations**, contained in this **LIMITED WARRANTY**.

If **WE** determine that a condition does not constitute a **CONSTRUCTION DEFECT** that is **OUR** responsibility and therefore deny **YOUR** request for warranty performance, **YOU** have the right to initiate binding arbitration that will irrevocably determine whether the condition constitutes a **CONSTRUCTION DEFECT** that is **OUR** responsibility. If this binding arbitration determines that the condition does constitute a **CONSTRUCTION DEFECT** that is **OUR** responsibility, **WE** will resolve the problem in accordance with the remedies prescribed in this **LIMITED WARRANTY**. The arbitrator will make a determination based on the language contained in Section **III, OUR Coverage Obligations**.

Enclosed with this **LIMITED WARRANTY** is a Limited Warranty Validation Form. The Limited Warranty Validation Form provides the dates on which the warranty coverage period begins and expires. It is important that this form is retained with the **LIMITED WARRANTY**. Liability under this **LIMITED WARRANTY** is limited to the amount shown on the Limited Warranty Validation Form.

All express or implied warranties other than this **LIMITED WARRANTY**, including any oral or written statement or representation made by **US** or any other person, and any implied warranty of habitability, merchantability or fitness, are hereby disclaimed by **US** and are waived by **YOU**. In addition, **YOU** waive the right to seek damages or other legal or equitable remedies from **US**, **OUR** subcontractors, agents, vendors, suppliers, design professionals and materialmen, under any other common law or statutory theory of liability, including but not limited to negligence and strict liability. **YOUR** only remedy in the event of a **CONSTRUCTION DEFECT** in or to the **HOME** or the **COMMON ELEMENTS** or to the real property on which the **HOME** or the **COMMON ELEMENTS** is situated is the coverage provided to **YOU** under this **LIMITED WARRANTY**. Notwithstanding the foregoing, nothing in this **LIMITED WARRANTY** shall diminish any rights, obligations, or remedies that **YOU** or **WE** may have under California Civil Code Sections 895 through 945.5

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or under any procedures adopted in place of California Civil Code sections 910 through 938. Additionally, there may be instances where an additional PWC administered Builder's Limited Warranty is issued together with this LIMITED WARRANTY. If both of these warranties are issued to YOU, YOU agree to request warranty performance under either warranty relative to warrantable issues on the HOME or the COMMON ELEMENTS. YOU may not collect twice relative to the same defect and amounts paid or expended by US for warranty performance under either warranty will reduce the limit of liability remaining under both warranties simultaneously.

WE have contracted with PWC for certain administrative services relative to this LIMITED WARRANTY. PWC's sole responsibility is to provide administrative services. Under no circumstances or conditions is PWC responsible for fulfilling OUR obligations under this LIMITED WARRANTY.

If any provision of this LIMITED WARRANTY is determined to be unenforceable, such a determination will not affect the remaining provisions. If this LIMITED WARRANTY or any provision herein is determined to be unenforceable as to a HOMEOWNERS ASSOCIATION or a specific HOMEOWNER, such a determination will not affect the enforceability of this LIMITED WARRANTY or such provision as to any other HOMEOWNERS ASSOCIATION or any other HOMEOWNER. The issue of enforceability, as well as all other issues, will be determined by Binding Arbitration as provided for in this LIMITED WARRANTY.

I. Coverage Limit

The amount shown on the Limited Warranty Validation Form is OUR limit of liability. It is the most WE will pay or expend for all covered CONSTRUCTION DEFECTS regardless of the number of requests for warranty performance made against this LIMITED WARRANTY. Once OUR limit of liability has been paid, no further requests for warranty performance can be made against this LIMITED WARRANTY or any other PWC administered Builder's Limited Warranty issued for the HOME or the COMMON ELEMENTS.

II. Warranty Coverage

Coverage under this LIMITED WARRANTY is expressly limited to CONSTRUCTION DEFECTS which occur during the WARRANTY PERIOD indicated on the Limited Warranty Validation Form and are reported by YOU in accordance with the notification requirements of Section VII, Procedure to Request US To Perform Under This LIMITED WARRANTY.

Coverage During the WARRANTY PERIOD indicated on the Limited Warranty Validation Form that is attached to and made part of this LIMITED WARRANTY, WE warrant the HOME and the COMMON ELEMENTS will be free of CONSTRUCTION DEFECTS. To be eligible for coverage WE must receive written notice from YOU of the alleged CONSTRUCTION DEFECT as soon as it is reasonably possible after YOU have become aware or should have become aware of a CONSTRUCTION DEFECT but in no event later than thirty (30) days after the expiration of the coverage.

III. OUR Coverage Obligations

All notices of alleged CONSTRUCTION DEFECTS, and complaints under this LIMITED WARRANTY must be made by YOU in writing. Telephonic or face-to-face discussion will not protect YOUR rights under this LIMITED WARRANTY (see Section VII, Procedure to Request US To Perform Under This LIMITED WARRANTY).

In the event YOU allege a **CONSTRUCTION DEFECT** occurs during the **WARRANTY PERIOD**, upon receiving written notice from YOU, WE, or a third party designated by US or acting on OUR behalf, will inspect, investigate and/or test (including destructive testing) the alleged **CONSTRUCTION DEFECT** to determine if a **CONSTRUCTION DEFECT** exists. Upon confirmation of a **CONSTRUCTION DEFECT**, WE, or a third party designated by US or acting on OUR behalf, will (1) repair or replace the **CONSTRUCTION DEFECT**, (2) pay to YOU the actual amount it would cost US to repair or replace the **CONSTRUCTION DEFECT** or (3) PAY to YOU an amount equal to the diminution in fair market value caused by the **CONSTRUCTION DEFECT**. The decision to repair, replace, or to make payment to YOU is at OUR or OUR authorized representative's sole option.

WE will have been considered to have breached this **LIMITED WARRANTY** only if WE fail to resolve a **CONSTRUCTION DEFECT** in accordance with the terms and conditions of this **LIMITED WARRANTY**.

A. Standards By Which the Presence of a CONSTRUCTION DEFECT Will Be Determined

In the event YOU believe that a flaw in the **HOME** or the **COMMON ELEMENTS** constitutes a **CONSTRUCTION DEFECT**, the following factors will be considered by US in determining whether the condition constitutes a **CONSTRUCTION DEFECT**. Should either YOU or WE elect to initiate binding arbitration, these factors will be considered by the arbitrator in rendering a decision. These factors are provided to assist in the interpretation of the standards set forth in California Civil Code applicable to the **HOME** or the **COMMON ELEMENTS**. These factors are not intended to diminish or supersede the standards set forth in California Civil Code applicable to the **HOME** or **COMMON ELEMENTS**.

1. Any performance standards or guidelines or other documents or manuals that contain OUR building standards, including those applicable to the "fit and finish" of cabinets, mirrors, flooring, interior and exterior walls, countertops, paint finishes, and trim which are warranted for the first year of the **WARRANTY PERIOD**, that were provided to YOU at or prior to closing on the **HOME**, or in the case of the **HOMEOWNERS ASSOCIATION**, prior to transferring title to all the **COMMON ELEMENTS**. Absent such standards, the Residential Construction Performance Guidelines published by the National Association of Home Builders, in effect at the time of closing on the **HOME**, or in the case of the **HOMEOWNERS ASSOCIATION**, at the time of transferring title to all the **COMMON ELEMENTS** shall apply to the aforementioned "fit and finish items" during the first year of the **WARRANTY PERIOD**. Absent a specific standard in the documents identified above, building practices and standards in use in the region of the country in which the **HOME** or the **COMMON ELEMENTS** are located shall apply;
2. Consideration as to whether the magnitude of the flaw or imperfection:
 - materially affects the structural integrity of the **HOME** or **COMMON ELEMENTS**; or
 - has an obvious and material negative impact on the appearance of the **HOME** or **COMMON ELEMENTS**; or
 - jeopardizes the life or safety of the occupants; or
 - results in the inability of the **HOME** or the applicable **COMMON ELEMENTS** to provide the functions that can reasonably be expected in such a **HOME** or **COMMON ELEMENT**.
3. Consideration as to whether a condition is the result of normal wear and tear (conditions that are normal wear and tear, or are caused by normal wear and tear are not **CONSTRUCTION DEFECTS**);
4. Consideration as to whether the condition was caused by, or in any way resulted from, the failure of the **HOMEOWNER** or **HOMEOWNERS ASSOCIATION** to perform normal or routine maintenance (any condition that is determined to be a **HOMEOWNER** or **HOMEOWNERS**

ASSOCIATION maintenance issue, or any condition that results from improper or inadequate **HOMEOWNER** or **HOMEOWNERS ASSOCIATION** maintenance, is not a **CONSTRUCTION DEFECT**);

5. Consideration as to whether the condition was caused by the **HOMEOWNER** or **HOMEOWNERS ASSOCIATION** or their representatives, other than **US**, after the **HOMEOWNER** took possession of the **HOME** or the **COMMON ELEMENTS** (**WE** and **YOU** conducted a walk through inspection just prior to closing on the **HOME**. Damage that was caused by **YOU** or **YOUR** representatives is not a **CONSTRUCTION DEFECT**, for example, a large, visible scratch on marble tile in the entry foyer that was not noted in the walk through inspection, but was reported after furniture was moved into the **HOME**, will not be considered a **CONSTRUCTION DEFECT**);
6. Recognition that any condition resulting directly or indirectly from or worsened by changes, additions, alterations or other actions or omissions by the **HOMEOWNER** or **HOMEOWNERS ASSOCIATION** or their agents, other than **US**, will not be considered a **CONSTRUCTION DEFECT** (this includes changes to the topography, drainage or grade of the property);
7. Any Exclusions contained in this **LIMITED WARRANTY**;

IV. Homeowner Maintenance Obligations

Maintenance of the **HOME** and the **COMMON ELEMENTS** is **YOUR** responsibility. All homes and common elements require periodic maintenance to prevent premature deterioration, water intrusion and to ensure adequate performance of the **SYSTEMS**. **WE** will make a "Homeowner Maintenance Manual" or similar publication available to **YOU** upon request. Whether from this document or others that are readily available to **YOU**, **YOU** must understand and perform the maintenance that the **HOME** and **COMMON ELEMENTS** require. As stated in other sections of this **LIMITED WARRANTY**, **WE** are not responsible for **HOME** or **COMMON ELEMENTS** maintenance issues or for damage that results from **YOUR** failure to maintain the **HOME** or the **COMMON ELEMENTS**.

V. Coverage Limitations

When **WE** or a third party designated by **US** or acting on **OUR** behalf, repair or replace a **CONSTRUCTION DEFECT** the repair or replacement will include the repair or replacement of only those surfaces, finishes and coverings that were damaged by the **CONSTRUCTION DEFECT** that were part of the **HOME** or the **COMMON ELEMENTS** when title was first transferred by **US**. Surfaces, finishes and coverings that require repair or replacement in order for **US** or a third party designated by **US** to repair or replace **CONSTRUCTION DEFECTS** will be repaired or replaced. The extent of the repair and replacement of these surfaces, finishes or coverings will be to approximately the same condition they were in prior to the **CONSTRUCTION DEFECT**, but not necessarily to a like new condition.

When repairing or replacing surfaces, finishes and coverings, the repair or replacement will attempt to achieve as close a match with the original surrounding areas as is reasonably possible, but an exact match cannot be guaranteed due to such factors as fading, aging and unavailability of the same materials.

In the case where a **CONSTRUCTION DEFECT** exists and the **HOME** is rendered uninhabitable and the **CONSTRUCTION DEFECT** is repaired or replaced, the repair or replacement shall include the reasonable cost of the **HOMEOWNER'S** alternative shelter, storage expenses and lost business income (if the **HOME**

was used as a principal place of business licensed to be operated from the HOME) until the HOME is made habitable.

VI. Exclusions

A. This **LIMITED WARRANTY** does not cover:

1. Any **CONSTRUCTION DEFECTS** or other damages resulting, either directly or indirectly, from the following causes or occurring in the following situations:

Fire;
Lightning;
Explosion;
Riot and Civil Commotion;
Smoke;
Hail;
Aircraft;
Falling Objects;
Vehicles;
Floods;
Earthquake;

Landslide or mudslide originating on property other than the site of the **HOME** or the **COMMON ELEMENTS** or other property developed by the **BUILDER**;

Mine subsidence or sinkholes;

Changes in the underground water table not reasonably foreseeable by the **BUILDER**;

Volcanic eruption; explosion or effusion;

p. Wind including:

- (i). Gale force winds;
- (ii). Hurricanes;
- (iii). Tropical storms;
- (iv). Tomadoes;

q. Insects, animals or vermin;

r. Changes of the grading of the ground by anyone other than **US** or **OUR** agents, or subcontractors which results in surface drainage towards the **HOME** or other improper drainage or permits water to pond or become trapped in localized areas against the foundation or otherwise;

s. Changes, additions, or alterations made to the **HOME** or the **COMMON ELEMENTS** by anyone after the **WARRANTY PERIOD** begins, except those made or authorized by **US**;

t. Any defect in material or workmanship supplied by anyone other than **US** or **OUR** agents, or subcontractors;

u. Improper maintenance, negligence or improper use of the **HOME** or the **COMMON ELEMENTS** by **YOU** or anyone other than **US** that results in rot, dry rot, moisture, rust, mildew or any other damage;

v. Dampness or condensation due to **YOUR** failure to maintain adequate ventilation;

w. Damage resulting from the weight and/or performance of any type of waterbed or other furnishings which exceeds the load-bearing design of the **HOME** or the **COMMON ELEMENTS**;

x. Normal wear and tear or normal deterioration of materials;

v. Economic damages due to the **HOME'S** or the **COMMON ELEMENTS'** failure to meet consumer expectations.

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2. Any costs arising from, or any **CONSTRUCTION DEFECT** resulting from the actual, alleged or threatened discharge, dispersal, release or escape of **POLLUTANTS**. **WE** will not cover costs or expenses arising from the uninhabitability of the **HOME** or the **COMMON ELEMENTS** or health risk due to the proximity of **POLLUTANTS**. **WE** will not cover costs, or expenses resulting from the direction of any governmental entity to test, clean-up, remove, treat, contain or monitor **POLLUTANTS**;
3. Any costs arising from, or any **CONSTRUCTION DEFECT** resulting from the effects of electromagnetic fields (EMF's) or radiation;
4. Any damage to personal property that does not result from a **CONSTRUCTION DEFECT**;
5. Any "**CONSEQUENTIAL OR INCIDENTAL DAMAGES**";
6. Any damage to **CONSUMER PRODUCTS**;
7. Any **CONSTRUCTION DEFECT** as to which **YOU** have not taken timely and reasonable steps to protect and minimize damage after **WE** or **OUR** authorized representative have provided **YOU** with authorization to prevent further damage;
8. Any damage to the extent it is incurred after or as a result of **YOUR** failure to notify **US** in a reasonably timely manner after **YOU** have become aware or should have become aware of the **CONSTRUCTION DEFECT** or condition causing such damage;
9. Any costs or obligations paid or incurred by **YOU** in violation of Section VII. C. below;
 10. Any non-conformity with local building codes, regulations or requirements that has not resulted in a **CONSTRUCTION DEFECT**. While **WE** acknowledge **OUR** responsibility to build in accordance with applicable building codes, this **LIMITED -WARRANTY** does not cover building code violations in the absence of a **CONSTRUCTION DEFECT**;
 11. Any deviation from plans and specifications that has not resulted in a **CONSTRUCTION DEFECT**;
 12. Any claims barred by any limitations period provided by law;
 13. The 'fit and finish' of cabinets, mirrors, flooring, interior and exterior walls, countertops, paint finishes, and trim which are reported by **YOU** after the first year of the **WARRANTY PERIOD**, except where the 'fit and finish' of such items is damaged by other **CONSTRUCTION DEFECTS** covered under this **LIMITED WARRANTY**.
- B. **OUR LIMITED WARRANTY** does not cover any **CONSTRUCTION DEFECT** which would not have occurred in the absence of one or more of the excluded events or conditions listed in Exclusions, Section VI. A.1 a. - A.1.q., A.2. or A.3. above, regardless of:
 1. the cause of the excluded event or condition; or
 2. other causes of the loss or damage; or
 3. whether other causes acted concurrently or in any sequence with the excluded event or condition to produce the loss or damage.

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VII. Procedure to Request US To Perform Under This LIMITED WARRANTY

Subsections A through E of this Section VII apply in all cases, except where other procedures or provisions apply pursuant to a written contract between YOU and US.

If YOU become aware of a condition that YOU believe is a CONSTRUCTION DEFECT under this LIMITED WARRANTY, YOU have the following responsibilities:

A. Notification

YOU must notify US in writing as soon as it is reasonably possible after YOU have become aware or should have become aware of a CONSTRUCTION DEFECT, but in no event may YOUR written notice of a CONSTRUCTION DEFECT or YOUR written request for warranty performance be postmarked or received by US later than thirty (30) days after this LIMITED WARRANTY has expired.

If the written notice is postmarked or received by US more than thirty (30) days after the expiration of this LIMITED WARRANTY, WE shall have no obligation to remedy the CONSTRUCTION DEFECT. In order to establish a record of timely notification, WE recommend that written notice should always be sent by Certified Mail, return receipt requested.

B. Cooperate With US

YOU must give US and any third parties acting on OUR behalf reasonable help in inspecting, investigating, testing (including destructive testing), monitoring, repairing, replacing or otherwise correcting an alleged CONSTRUCTION DEFECT. Help includes, but is not limited to, granting reasonable access to the HOME or COMMON ELEMENTS for the forgoing purposes. If YOU fail to cooperate or provide such reasonable access to the HOME or COMMON ELEMENTS, WE will have no obligation to do any of the foregoing.

C. Do Not Make Voluntary Payments

YOU agree not to make any voluntary payments or assume any obligations or incur any expenses for the remedy of a condition YOU believe is a CONSTRUCTION DEFECT without prior written approval from US, or other parties authorized to act on OUR behalf. WE will not reimburse YOU for costs incurred where YOU did not obtain prior written approval.

However, YOU may incur reasonable expenses in making repairs in an EMERGENCY CONDITION without prior written approval, provided the repairs are solely for the protection of the HOME or COMMON ELEMENTS from further damage or to prevent an unsafe living condition and provided YOU notify US as soon as is reasonably possible. To obtain reimbursement for repairs made during an EMERGENCY CONDITION, YOU must provide US with an accurate written record of the repair costs.

D. Sign A Release

When WE or a third party designated by US or acting on OUR behalf have completed repairing, replacing or paying YOU as to any CONSTRUCTION DEFECTS or other related damage to the HOME or the COMMON ELEMENTS covered by this LIMITED WARRANTY, YOU must sign a full release of OUR obligation for the CONSTRUCTION DEFECTS. The release shall be applicable to the CONSTRUCTION

DEFECTS and shall not prevent **YOU** from notifying **US** should **YOU** become aware of a subsequent **CONSTRUCTION DEFECT**.

E. If YOU Disagree With US

If **YOU** believe **WE** have not responded to **YOUR** request for warranty performance to **YOUR** satisfaction or in a manner that **YOU** believe this **LIMITED WARRANTY** requires, **YOU** may provide written notice to **PWC** requesting Mediation. Upon **PWC's** receipt of written notice from **YOU**, **PWC** may review and mediate **YOUR** request by communicating with **YOU**, **US**, and any other individuals or entities that **PWC** believes may possess relevant information. If after forty-five (45) days, **PWC** is unable to successfully mediate **YOUR** request for warranty performance, or at any earlier time when **PWC** determines that **YOU** and **WE** are at an impasse, **PWC** will notify **YOU** that **YOUR** request for warranty performance remains unresolved and that **YOU** may elect to initiate Binding Arbitration. Binding Arbitration as described in the following section is the sole remedy for the resolution of disputes between **YOU** and **US** as set forth in the following section.

VIII. Binding Arbitration Procedure

Any disputes between **YOU** and **US**, or parties acting on **OUR** behalf, including **PWC**, related to or arising from this **LIMITED WARRANTY**, the design or construction of the **HOME** or the **COMMON ELEMENTS** or the sale of the **HOME** or transfer of title to the **COMMON ELEMENTS** will be resolved by binding arbitration. Binding arbitration shall be the sole remedy for resolving any and all disputes between **YOU** and **US**, or **OUR** representatives. Disputes subject to binding arbitration include, but are not limited to:

- A. Any disagreement that a condition in the **HOME** or the **COMMON ELEMENTS** is a **CONSTRUCTION DEFECT** and is therefore covered by this **LIMITED WARRANTY**;
- B. Any disagreement as to whether a **CONSTRUCTION DEFECT** has been corrected in compliance with this **LIMITED WARRANTY**;
- C. Any alleged breach of this **LIMITED WARRANTY**;
- D. Any alleged violation of consumer protection, unfair trade practice, or any other statute;
- E. Any allegation of negligence, strict liability, fraud, and/or breach of duty of good faith, and any other claims arising in equity or from common law;
- F. Any dispute concerning the issues that should be submitted to binding arbitration;
- G. Any dispute concerning the timeliness of **OUR** performance and/or **YOUR** notifications under this **LIMITED WARRANTY**;
- H. Any dispute as to the payment or reimbursement of the arbitration filing fee;
- I. Any dispute as to whether this **LIMITED WARRANTY**, or any provision hereof, including, but not limited to any waiver hereunder, is unenforceable;
- J. Any other claim arising out of or relating to the sale, design or construction of **YOUR HOME** or the **COMMON ELEMENTS**, including, but not limited to any claim arising out of, relating to or based on any implied warranty or claim for negligence or strict liability not effectively waived by this **LIMITED WARRANTY**.

The arbitration shall be conducted by Construction Arbitration Services, Inc., or such other reputable arbitration service that PWC shall select, at its sole discretion, at the time the request for arbitration is submitted. The rules and procedures of the designated arbitration organization, that are in effect at the time the request for arbitration is submitted, will be followed. A copy of the applicable rules and procedures will be delivered to YOU upon request.

This arbitration agreement shall be governed by the United States Arbitration Act (9 U.S.C. §§ 1 – 16) to the exclusion of any inconsistent state law, regulation or judicial decision. The award of the arbitrator shall be final and binding and may be entered as a judgment in any court of competent jurisdiction.

Each party shall bear its own attorneys fees and costs (including expert costs) for the arbitration. The arbitration filing fee, which is the amount charged by the arbitration service to PWC for each arbitration, shall be divided and paid equally as between YOU and US, unless YOU and WE have otherwise agreed in writing to a different allocation. Based on the outcome of the arbitration, the arbitrator may, at their discretion and to the extent permitted by law, direct that WE reimburse YOU some or all of that portion of the arbitration filing fee YOU have paid. Contact PWC to determine the arbitration filing fee in effect at the time an arbitration is being requested.

The process for YOU to initiate arbitration is described below.

Step 1 YOU complete a Binding Arbitration Request Form and mail it to PWC along with the appropriate arbitration filing fee. A Binding Arbitration Request Form is attached to this LIMITED WARRANTY. YOUR Binding Arbitration Request Form must be received no later than ninety (90) days after this LIMITED WARRANTY expires. YOU must still notify US of an alleged CONSTRUCTION DEFECT as soon as it is reasonably possible after YOU have become aware or should have become aware of the CONSTRUCTION DEFECT, but in no event later than thirty (30) days after expiration of this LIMITED WARRANTY. Please Note that while YOU have thirty (30) days after this LIMITED WARRANTY expires to notify US and ninety (90) days after it expires to file for arbitration, this time period does not extend the WARRANTY PERIOD for CONSTRUCTION DEFECTS. Additionally, no investigation, inspection, testing, repair, replacement, or payment, nor any promise of same by US under this LIMITED WARRANTY, nor any dispute resolution efforts, shall extend the term of this LIMITED WARRANTY or extend or toll any statutes of limitations or any of YOUR rights or remedies.

Step 2 PWC Will Arrange the Arbitration Proceeding. The arbitrator or arbitration organization will notify YOU of the time, date and location of the arbitration hearing. Most often the hearing will be conducted at the HOME or the COMMON ELEMENTS or some other location that is agreeable to all the parties to the dispute. In scheduling the hearing the arbitrator will set a time and date that is reasonably convenient to all the parties.

Step 3 The Arbitration Hearing. The parties at the arbitration hearing will include the arbitrator, YOU, US and/or a third party designated by US or acting on OUR behalf. Any party to the proceeding may be represented at the hearing. All persons who are parties to the arbitration, as well as representatives and witnesses, are entitled to attend hearings.

After evidence is presented by YOU, US or OUR representatives, a decision will be rendered by the arbitrator. The decision is final and binding on YOU and US. The arbitrator first will determine whether any claimed or alleged CONSTRUCTION DEFECT exists and whether it is OUR responsibility. Second, if the arbitrator finds US responsible for a CONSTRUCTION DEFECT, the arbitrator will determine the scope of any repair or replacement, OUR cost of any such repair or replacement, and the diminution in fair market value, if any,

caused by such **CONSTRUCTION DEFECT**. Based upon the arbitrator's decision, **WE** shall choose whether **WE** shall (1) repair, replace the **CONSTRUCTION DEFECT**, (2) pay to **YOU** the actual amount it would cost **US** to repair or replace the **CONSTRUCTION DEFECT** or (3) **PAY** to **YOU** an amount equal to the diminution in fair market value caused by the **CONSTRUCTION DEFECT**. The decision to repair, replace, or to make payment to **YOU** is at **OUR** or **OUR** authorized representative's sole option. In addition, the arbitrator shall render a decision resolving any other disputed matters or issues related to or arising from this **LIMITED WARRANTY**, the design or construction of the **HOME** or the **COMMON ELEMENTS** or the sale of the **HOME** or transfer of title to the **COMMON ELEMENTS**.

Step 4 **OUR Arbitration Performance Obligations.** **WE** will comply with the arbitrator's decision no later than 60 days from the date of the award or other such date as may be specified or allowed in the decision. However, delays caused by circumstances beyond **OUR** or **OUR** representative's control shall be excused.

Step 5. **If YOU believe WE Have Failed To Comply With The Award.** **YOU** should contact **PWC** at its mailing address specified in this **LIMITED WARRANTY** if **YOU** believe **WE** have not complied with the arbitrator's award. **PWC** will mediate this dispute and if it cannot be resolved, will advise **YOU** that a compliance inspection arbitration is available to determine whether **WE** have performed adequately under the original arbitration award. **PWC** will communicate these findings to both **US** and **YOU**. If it is determined that **WE** have not properly performed, **WE** will be obligated to immediately comply.

PWC's sole responsibility is to administer this **LIMITED WARRANTY** on **OUR** behalf and as such **PWC** assumes no other liabilities in connection with this **LIMITED WARRANTY**. Under no condition or circumstance is **PWC** responsible for fulfilling any of **OUR** obligations under this **LIMITED WARRANTY**.

IX. General Conditions

A. Separation of This LIMITED WARRANTY From The Contract Of Sale

This **LIMITED WARRANTY** is separate and independent of the contract between **YOU** and **US** for the construction and/or sale of the **HOME** or transfer of the **COMMON ELEMENTS**. Except as otherwise provided herein, the provisions of this **LIMITED WARRANTY** shall in no way be restricted or expanded by anything contained in the construction and/or sales contract or other documents between **YOU** and **US**.

B. Transfer to Subsequent HOMEOWNERS

This **LIMITED WARRANTY** will transfer to new owners of the **HOME** for the remainder of the **WARRANTY PERIOD**. **YOU** agree to provide this **LIMITED WARRANTY** to any subsequent purchaser of the **HOME** as a part of the contract of sale of the **HOME**. **OUR** duties under this **LIMITED WARRANTY** to the new **HOMEOWNER** will not exceed the limit of liability then remaining, if any.

C. Transfer of Manufacturer's Warranties

WE assign to **YOU** all the manufacturer's warranties on all appliances, fixtures and items of equipment that **WE** installed in the **HOME**. Should an appliance or item of equipment malfunction **YOU** must follow the procedures set forth in that manufacturer's warranty to correct the problem. **OUR** obligation under this **LIMITED WARRANTY** is limited to the workmanlike installation, including the requirements and provision contained in the standards set forth in California Civil Code applicable

to the HOME or the COMMON ELEMENTS, of such appliances and equipment . WE have no obligation for appliances and equipment defined as CONSUMER PRODUCTS.

D. Recovery Rights

If WE or a third party designated by US or acting on OUR behalf repairs, replaces or pays YOU as to a CONSTRUCTION DEFECT, or other related damage to the HOME or the COMMON ELEMENTS covered by this LIMITED WARRANTY, WE are entitled, to the extent of OUR payment, to take over YOUR related rights of recovery from other people and organizations, including but not limited to, other warranties and insurance. YOU have an obligation not to make it harder for US to enforce these rights. YOU agree to sign any papers, deliver them to US, and do anything else that is necessary to help US exercise OUR rights.

E. General Provisions

If any provision of this LIMITED WARRANTY is determined to be unenforceable, such a determination will not affect the remaining provisions. If this LIMITED WARRANTY or any provision herein is determined to be unenforceable as to a HOMEOWNERS ASSOCIATION or a specific HOMEOWNER, such a determination will not affect the enforceability of this LIMITED WARRANTY or such provision as to any other HOMEOWNERS ASSOCIATION or any other HOMEOWNER. The issue of enforceability, as well as all other issues, will be determined by Binding Arbitration as provided for in this LIMITED WARRANTY.

This LIMITED WARRANTY and the binding arbitration process are binding on YOU and US. It is also binding on YOUR and OUR heirs, executors, administrators, successors, and assigns, subject to paragraph B of the General Conditions.

As may be appropriate, the use of the plural in this LIMITED WARRANTY includes the singular, and the use of one gender includes all genders.

X. Definitions

BUILDER means the individual, partnership, corporation or other entity which participates in the Warranty Program administered by the Professional Warranty Service Corporation and provides YOU with this LIMITED WARRANTY. Throughout this document the BUILDER is also referred to as "WE", "US" and "OUR".

COMMON ELEMENTS means the property as specified in the recorded Covenants, Conditions and Restrictions as common area and any other property as to which the HOMEOWNERS ASSOCIATION has standing under the law to make a claim. This may include, but is not limited to, streets, slopes, the structure or components of enclosure or other parts of the HOME, corridors, lobbies, vertical transportation elements, rooms, balconies, clubhouses or other spaces that are for the common use of the residents of the development in which the HOME is located. SYSTEMS serving two or more HOMES, and the outbuildings that contain parts of such SYSTEMS are also included in this definition.

CONSEQUENTIAL OR INCIDENTAL DAMAGES means any loss or injury other than:

OUR cost to correct a CONSTRUCTION DEFECT including the correction of those surfaces, finishes and coverings damaged by the CONSTRUCTION DEFECT;

OUR cost of repair or replacement of furniture, carpet or personal property damaged by the CONSTRUCTION DEFECT. Should replacement be necessary, OUR obligation is limited to replacement with items providing the same function and quality and that are readily available at the time the item is being replaced.

OUR costs of removal or replacement in order to repair or replace a CONSTRUCTION DEFECT;

The reasonable cost of the **HOMEOWNER'S** alternative shelter, storage expenses and lost business income (if the **HOME** was used as a principal place of business licensed to be operated from the **HOME**) where the **HOME** is uninhabitable due to a **CONSTRUCTION DEFECT** or where the **HOME** is rendered uninhabitable by the repair of the **CONSTRUCTION DEFECT**.

Diminished fair market value is considered "**CONSEQUENTIAL OR INCIDENTAL DAMAGE**" and is excluded under this **LIMITED WARRANTY** unless **WE** elect this remedy in lieu of the repair, replacement or other payment as to a **CONSTRUCTION DEFECT**.

CONSTRUCTION DEFECT(S) means a flaw in the materials or workmanship used in constructing the **HOME** that:

- materially affects the structural integrity of the **HOME** or the **COMMON ELEMENTS**; or
- has an obvious and material negative impact on the appearance of the **HOME** or the **COMMON ELEMENTS**; or
- jeopardizes the life or safety of the occupants; or
- results in the inability of the **HOME** or the applicable **COMMON ELEMENTS** to provide the functions that can reasonably be expected in a residential dwelling.

WE and any arbitrator assigned to rule relative to a **CONSTRUCTION DEFECT** will consider both this definition and Section III – A. (**Standards By Which the Presence of a CONSTRUCTION DEFECT Will Be Determined**) in determining the existence of a **CONSTRUCTION DEFECT**. A flaw is a **CONSTRUCTION DEFECT** if either **WE** or an arbitrator conducting a binding arbitration hearing declares the flaw to be a **CONSTRUCTION DEFECT**. **OUR** obvious and visible failure to complete the construction of the **HOME** or **COMMON ELEMENTS**, or any portion of the **HOME** or **COMMON ELEMENTS**, is not a **CONSTRUCTION DEFECT**.

CONSUMER PRODUCT means any item of equipment, appliance or other item defined as a **CONSUMER PRODUCT** in the Magnuson-Moss Warranty Act (15 U.S.C. §. 2301, et seq.) Examples of Consumer Products include, but are not limited to dishwasher, garbage disposal, gas or electric cook-top, range, range hood, refrigerator or refrigerator/freezer combination, gas oven, electric oven, microwave oven, trash compactor, garage door opener, clothes washer and dryer, hot water heater and thermostat.

EMERGENCY CONDITION means an event or situation that creates the imminent threat of damage to the **HOME** or **COMMON ELEMENTS**, or results in an unsafe living condition due to a **CONSTRUCTION DEFECT** that **YOU** (or as applicable, the **HOMEOWNERS ASSOCIATION**) become aware of at a point in time other than **OUR** normal business hours and **YOU** were unable to obtain **OUR** or **OUR** authorized representative's prior written approval to initiate repairs to stabilize the condition or prevent further damage.

HOME means a single family residence either attached or detached covered by this **LIMITED WARRANTY** or a condominium or cooperative unit in a multi-unit residential structure/building covered by this **LIMITED WARRANTY**.

HOME BUILDER'S LIMITED WARRANTY means only this express warranty document provided to **YOU** by **US**.

HOMEOWNER means the first person(s) to whom a **HOME** (or a unit in a multi-unit residential structure/building) is sold, or for whom such **HOME** is constructed, for occupancy by such person or such person's family, and such person's(s') successors in title to the **HOME**, or mortgagees in possession and any representative of such person(s) who has standing to make a claim on that person(s) behalf, including any class representative or **HOMEOWNERS ASSOCIATION** making a claim in a representative capacity.

HOMEOWNERS ASSOCIATION means a profit or nonprofit corporation, unincorporated association, organization, partnership, assessment district, limited liability company, limited liability partnership or other

entity of any kind that owns, manages, maintains, repairs, administers, or is otherwise responsible for and has standing to make a claim as to any part of the **COMMON ELEMENTS**.

POLLUTANTS means all solid, liquid, or gaseous irritants or contaminants. The term includes, but is not limited to, petroleum products, smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, radon gas, and waste materials, including materials to be recycled.

PWC means Professional Warranty Service Corporation which administers the warranty program in which **WE** participate. As such, **PWC** assumes no other liabilities in connection with this **LIMITED WARRANTY**. The **PWC** mailing address is: **Professional Warranty Service Corporation**
P.O. Box 800 Annandale, VA 22003-0800

SYSTEMS means the following:

- (a) Plumbing system - gas supply lines and fittings; water supply, waste and vent pipes and their fittings; septic tanks and their drain fields; and water, gas and sewer services piping and their extensions to the tie-in of a public utility connection or on-site well and sewage disposal system.
- (b) Electrical system - all wiring, electrical boxes, switches, outlets, and connections up to the public utility connection.
- (c) Heating, Cooling, and Ventilation system - all duct-work; steam, water and refrigerant lines; and registers, connectors, radiation elements and dampers.

WARRANTY PERIOD shall commence on the date the title to the **HOME** is transferred to the first **HOMEOWNER**. Notwithstanding anything to the contrary set forth in this **LIMITED WARRANTY**, the **WARRANTY PERIOD** for the **COMMON ELEMENTS** of an individual structure/building commences on the date the title for the first **HOME** in the structure/building is transferred to the first **HOMEOWNER** or as concerns clubhouses or outbuildings or other **COMMON ELEMENTS** not part of the **HOME** the date the title to these structures is transferred to the **HOMEOWNERS ASSOCIATION**. The dates the **WARRANTY PERIOD** begins and ends are indicated on the Limited Warranty Validation Form which is attached to and made part of this **LIMITED WARRANTY**.

WE, US, OUR means the **BUILDER**.

YOU, YOUR means the **HOMEOWNER** and the **HOMEOWNERS ASSOCIATION**.

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BINDING ARBITRATION REQUEST FORM

Dear Homeowner (Homeowners Association):

Prior to requesting binding arbitration under the terms of the HOME BUILDER'S LIMITED WARRANTY, you should have sent your builder a clear and specific written request outlining the situation or condition that you are herein submitting to binding arbitration. If you have taken this step and believe the builder has not properly responded in accordance with the HOME BUILDER'S LIMITED WARRANTY, fill out this form and send it to PWC along with the arbitration filing fee. Be sure to attach a copy of all pertinent correspondence between you and your builder relative to the issue.

The information you need to fill out this form can be found on the Limited Warranty Validation Form. However, if you do not know the answers to any questions, write "Don't Know." Please do not leave any item blank.

Your name: _____

Address: _____

CITY STATE ZIP

Home Phone: () _____ Business Phone: () _____

LIMITED WARRANTY #: _____ Date Warranty Period begins: _____

Builder's Name: _____

Address: _____

Describe the dispute that you wish to submit to binding arbitration under the terms of the HOME BUILDER'S LIMITED WARRANTY. If the dispute is relative to a construction defect please include information on when the construction defect(s) first occurred or when you first noticed the construction defect. (Attach additional sheets, if necessary).

I/we are hereby requesting PWC to initiate a binding arbitration to resolve the dispute described herein above.

Signature _____

Date _____

Signature _____

Date _____

INSTRUCTIONS: Photo-copy this form and complete the fields.
Obtain the required arbitration filing fee by contacting PWC at 1-800/850-2799.
Send this Binding Arbitration Request Form and the arbitration filing fee to:

PROFESSIONAL WARRANTY SERVICE CORPORATION
P. O. BOX 800
ANNANDALE, VIRGINIA 22003-0800

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PWC Form No. 301

SUBSEQUENT HOME BUYER ACKNOWLEDGMENT AND TRANSFER

Any coverage remaining under the HOME BUILDER'S LIMITED WARRANTY applicable to the home specified on the Limited Warranty Validation Form is transferred to the subsequent homeowner. Any obligations under the HOME BUILDER'S LIMITED WARRANTY to any subsequent homeowner shall not exceed the limit of liability remaining at the time of transfer, if any.

The undersigned home buyer(s) hereby acknowledge and agree:

I/we acknowledge that I have reviewed, understand and agree to all the terms of the HOME BUILDER'S LIMITED WARRANTY document (PWC Form No. 117)

I/we understand and acknowledge that Professional Warranty Service Corporation ("PWC") is not the warrantor of the HOME BUILDER'S LIMITED WARRANTY.

I/we understand that I/we am responsible for the maintenance of the home including maintenance of the grade of the land surrounding the home, and that the builder shall not be responsible for any defect of damage to the home which is the result of my/our failure to maintain the home.

I/we acknowledge and agree to the Binding Arbitration Procedure contained in the HOME BUILDER'S LIMITED WARRANTY.

Signature(s) of Subsequent Home Buyer(s): _____ Date: _____
_____ Date: _____

Print above name(s): _____

Re-issuance of the Limited Warranty Validation Form with the name(s) of the new Home Buyer(s) is not necessary for you to receive the coverage remaining under the HOME BUILDER'S LIMITED WARRANTY. Upon receipt of this signed form, PWC will update its records to reflect the name(s) of the new homeowner(s). If you want PWC to issue another Limited Warranty Validation Form with your name(s) on the form, please check the box below and send a check in the amount of \$20.00 made payable to "PWC" with your submission of this form.

YES, re-issue the Limited Warranty Validation Form in the above name(s) (check box) Initial _____

Address of Home: _____

Limited Warranty No.: _____

INSTRUCTIONS: Photo-copy this form. Provide information requested, sign, fill in Limited Warranty # in the space provided (this number is provided on the Limited Warranty Validation Form), and provide a telephone number where you can be reached (_____) _____. If you want the Limited Warranty Validation Form reissued in your name, enclose your check to PWC in the amount of \$20.00 (check box above and initial). To reach PWC by phone, call: 1-800/850-2799.

Mail this form and a photocopy of applicable settlement/closing documents indicating transfer of title, to:

PROFESSIONAL WARRANTY SERVICE CORPORATION P.O. BOX 800 ANNANDALE, VA 22003-0800

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