

[D R A F T ONLY - NOT FOR RECORDING PURPOSES]

RECORDED AT THE REQUEST OF AND
WHEN RECORDED, RETURN TO:

Tara C. Narayanan
MILLER STARR REGALIA
1331 N. California Blvd., Fifth Floor
Walnut Creek, CA 94596

**DAVIS STREET
DECLARATION
OF
RESTRICTIONS (CC&Rs)**

If this document contains any restriction based on race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, source of income as defined in subdivision (p) of Section 12955, disability, veteran or military status, or genetic information, that restriction violates state and federal fair housing laws and is void, and may be removed pursuant to Section 12956.2 of the Government Code. Lawful restrictions under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status.

DAVIS STREET

DECLARATION OF RESTRICTIONS (CC&Rs)

TABLE OF CONTENTS

ARTICLE 1 Definitions 1

 1.1 Applicable Laws 1

 1.2 Approval by the Owners 1

 1.3 Articles 1

 1.4 Association 1

 1.5 Bylaws 1

 1.6 City 1

 1.7 Commercial and Industrial Act 2

 1.8 Common Area 2

 1.9 Condominium 2

 1.10 Condominium Plan 2

 1.11 Declarant 2

 1.12 Declaration 2

 1.13 Development 2

 1.14 Exclusive Use Common Area 2

 1.15 Governing Documents 2

 1.16 Improvements 2

 1.17 Maintain, Maintained, Maintaining or Maintenance 2

 1.18 Map 2

 1.19 Member 2

 1.20 Mortgage 3

 1.21 Mortgagee 3

 1.22 Occupant(s) 3

 1.23 Owner 3

 1.24 Permittee(s) 3

 1.25 Person 3

 1.26 Unit 3

ARTICLE 2 Property Rights and Easements 3

 2.1 Type of Development 3

 2.2 Ownership Interests 3

 2.3 Easements 4

 2.4 General Easement Rights 4

 2.5 Reservation of Rights 5

 2.6 Authority Over Common Area 5

 2.7 Delegation of Use Rights 5

 2.8 Exclusive Use Common Area 5

 2.9 Restrictions on Partition 6

ARTICLE 3 Restrictions 6

 3.1 Uses 6

 3.2 Rental Restrictions 7

 3.3 Operation Restrictions 7

 3.4 Nuisance 7

 3.5 Vehicle and Parking Restrictions 7

 3.6 Towing Authority 8

 3.7 Television or Radio Equipment 8

 3.8 Signage 8

 3.9 Vehicle Maintenance 8

 3.10 Alterations, Modifications or Additions 8

3.11	Compliance with Law	8
3.12	Solar Energy System	8
ARTICLE 4	Maintenance Obligations	10
4.1	Owners' Maintenance Obligations	10
4.2	Association's Maintenance and Landscaping Obligations.....	12
4.3	Inspection and Maintenance Standards and Guidelines	13
4.4	Trash Removal.....	14
4.5	Cooperation and Access	14
4.6	Reimbursement and Indemnification	14
ARTICLE 5	The Association	14
5.1	Formation of the Association and Commencement of Operations	14
5.2	Powers of the Association.....	15
5.3	Duties of the Association	15
5.4	Taxes and Assessments	15
5.5	Utility Service to the Common Area.....	16
5.6	Reporting Requirements	16
ARTICLE 6	Assessments.....	16
6.1	Obligations to Pay Assessments	16
6.2	Annual Regular Assessment.....	16
6.3	Reserves	17
6.4	Special Assessments	17
6.5	Reimbursement Assessments	17
6.6	Commencement of Regular Assessments	17
6.7	Due Dates of Assessments.....	17
6.8	Allocation of Regular and Special Assessments	17
6.9	Enforcement of Delinquent Assessments	18
6.10	Estoppel Certificate	18
ARTICLE 7	Insurance	18
7.1	Owners' Individual Insurance Requirements	18
7.2	Association Liability Insurance.....	19
7.3	Association's Property Insurance.....	19
7.4	Insurance Rating and Cancellation	20
7.5	Association's Authority to Revise Insurance Coverage	20
7.6	Periodic Insurance Review	21
7.7	Insurance Trustee	21
7.8	Other Insurance	21
ARTICLE 8	Damage, Destruction or Condemnation	21
8.1	Restoration Defined	21
8.2	Insured Casualty	21
8.3	Inadequate Insurance Proceeds or Uninsured Loss.....	22
8.4	Additional Special Assessment.....	22
8.5	Alternative Reconstruction	22
8.6	Sale of Condominiums.....	22
8.7	Restoration of Partition Rights	23
8.8	Rebuilding Contract.....	23
8.9	Condemnation.....	23
8.10	Dispute Resolutions	24
ARTICLE 9	Rights of Mortgagees.....	24
9.1	Lender Definitions	24
9.2	Encumbrance	24
9.3	Rights of Institutional Mortgagees.....	24
9.4	Subordination	24
9.5	Breaches	25

9.6	Special Voting Requirements.....	25
9.7	Distribution of Insurance and Condemnation Proceeds	25
9.8	Mortgagee Notice.....	25
9.9	Right of First Refusal.....	26
9.10	Unpaid Assessments	26
ARTICLE 10	Amendments.....	26
10.1	Amendment Before Close of First Sale.....	26
10.2	Amendment After Close of First Sale.....	26
10.3	Amendment of the Condominium Plan	26
10.4	Corrections.....	26
ARTICLE 11	Dispute Resolution.....	27
11.1	Disputes Between Owners.....	27
11.2	Mediation.....	27
11.3	Binding Arbitration.....	27
11.4	Enforcement by Lien	28
ARTICLE 12	Miscellaneous Provisions	28
12.1	Headings	28
12.2	Severability.....	28
12.3	Cumulative Remedies	29
12.4	Discrimination.....	29
12.5	Notification of Sale	29
12.6	Reservation or Grant of Easements.....	29
12.7	Incorporation of Exhibits	29
12.8	Enforcement Rights and Remedies	29
12.9	Term.....	30
12.10	Reserved Rights of Declarant	30
12.11	Assignment by Declarant	30
12.12	Attorneys' Fees	30
12.13	Notices	30
12.14	No Enforcement Waiver	30
12.15	Statutory Reference	31
EXHIBIT A – Prohibited Commercial Uses (§§3.1 and 3.2)		
EXHIBIT B – Sign Program (§3.8)		
EXHIBIT C – Estimated Square Footages (§6.8)		

DAVIS STREET

DECLARATION OF RESTRICTIONS (CC&Rs)

THIS DECLARATION OF RESTRICTIONS (CC&Rs) is executed by THE DAVIS STREET COMMUNITY CENTER INCORPORATED, a California corporation, and DS REAL PROPERTY INVESTORS LLC, a California limited liability company (collectively, "Declarant") with reference to the following facts:

- A. Declarant is establishing a commercial condominium development consisting of one community center condominium and one cannabis dispensary condominium located on certain real property in San Leandro, California, more particularly described as Lot ___ on the subdivision map entitled "_____" filed in the records of Alameda County, California, on _____, 20__, in Book ____ of Maps at pages _____. The Units are more particularly described as "Unit 1," and "Unit 2" on the Condominium Plan filed on _____, 20__, as Document No. _____ in the records of Alameda County, California (the "Development").
- B. Declarant desires to impose certain restrictions on the condominiums in the Development that will benefit and bind each condominium, and each owner and successive owner thereto, as covenants running with the land and equitable servitudes, to grant and describe certain easements that will be appurtenant to the condominiums, and to establish a condominium project within the meaning of Civil Code section 6542.

DECLARANT DECLARES AS FOLLOWS:

ARTICLE 1 Definitions

Unless the context indicates otherwise, the following terms shall have the following definitions:

1.1 Applicable Laws. All federal, state and local laws, statutes, acts, ordinances, rules, regulations, permits, licenses and requirements of all governmental authorities (including any agency, authority, Association, branch, division, department or similar unit of any federal, state, county, district or other governmental entity having jurisdiction over the Development) that now or hereafter during the term of this Declaration may be applicable to a commercial common interest development.

1.2 Approval by the Owners. The approval by the Owners of both Condominiums. Any approval given by any one Owner of a Condominium shall conclusively be presumed to be approval by all of the Owners of that Condominium. Any action involving "Approval by the Owners" as defined herein shall also include "Approved by the Owners," and shall conclusively be presumed to an action approved by the Association.

1.3 Articles. The Articles of Association of the Association and any amendments thereto.

1.4 Association. The Davis Street Owners Association, an unincorporated association, the members of which are the Owners of the Condominiums.

1.5 Bylaws. The Bylaws of the Association and any amendments thereto.

1.6 City. The City of San Leandro, California.

1.7 Commercial and Industrial Act. The Commercial and Industrial Common Interest Development Act as set forth in Part 5.3 (commencing with Civil Code section 6500) to Division 4 of the Civil Code and any subsequent modifications thereto.

1.8 Common Area. The element of a Condominium that is owned in undivided interests in common, consisting of Lot ___ as described on the Map and all Improvements thereon, except Unit 1 and Unit 2 described in **Sections 2.8.2 and 2.8.7**. The Common Area includes the land, airspace outside the Units, foundations, unfinished floors, subfloors, beams, columns, exterior walls and trim, windows, roof, exterior doors, load-bearing walls, sprinklers, sprinkler pipes, other life safety systems and vents (including portions that protrude into the Unit), reservoirs, tanks, pumps, meters, ducts, chutes, conduits, pipes, plumbing, wires, and other utilities (except the fixtures located within the boundaries of a Unit), loading dock, electrical room(s), and all other Improvements in the Development except the Improvements located within the boundaries of a Unit as described in **Section 1.26**.

1.9 Condominium. A fee (perpetual) estate in real property as defined in Civil Code section 6542 consisting of two elements: (i) a separate interest in space identified as a "Unit" as described in **Section 1.26**, and (ii) an undivided interest in common in the Common Area as described in **Section 1.8**.

1.10 Condominium Plan. The condominium plan for the Development that was prepared in accordance with the requirements of Civil Code sections 6540 and 6624 and that was recorded on _____, 20__, as Document No. _____ in the records of Alameda County, California, and any amendments or corrections thereto.

1.11 Declarant. The Davis Street Community Center Incorporated, a California corporation ("DSCC"), and DS Real Property Investors LLC, a California limited liability company, or any successor or assign that assumes in writing all or a portion of the rights and duties of a Declarant hereunder. There is more than one Declarant.

1.12 Declaration. This Declaration of Restrictions (CC&Rs) and any amendments or corrections thereto.

1.13 Development. The commercial development that is constructed on Lot ___ shown on the Map and subject to all the provisions in this Declaration, including the Condominiums and all other Improvements thereon.

1.14 Exclusive Use Common Area. The portion or portions of the Common Area described in **Section 2.8** that are subject to rights for the exclusive use of one of the Owners.

1.15 Governing Documents. This Declaration, the Articles, and the Bylaws.

1.16 Improvements. Any property in the Development constituting a fixture within the meaning of Civil Code section 660.

1.17 Maintain, Maintained, Maintaining or Maintenance. Unless expressly stated otherwise, "maintain", "maintained", "maintaining" or "maintenance" as used in this Declaration includes inspection, cleaning, maintenance, repair, upgrading and/or replacement.

1.18 Map. The subdivision map entitled "_____" filed for record in Alameda County, California, on _____, 20__, in Book _____ of Maps at pages _____, including any subsequently-recorded amended final maps, parcel maps, certificates of correction, lot-line adjustments, and/or records of survey.

1.19 Member. A member of the Association.

1.20 Mortgage. A recorded mortgage or deed of trust against one or more Condominiums in the Development.

1.21 Mortgagee. A mortgagee under a Mortgage or a beneficiary under a deed of trust recorded against a Condominium in the Development.

1.22 Occupant(s). Any Person entitled to use and occupy a Condominium pursuant to an ownership right or any lease, license or other similar agreement with the Owner of the Condominium.

1.23 Owner. The owner or owners of the fee (perpetual) estate of a Condominium in the Development.

1.24 Permittee(s). All Owners and Occupants and their agents and invitees.

1.25 Person. Any natural person, partnership, trust, corporation, limited liability company, or other legal entity.

1.26 Unit. The element of a Condominium that is owned separately, consisting of a separate interest in space, the boundaries of which are described as the area designated "Unit" on the Condominium Plan followed by a number. The dimensions of the Unit are measured from the interior unfinished perimeter walls and ceilings, floor, windows, window frames, and perimeter doors and door frames, provided that the Unit includes the wall boards, sheet rock, paint on the interior surfaces, wallpaper, paneling, outlets, stain, tile, hardwood floors, carpet and other ceiling, floor or wall finishes. The Unit does not include the structural component of any load bearing wall, column or other structure member necessary for support or structural rigidity of any portion of the Common Area. The Unit includes all Improvements situated within its boundaries, including, but not limited to, interior walls (except interior load bearing walls), appliances, cabinets, interior doors, and all electrical, heating, plumbing and other utility fixtures. Any utility fixtures that are located partially within the Unit and partially in the Common Area, such as electrical outlets, and that exclusively serve the Unit are part of the Unit. Areas within a dropped ceiling, duct or utility chase within a Unit that traverses a Unit and that contain utilities that serve the other Condominium are Common Area and not part of the Unit. In interpreting deeds and plans, the existing physical boundaries of the Unit, where the boundaries of the Unit are contained within the building's physical Improvements or a Unit reconstructed in substantial accordance with the original plan, shall be conclusively presumed to be its boundaries, rather than the description expressed in the Condominium Plan or any other recorded document, regardless of variances between boundaries shown on the Condominium Plan or in any other recorded document and those of the building and regardless of settling or lateral movement of the building.

ARTICLE 2

Property Rights and Easements

2.1 Type of Development. This Development is a condominium project within the meaning of Civil Code section 6542 and consists of two (2) Condominiums.

2.2 Ownership Interests. Each Owner owns a fee (perpetual) estate in a Condominium consisting of a separate interest in a Unit as defined in **Section 1.26** and an undivided equal interest in common in the Common Area described in **Section 1.8**. Each Owner is a Member of the Association.

The Unit and the Common Area appurtenant thereto may not be separated. Any transfer of a Unit automatically shall transfer the Common Area appurtenant thereto regardless of whether the instrument of transfer describes the Common Area. Any conveyance, encumbrance, judicial sale, or other transfer (voluntary or involuntary) of an interest in the Common Area shall be void unless the Unit appurtenant thereto is also transferred.

2.3 Easements. The Development is subject to the applicable easements described in this **Section 2.3** and the general easement rights described in **Section 2.4**.

2.3.1 Encroachment Easement. Declarant grants to the Owner of each Condominium and the Association an easement in favor of the Owner's Condominium as the dominant tenement over the other Condominium as the servient tenement for the purpose of accommodating any encroachment of Improvements that are part of the dominant tenement that encroach into the servient tenement resulting from the original construction of the Improvements, settlement or shifting of structures, or construction changes during the course of construction, and any encroachment authorized under **Section 2.6**. The extent of the encroachment easement shall be the location of the encroaching structure as originally constructed and such reasonable access to the servient tenement in order to maintain the encroaching Improvement. If a structure is partially or totally destroyed, the structure may be repaired or rebuilt in accordance with the original plans, including the replacement of any encroaching Improvement.

2.3.2 Utility Easement. As a part of the original construction of the Condominiums, certain Units may have utilities that traverse the Unit and serve other Unit(s). Declarant grants to the Owner of each Condominium served by the utilities an easement in favor of the Owner's Condominium as the dominant tenement over the Condominium containing the utilities as the servient tenement for utility chases, shafts, vents, ducts, lines and other equipment that traverse the servient tenement and provide utility service to the dominant tenement, including any solar components that are part of Solar Energy Systems installed under **Section 2.8.6** and utilities that are a part of the Development's life safety system (the "Utility Facilities"). The location of the easement is the location of the Utility Facilities installed as a part of the original construction of the Unit or as subsequently installed with the consent of the Owner of the servient tenement. The easement right granted hereunder includes access to the servient tenement as may be necessary to maintain the Utility Facilities. The Occupants of the servient tenement shall not take any action that would in any manner interfere with the operation of the Utility Facilities.

2.3.3 Maintenance Easement. Declarant grants to the Association and each Owner an easement in favor of the Owner's Condominium as the dominant tenement over the other Condominium as the servient tenement for purposes of providing the agents of the Association such access as may be reasonably necessary to perform the Association's maintenance duties as described in **Section 4.2**. Access includes the ability by the Association to gain entrance to the Units and Exclusive Use Common Areas, including electric rooms and roof.

2.3.4 Map Easements. Declarant grants to the Association and the Owner of each Condominium in favor of the Condominium as the dominant tenement the easements described on the Map that benefit the dominant tenement over the property shown on the Map that is subject to the easement as the servient tenement.

2.4 General Easement Rights. Each easement described in **Section 2.3** is subject to, and construed in accordance with, the following provisions, except as otherwise expressly provided for elsewhere in this Declaration: (i) the easement is appurtenant to the dominant and servient tenements and any transfer of a dominant or servient tenement automatically transfers the easement appurtenant thereto regardless of whether the easement is described in the instrument of transfer; (ii) the easement is in perpetuity unless otherwise terminated by operation of law; (iii) no easement may be modified or relocated except with the written consent of the Owners of the dominant and servient tenements; (iv) except as otherwise provided in **Article 4**, the Owner of the dominant tenement shall maintain the Improvements and landscaping within any easement that exclusively benefits the dominant tenement; (v) the Owner of the dominant tenement shall indemnify, defend and hold harmless the Owner of the servient tenement against any claims, liabilities, damages, judgments or expenses, including reasonable attorneys' fees (collectively, "Claim"), from any injury or death to any Person or damage to any property that occurs in connection with the use or maintenance of the easement as a result of any act or omission by the Owner Occupant or their Permittee except to the extent the Claim is a covered claim under insurance maintained by the Association (any deductibles or costs in excess of available coverage amounts shall be paid by the Owner); (vi) all easement uses shall comply with the covenants, rights, duties and restrictions set forth in this Declaration and with all Applicable Laws; (vii) each easement granted hereunder exists by virtue of this Declaration,

without the necessity of confirmation by any other documents; (viii) the easements are nonexclusive unless expressly provided otherwise; (ix) no nonexclusive easement provided or reserved under this Declaration shall restrict the Owner of the servient tenement from granting other easements or interests therein as long as the other easement or interest does not unreasonably interfere with the easement rights of the dominant tenement; (x) easement access and use rights are subject to the rights reserved in **Section 2.5** and the rights of Declarant as described in **Section 12.10**; and (xi) if the dominant and servient tenements are owned by the same Owner, the easement shall be effective automatically on the date the dominant and servient tenements no longer are owned by the same Owner regardless of whether the instrument of transfer separating the ownership describes the easement.

2.5 Reservation of Rights. Notwithstanding any property rights, including easements, described herein, each Condominium is subject to each of the following:

(i) the right of the Association's agents to enter any Condominium to cure any violation or breach of the Governing Documents, provided that at least thirty (30) days' prior written notice of such violation or breach (except in the cases of emergency) has been given to the Owner and provided that within the thirty (30) day period such Owner has not acted to cure such violation or breach;

(ii) the right of the Association's agents to enter any Condominium to perform its obligations and duties under the Governing Documents, including the obligations and the duties with respect to maintenance of any Common Area Improvement; and

(iii) the rights reserved in **Sections 2.6, 2.8 and 12.10**.

2.6 Authority Over Common Area. The Association shall have the power and the right in the name of the Owners as their attorney-in-fact to grant, convey or otherwise transfer to any Owner or any other Person fee title, easements, leasehold estates, exclusive use easements or rights, licenses, lot-line adjustments, rights-of-way and/or dedications in, on, over or under the Common Area (except Exclusive Use Common Area).

2.7 Delegation of Use Rights. An Owner's Permittees may use and enjoy any Common Area Improvements. All such use shall be subject to restrictions contained in this Declaration. If an Owner leases all of his or her Condominium, neither the Owner nor the Owner's Permittees shall be entitled to use any Common Area Improvements other than such use as is directly related to the Owner's rights and duties as a landlord. Such rights may be enjoyed by the Occupant and Occupant's Permittees during the term of the rental agreement.

Any Owner who rents its Condominium must comply with the requirements of **Section 3.2**.

2.8 Exclusive Use Common Area. Portions of the Common Area are set aside for the exclusive use of the Occupants of a specific Unit and constitute Exclusive Use Common Areas. The areas are shown on the Condominium Plan with the designations set forth below and are set aside for the exclusive use of the identified Owner and its Occupants and Permittees. If there is any conflict between the dimensions or location of the Exclusive Use Common Areas shown on the Condominium Plan and their dimensions and location as built at the time of the original construction of the Development, the dimensions and locations as built shall control. Except as described herein, no other portion of the Common Area is Exclusive Use Common Area.

Exclusive Use Common Area rights are appurtenant to the Condominium to which the rights are assigned and may not be separated therefrom. Any transfer of a Condominium automatically transfers the exclusive use rights appurtenant thereto regardless of whether the instrument of transfer describes the Exclusive Use Common Area rights. Any transfer of the right to use any Exclusive Use Common Area shall be a license only and shall not transfer any other interest in the Exclusive Use Common Area, which shall remain appurtenant to the Condominium to which it is assigned. No Exclusive Use Common Area may be

transferred, even in a license, to any person who is not an Owner or Occupant of a Unit. The designated areas include the following:

2.8.1 HVAC/Air Conditioners. The areas containing the HVAC, including, but not limited to, concrete pads, air conditioning condensers, and related equipment, are Exclusive Use Common Areas reserved for the exclusive use of the Occupants of the Unit served by the equipment.

2.8.2 Loading Area. The loading area identified as “_____” on the Condominium Plan is reserved for the exclusive use of the Owner and Occupants of Unit 1. The loading area identified as “_____” on the Condominium Plan is reserved for the exclusive use of the Owner and Occupants of Unit 2.

2.8.3 Parking Spaces. The parking spaces identified “___” through “___” on the Condominium Plan are reserved for the exclusive use of the Owner and Occupants of Unit _____. The parking spaces identified “___” through “___” on the Condominium Plan are reserved for the exclusive use of the Owner and Occupants of Unit _____.

2.8.4 Rooftop Equipment Area. The rooftop areas containing rooftop equipment are reserved for the exclusive use of the Owner and Occupants of the Unit served by the rooftop equipment, provided that it is installed in compliance with the requirements of this Declaration.

2.8.5 Signage and Lighting Fixtures. The areas containing signage and lighting fixtures that are located on the Condominium building, including, but not limited to, signs, awnings, lighting fixtures, and related equipment, are Exclusive Use Common Areas reserved for the exclusive use of the Occupants of the Unit served by the signage and lighting.

2.8.6 Solar Use Areas. The solar use areas, if any, described in **Section 3.12.1(iv)** are Exclusive Use Common Area appurtenant to the Unit(s) to which they are assigned.

2.8.7 Trash Collection Areas. The trash collection area identified as “_____” on the Condominium Plan is reserved for the exclusive use of the Owner and Occupants of Unit 1. The trash collection area identified as “_____” on the Condominium Plan is reserved for the exclusive use of the Owner and Occupants of Unit 2.

2.9 Restrictions on Partition. Except as authorized in **Sections 2.6, 8.7 and 8.9**, the Common Area shall remain undivided, and there shall be no judicial partition thereof except as may be authorized under **Section 8.9** or by Civil Code section 6656 or any successor statute thereto.

Any proceeds or property resulting from a partition shall be distributed to and among the respective Owners and their Mortgagees as their interests appear in proportion to the ratio that the fair market value of each Owner’s Condominium bears to the fair market value of all Owners’ Condominiums as of the date immediately preceding the date of the event giving rise to the right of the Owners to partition the Common Area, provided that any proceeds for Exclusive Use Common Areas shall be disbursed to the Condominium entitled to use the Exclusive Use Common Areas before the sale or taking.

ARTICLE 3 Restrictions

3.1 Uses. The Condominiums may be used only for commercial purposes that are permitted by Applicable Laws. Restaurant uses requiring grease interceptors or venting systems are permitted subject to all Applicable Laws. Food services where the food is prepared off site or without the requirement of a venting system or grease interceptors are authorized in any Condominium. No commercial uses may be conducted in a Unit until the Owner of such Unit complies with all permit, licensing and other Applicable Laws. Notwithstanding the foregoing, none of the uses set forth in **Exhibit A** may be conducted within any

Condominium even if authorized under local zoning laws unless otherwise authorized by Approval by the Owners.

3.2 Rental Restrictions. An Owner may rent, its, his or her Condominium subject to the conditions listed herein. Any rental agreement shall be subject to the Governing Documents, and any breach of any of the foregoing shall constitute a breach by the Owner and also a default under the rental agreement, regardless of whether it so provides in the rental agreement. If any tenant breaches any restriction contained in the Governing Documents, the Owner, on demand from the Association, immediately shall take such steps as may be necessary to correct the breach, including, if necessary, eviction of the tenant.

The Owner of a Condominium may lease or sublease space(s) within the Condominium, provided that each of the following conditions are satisfied:

- (i) an Occupant's use of all or a portion of the Condominium must comply with the use restrictions described in **Section 3.1** and **Exhibit A**;
- (ii) the rental agreement must be in writing;
- (iii) all rentals shall have a minimum lease term of thirty (30) days; and
- (iv) before commencement of the rental agreement, the Owner shall provide the Association with the name of each Occupant and contact information for both the Occupant(s) and the Owner (including telephone numbers, email addresses and street addresses).

Nothing herein restricts or prohibits in any manner the right of an Owner to rent portions of a Condominium to different Occupants.

3.3 Operation Restrictions. Subject to stricter restrictions imposed by Approval by the Owners, the commercial operations within the Condominiums shall be compliant with all Applicable Laws and as otherwise set forth in this Declaration.

3.4 Nuisance. No activity shall be conducted in any Unit or the Common Area that constitutes a nuisance or unreasonably interferes with the use or quiet enjoyment of the Occupants of any other Condominium. No use is allowed that creates conditions that are hazardous, noxious or offensive through the emission of odor, fumes, smoke, cinders, dust, gas, vibrations, glare, refuse, water-carried waste, or excessive noise. No activity may be carried on that causes any insurance policy to be cancelled or not renewed or that will impair the structural integrity of the Development. No running, loud conversation, loud music, or loitering in entrance ways or parking areas or creation of any other noise or nuisance in the Common Area is allowed.

Notwithstanding the foregoing, the determination of whether an activity is a nuisance must take into account the commercial characteristics of the Development. Commercial activities being conducted in strict compliance with all Applicable Laws shall not be considered a nuisance.

3.5 Vehicle and Parking Restrictions. No mobile home, camper or recreational vehicle, boat, truck or similar equipment shall be parked anywhere within the Development. For purposes herein, "truck" does not include a pickup truck that does not exceed one ton or a sports utility vehicle. In addition, trucks may park on a temporary basis while loading and unloading. No trucks, forklifts, or similar vehicles shall be parked in any parking space if they exceed the size of the space, and no containers or similar equipment shall occupy any parking space.

Garage access and parking spaces may not be sufficient in size to accommodate larger vehicles, including in particular sports utility vehicles and vans. In addition, certain parking spaces may be smaller in size than a standard parking space and certain spaces may have limited vertical

clearance. It is each Owner's sole responsibility to confirm that the garage is accessible for the Owner's vehicle(s), that the Owner's vehicle(s) can fit within the Owner's parking space(s), if any, and that the Owner's vehicle(s) can comply with the restrictions contained herein.

3.6 Towing Authority. Any vehicle wrongfully parked within the Development may be towed in compliance with the requirements and procedures of Vehicle Code section 22658 or any successor statute thereto.

3.7 Television or Radio Equipment. No television, video or radio poles, antennae, satellite dishes, cables or other transmission and/or reception fixtures or personal property (individually and collectively the "Antenna Equipment") shall be installed or maintained on any Condominium except in compliance with all Applicable Laws. Under no circumstances shall any Antenna Equipment be installed within Common Area, including any exterior wall, railing, or floor of the Condominium building, without the prior written approval of the other Condominium Owner.

3.8 Signage. All signs by Owners and Occupants shall meet the standards of the Sign Program attached hereto as **Exhibit B** and shall satisfy all Applicable Laws. No freestanding signs shall be permitted within the Common Area, except for any directional or drive through signs as may be Approved by the Owners.

3.9 Vehicle Maintenance. There shall be no maintenance performed on any vehicle within the Development except for any emergency repairs that are necessary in order to move the vehicle to a proper repair facility.

3.10 Alterations, Modifications or Additions. There shall be no alterations, modifications or additions made to any Condominium or any Improvement thereon except in compliance with the provisions of **Section 3.11**.

3.11 Compliance with Law. No Owner shall permit anything to be done or kept in the Owner's Condominium that violates any Applicable Laws. Nothing shall be done or kept in any Condominium that might increase the rate of or cause the cancellation of any insurance maintained by the Association without prior written Approval by the Owners. The amount of the increase may be allocated to the Condominium that is responsible for the increase.

3.12 Solar Energy System. At their own expense, Owners may install Solar Energy Systems (defined below) within the Solar Use Area (defined below) assigned to the Condominium as Exclusive Use Common Area described in **Section 2.8** in accordance with the terms, conditions and restrictions set forth in this **Section 3.12**. The ownership, installation, operation, removal, maintenance and insurance of the Solar Energy System shall be in accordance with the terms, conditions and restrictions set forth in this **Section 3.12**. Neither the Declarant nor the Association makes any representation or warranty that a Solar Use Area will be adequate to support a Solar Energy System or, if installed, the amount of electricity generated by the system. Adequacy and electricity generation depends on a number of factors, including building height, building orientation, topography, roof slopes or equipment, and adjacent structures and vegetation. In addition, Neither the Declarant nor the Association makes any representation that electrical closets will have space for solar equipment such as inverters or batteries. Each Owner electing to install a Solar Energy System shall be solely responsible for determining the adequacy of the Owner's assigned Solar Use Area and electrical closet to support a Solar Energy System and shall rely solely on the Solar Energy System provider for making this determination. The Owners of Condominiums shall cooperate in the assignment of Solar Use Areas, including that they may be assigned on a first come, first served basis. Any disputes relating to Solar Energy Systems and/or Solar Use Areas shall be resolved in accordance with the dispute resolution procedures described in **Article 11**.

3.12.1 Definitions. The following terms shall have the following definitions:

(i) Solar Lessor. The owner of the Solar Energy System leased to an Owner;

(ii) Solar Energy System. The components need to convert solar energy into electrical energy, including the modular solar panels, roof mounting equipment, conduits, wiring, inverters, and/or batteries;

(iii) Solar Laws. Civil Code sections 714 and 714.1 and any amendments thereto; and

(iv) Solar Use Area. The portion of the shared roof on which Owners may install Solar Energy Systems, to the extent authorized under the Solar Laws and Approved by the Owners. Assigned Solar Use Areas shall be Exclusive Use Common Area appurtenant to the Condominium served by the Solar Energy System.

3.12.2 Ownership and Leasing. The Solar Energy System exclusively serving a Condominium is personal property owned by the Owner or, if applicable, the Solar Lessor. The Owner may lease a Solar Energy System from a Solar Lessor as long as the Solar Lessor is a duly qualified vendor of Solar Energy Systems subject to Approval by the Owners. The lease may provide that the Solar Lessor will perform certain of the Owner's duties under this **Section 3.12.2**, including maintenance and insurance, provided that the Owner retains full responsibility and liability for any failure to perform these duties properly.

3.12.3 Installation, Maintenance and Modification. Each Owner shall be responsible for the cost to install and maintain the Solar Energy System that serves the Owner's Condominium, provided that (i) the type of Solar Energy System is Approved by the Owners, (ii) the location, type, quality, size and color of the conduit between the electrical closet and the Solar Use Area is Approved by the Owners if the electrical closet is not located within the Unit; and (iii) installation and maintenance shall be performed by duly qualified and licensed contractors ("Solar Contractor") Approved by the Owners. No Solar Energy System may be installed, modified or expanded in any manner without the prior written Approval by the Owners.

3.12.4 Insurance and Indemnification. Owners shall provide proof of insurance by the Owner and by the Solar Contractor prior to commencing any work on the Solar Energy System which shall include the following:

(i) Liability Insurance. As to Owner: Comprehensive general liability insurance, in standard form, with limits of One Million Dollars (\$1,000,000) for bodily injury and property damage each occurrence and Two Million Dollars (\$2,000,000) in the aggregate. **Each Owner is strongly advised to seek the advice of a qualified insurance consultant regarding their insurance obligations hereunder.**

(ii) Policy Requirements. All policies shall be specifically endorsed to provide that the coverage will be primary and that any insurance carried by the additional insureds shall be in excess and non-contributory and shall contain a waiver of subrogation in favor of said entities. All insurance required shall be issued by insurance companies authorized to do business in California and shall have an AM Best Rating of at least A-VII and shall be specifically endorsed to provide that such coverage shall not be canceled or materially changed without at least thirty (30) days' prior written notice to the manager of the Association. The certificates of insurance must name the Association as an additional insured on a separate endorsement form which shall be provided to the Association within fourteen (14) days of approval of the application and as to the Owner's policy, annually thereafter.

(iii) Insurance of the Solar Energy System. The Solar Energy System will not be insured under the Association's property insurance policies.

(iv) Indemnification. Each Owner with a Solar Energy System shall indemnify, protect, defend and hold the Association and the Owner of the other Condominium, and their respective successors and assigns, and their officers, directors, successors and assigns, the management company for the Association, entirely free and harmless from and against any and all claims, costs, expenses, liabilities, actions and damages, including without limitation, attorneys' fees and costs and costs of enforcing this indemnification (collectively, "Solar Claims") arising from or attributable to any acts or omissions of Owner,

the Solar Contractor described in **Section 3.12.3**, or any of their respective heirs, personal representatives, successors, assigns, officers, agents, employees, subcontractors, or material suppliers arising out of or based upon any injury or damage resulting from the operation, maintenance, removal, or re-installation of the Owner's Solar Energy System. This indemnity does not include any Solar Claims to the extent they arise out of the gross negligence or willful misconduct of the Association or the other Owner or other Owner's Occupants or Permittees.

3.12.5 Maintenance Removal and Reinstallation. Owner agrees that performance of any work shall not interfere with the Association's maintenance of the roof on the building ("Roof Work"). If the Association has to perform Roof Work, Owner shall cooperate with the Association to timely remove and store any Solar Energy System located in the Roof Work area, at Owner's expense, as provided below. Except in cases of emergency where reasonable notice will not be provided, the Association shall give Owner at least seven (7) days prior written notice of its intent to have Roof Work performed, the location of the Solar Energy System that will be affected by the Roof Work, and a deadline by which Owner is required to remove the affected Solar Energy System. If Owner fails to remove the Solar Energy System by the deadline stated in the Association's notice, then the Association shall have the right to employ a contractor experienced with solar energy systems to remove the Solar Energy System from the areas where the Roof Work will be performed and to store the Solar Energy System, in which case the Association shall not be responsible for any loss or damage caused to such Solar Energy System during or after such removal, including any damage resulting from the storage of the Solar Energy System unless the Association commits gross negligence or willful misconduct in connection with such removal. If the Association removes the Owner's Solar Energy System, the Association may levy a reimbursement assessment against Owner for all expenses incurred for the removal and/or storage. After the Association's Roof Work is completed, Owner shall have the Solar Energy System re-installed by an approved Solar Contractor within ten (10) days of receipt of written notice from the Association that such Roof Work is complete. Owner shall be responsible for all costs for removal, storage and reinstallation of the Solar Energy System in connection with any Roof Work.

3.12.6 Condominium Transfers. If title to a Condominium is or will be transferred to a successor Owner, the transferring Owner or the Solar Lessor may remove the Solar Energy System except the conduits and wiring between the electrical closet and the Solar Use Area, which shall remain for use by the successor Owner. If the Owner or the Solar Lessor fails to notify the Association in writing no later than thirty (30) days prior to the date title is transferred that the Solar Energy System will be removed, which removal must occur prior to the date of transfer, the successor Owner shall be deemed the new Owner or lessee of the Solar Energy System and responsible and liable as the Owner under this **Section 3.12** for any acts or omissions occurring on or after the date of transfer. The transferring Owner shall remain liable for all acts or omissions occurring before the date of transfer.

ARTICLE 4 Maintenance Obligations

4.1 Owners' Maintenance Obligations. Each Owner shall maintain the Owner's Unit and all Improvements and Exclusive Use Common Area appurtenant thereto as described in this **Section 4.1** and in compliance with the standards and guidelines described in **Section 4.3**.

Each Owner shall allow agents of the Association reasonable access to the Owner's Unit and Exclusive Use Common Area for purposes of performing any of the Association's maintenance obligations under this Declaration. If any Owner fails or refuses to provide reasonable access, the Owner shall be responsible for any maintenance costs that could have been avoided if access had been provided, and the Association may levy a reimbursement assessment against the Condominium to recover the additional costs.

If damage to any of the Improvements maintained by the Owner is covered by insurance maintained by the Association, on request from the Owner, the Association may, at its discretion, submit an appropriate claim if the claim exceeds the deductible and shall remit any available insurance proceeds to the Owner on

receipt of satisfactory evidence that the proceeds are or will be used for repair. Any deductible amount shall be borne by the Owner. In lieu of filing a claim, the Association may elect to cover the amount that would have been paid through insurance through other funds available to the Association.

4.1.1 Unit. Each Owner shall maintain his or her Unit and all Improvements therein in good condition and repair at all times, including, but not limited to, interior doors and walls (including exterior surfaces of load bearing walls located within the Unit), exterior doors (repair and replacement only; the Association shall repaint exterior surfaces pursuant to **Section 4.2.1**), and all electrical, heating, plumbing, and other utility fixtures situated within the Unit or partially within the Unit and partially within the Common Area and exclusively serving the Unit, such as electrical outlets. Each Owner shall maintain all fixtures within the Unit's interior (including trade fixtures). Each Owner shall maintain (including bulb replacement) any exterior lighting fixtures that are connected into the Unit's electrical system. Each Owner shall maintain any signage or awnings, windows, and glass doors serving the Owner's Unit. Each Owner shall also maintain vents (if any), whether part of the Owner's Unit or the Unit's appurtenant Exclusive Use Common Area, that serve the Owner's Unit. Prior to the commencement of the work, the Association may require the Owner to comply with the type of conditions described in **Sections 4.2.3(i) through (iv)**.

4.1.2 Exclusive Use Common Area. Except for the maintenance to be performed by the Association in the parking lot (parking spaces and loading areas) as described in **Section 4.2.2**, each Owner shall maintain the Exclusive Use Common Areas described in **Section 2.8** that are appurtenant to the Owner's Unit in a neat, clean and sanitary condition and in proper operating condition at all times. Each Owner shall be responsible for maintaining any HVAC equipment that serves the Owner's Unit, wherever located, provided that the Owner may not disturb or modify any Common Area in any manner without Approval by the Owners. Each Owner shall be responsible for maintaining any signage and/or lighting fixtures serving the Owner's Condominium, including ensuring that the Common Area portions of the Condominium building are protected from water intrusion from penetrations into the building siding. No Owner may disturb or modify any Common Area in any manner without prior Approval by the Owners.

4.1.3 Utilities. Subject to **Section 4.2.3**, each Owner shall maintain all utility lines and equipment that exclusively serve the Owner's Unit, including any portion of an interconnected system such as a lateral sewer or water pipe exclusively serving the Unit, unless maintained by a regulated utility company. In maintaining such utilities, no Owner shall excavate, alter or otherwise disturb any Improvement situated within the property of another without the prior written consent of that property Owner. If the property is Common Area, the Association may require the Owner to comply with certain terms and conditions prior to commencement of any work within any Common Area.

4.1.4 Life Safety Systems. Each Owner shall maintain the smoke and carbon monoxide detectors located in the Owner's Unit, including replacing the batteries. As described in **Section 4.2.4**, the Association shall maintain any automatic fire sprinkler heads located in any Unit, provided that each Owner immediately shall notify the Association of any problems with any automatic sprinkler heads located in the Owner's Unit. If an automatic fire sprinkler is damaged by an act of the Owner or Occupant or their Permittees, the Owner shall be responsible for reimbursing the Association for any costs to repair or replace. The Association may levy a reimbursement assessment to recover its costs.

4.1.5 Solar Equipment. As set forth in **Section 3.12**, Owners shall be responsible for maintaining all parts of the Solar Energy System and related equipment that serves the Owner's Unit, and shall maintain any part of the Common Area impacted by the Solar Energy System at the Owner's sole expense.

4.1.6 Right to Cure. If an Owner fails to maintain the Owner's Unit or Exclusive Use Common Area as required herein, after notice as required by Applicable Laws, the other Condominium Owner may, but is not obligated to, enter the Unit (or Exclusive Use Common Area appurtenant thereto) and perform the necessary maintenance on behalf of the Association. On behalf of the Association, the Owner performing the maintenance may levy a reimbursement assessment against the defaulting Condominium in the manner described in **Section 6.5**. Any work performed pursuant to this **Section 4.1.6**

shall be done in a manner that does not unreasonably interfere with the Owners' and Occupants' use and enjoyment of their Unit.

4.2 Association's Maintenance and Landscaping Obligations. Except to the extent maintained by the Owners as described in **Sections 4.1 and 4.2**, the Association shall maintain in good condition and repair at all times the Common Area Improvements, including those described in **Sections 4.2.1 through 4.2.4**. In performing the Association's maintenance obligations the Association shall comply with the standards and guidelines described in **Section 4.3**.

If the Association requires access to a Unit in order to maintain any Improvements maintained by the Association as described herein, including the Utility Facilities described in **Section 2.3.2**, the Association shall provide the Unit Occupants with such prior notice as is reasonable under the circumstances and no less than ninety-six (96) hours' prior notice except in the event of an emergency. Owners must cooperate with the Association in providing the necessary access. Any Owner failing to cooperate shall be liable for any costs incurred by the Association in rescheduling inspections and any other costs incurred by the Association in maintaining Improvements that could have been avoided had timely access been granted. The Association may levy a reimbursement assessment as authorized in **Section 6.5** to recover its costs.

4.2.1 Common Area. The Association shall maintain all of the Common Area Improvements, including, but not limited to, foundations and all other structural components, siding, trim, roof, and doors to the exterior of the Condominium building (repainting only; Owners shall repair and replace pursuant to **Section 4.1.1**).

4.2.2 Exclusive Use Common Area. The Association shall maintain in good condition and repair the parking lot, including Exclusive Use Common Area parking spaces and loading areas. The Owners are responsible for the remaining Exclusive Use Common Area appurtenant to their Units as described in **Section 4.1.2**.

4.2.3 Utilities. Unless otherwise maintained by a government entity or regulated utility company, the Association shall maintain in good condition and repair all utilities and sanitary sewer and storm drainage facilities serving the Common Area, including, but not limited to, meters, distribution lines, catch basins, storage tanks, HVAC equipment, including condensers, wires, ducts, flues, pumps, boilers, and pipes, but excluding any utility equipment and fixtures located within a Unit or partially within the Common Area and within the Unit, such as electrical outlets.

Utility lines that exclusively serve a Unit shall be maintained by the Owner of the Unit. Certain electrical lines serve the Common Area but are wired to one or the other Unit, such as electricity for lighting the parking lot. Each Owner shall be responsible to maintain the electrical lines wired to the Owner's Unit and shall not interfere with the provision of electricity to the parking lot or other exterior lighting.

The Association shall be responsible for the maintenance of any utility lines that cross one Unit and exclusively serve another Unit, provided that costs incurred by the Association to maintain any utility equipment exclusively serving one Unit shall be allocated to the Unit exclusively served by the utility. Notwithstanding the foregoing, the Association may allow the Owner of the dominant tenement to perform the inspection and maintenance, including that the Condominium Owner may be required: (i) to provide, prior to the commencement of any work, an occurrence-based general commercial liability policy against any claims arising out of or related to the work naming the Owner of the servient tenement as an additional insured and containing such commercially reasonable terms and conditions as the Association shall approve; (ii) to provide, prior to the commencement of any work, appropriate collateral to secure the timely performance of the work and timely payment for all labor and materials; (iii) to acknowledge and agree that the Owner immediately shall repair any damage to any Improvement or personal property within the servient tenement resulting from maintenance; and (iv) to acknowledge and agree to defend, indemnify and hold the Owner of the servient tenement harmless from any claims, liens, causes of action, losses, damages, judgments or costs, including attorneys' fees, resulting from the work.

4.2.4 Life Safety Systems. The Association shall maintain the life safety systems, including automatic fire sprinkler heads located in a Unit, as described in **Section 4.1.4.**

4.3 Inspection and Maintenance Standards and Guidelines.

4.3.1 Maintenance Standards. All Improvements in the Development shall be maintained at all times: (i) in a neat, clean and sanitary condition; (ii) in proper operating condition; and (iii) in good condition and repair consistent with the standards for the maintenance and operation of a first-class, retail project comparable to that of other projects located in San Francisco Bay Area towns and cities of similar design, density, amenities and age.

Landscaping shall be maintained in a healthy and weed-free condition. Dying or dead vegetation shall be removed and replaced immediately. Maintenance shall include regular fertilization, mowing, irrigation, pruning, elimination of pests or diseases, and other customary prudent landscaping practices. The Association shall take appropriate steps to maintain the irrigation of the landscaping and to prevent damage resulting from misdirected or excessive watering. Planting and irrigation must comply with any applicable water efficient landscaping requirements and shall minimize the use of fertilizers, herbicides and pesticides.

The Association shall keep the storm drainage system, including intake drains, catch basins or area basins, free and clear of debris at all times, and no Owner shall take any action that would in any manner interfere with the operation of the system. No drainage facilities, flow patterns or grading shall be modified without the prior consent of the City.

Building exterior surfaces (including the siding, rain gutters, and downspouts) shall be periodically repainted and the roof materials periodically replaced in accordance with a schedule that maintains substantially the same quality of appearance as existed at the time original construction was completed and no less frequently than the periodic repainting and re-roofing recommendations of the manufacturer and/or the Guidelines described in this **Section 4.3.** In addition, each Unit shall be periodically inspected by the Owner and the Common Area inspected by the Association for pests, including construction material destroying pests or organisms and, if necessary, immediate appropriate corrective action shall be taken therefor.

It is intended that the Improvements be maintained in a like-new condition similar to the condition on the completion of the original construction, reasonable wear and tear excepted. In addition, to the extent applicable, all Improvements and landscaping shall be maintained in compliance with the maintenance and inspection guidelines described in **Sections 4.3.2 and 4.3.3** and commonly-accepted owners' maintenance obligations.

4.3.2 Maintenance Guidelines. Inspection and maintenance guidelines and schedules, including manufacturers' guidelines and schedules, may be available or adopted for the inspection and maintenance of certain Improvements and personal property situated within the Development (collectively, the "Guidelines"). Each Owner and the Association shall retain the Guidelines and shall take all appropriate steps to implement and comply with the Guidelines as required herein.

4.3.3 Water Intrusion. In order to reduce the potential for water damage (including mold growth) within the Condominiums, Owners shall perform each of the following steps: (i) periodic inspection of the Condominiums for water leaks, other evidence of water intrusion (such as condensation on the windows or walls, water stains or other types of water damage) and for the presence of molds, fungi and their spores (collectively "Mold"); (ii) if any water leaks, water intrusion and/or Mold are detected, appropriate corrective steps to repair the leak and/or reduce water intrusion and repair any resulting water damage (including the removal of any Mold); (iii) maintenance of proper ventilation (particularly in bathrooms) and humidity levels to reduce the risk of water damage (including Mold growth); (iv) periodic inspection of refrigerator condensation pans (if applicable), air conditioners (if applicable), and any other water-retaining appliances to ensure they are properly functioning and not leaking water or otherwise creating water damage to the Condominiums (including Mold growth); (v) periodic inspection of floor

coverings in bathrooms that may be conducive to Mold growth; (vi) replacement of heating and air conditioning filters as recommended by the manufacturer; and (vii) such other prudent steps as may be appropriate to prevent water leaks and water intrusion and to repair all leaks, sources of water intrusion and water damage (including Mold growth) within the Condominiums. The Association shall have the Common Area periodically inspected for wood destroying pests and organisms and shall take appropriate corrective measures therefor.

4.4 Trash Removal. Each Owner shall be responsible for the removal of all the trash and refuse from that Owner's Unit to the Exclusive Use Common Area trash collection area appurtenant to the Owner's Unit, if applicable. Each Owner shall be responsible for maintaining its Exclusive Use Common Area trash collection area in a neat, clean and sanitary condition at all times. Each Owner shall engage a trash removal service for the periodic removal of trash therefrom. All trash or refuse shall be kept only in sanitary containers. Trash shall be removed based on a schedule consistent with normal and customary trash removal from comparable retail operations in the area and consistent with a schedule that prevents the accumulation of trash in excess of the capacity of the trash receptacles.

Except for the designated trash collection areas, no portion of the Common Area shall be used to dump or store, even temporarily, trash or other refuse. Each Owner shall take all appropriate, proper and required precautions to protect Persons and property from any injuries or damages from the trash or other refuse generated from the Owner's Condominium and shall comply with all Applicable Laws regarding the disposal of any hazardous materials.

4.5 Cooperation and Access. Each Owner and Occupant shall fully cooperate with the agents of the Association in the performance of the Association's maintenance obligations described in **Section 4.2** above. Such cooperation shall include, but is not limited to, immediate notification to the Association or its managing agent of any maintenance problems for which the Association is responsible and access to the Owner or Occupant's Condominium and Exclusive Use Common Area as may be necessary to inspect and, if appropriate, to perform any necessary maintenance.

4.6 Reimbursement and Indemnification. If the Association incurs any maintenance costs because of the willful or negligent act or omission of any Owner or Occupant or their Permittees (including, but not limited to, any damage to the Common Area caused by a water leak or overflow from the Owner's Unit), the Association shall charge the cost to the Owner of the Condominium responsible for the costs and may levy a reimbursement assessment as described in **Section 6.5**. The Owner immediately shall pay the charge or reimbursement assessment to the Association, together with interest thereon at the rate of twelve percent (12%) per annum, but not in excess of the maximum rate authorized by Applicable Laws. If the Owner disputes the charge, the Owner shall be entitled to notice and a hearing as provided in **Section 5.2.2**. The Association shall not charge the Owner to the extent that the cost is met through insurance maintained by the Association, provided that any deductible amount and any costs in excess of such insurance coverage shall be paid by the Owner.

Furthermore, the Owner shall defend, indemnify and hold the Association harmless from any claim, demand, liability or cost, including reasonable attorneys' fees arising from such damage, except to the extent the demand, claim, cost or liability is covered by insurance maintained by the Association. The Owner shall pay the amount of any deductible and any amount in excess of insurance coverage.

ARTICLE 5 The Association

5.1 Formation of the Association and Commencement of Operations. The Commercial and Industrial Act requires that a condominium development have an association, which may be unincorporated. The Association for this Development is an unincorporated association consisting of the Owners of the two Condominiums within the Development. All actions of the Association require the Approval by the Owners of both Condominiums as described in **Section 1.2**. Each Owner is a Member of the Association and

transfer of title to a Condominium automatically transfers the membership interest to the transferee. The Declarants are Members as long as they own a Condominium in the Development.

5.2 Powers of the Association. The Association shall have all the powers of an unincorporated association subject only to such limitations on the exercise of these powers as are set forth in the Governing Documents. The Association shall have the power to do any lawful thing that may be authorized, required or permitted to be done by the Association under the Governing Documents and to do and perform any act that may be necessary or proper for or incidental to the exercise of any of the express powers of the Association, including, without limitation, each of the following:

5.2.1 Levying Assessments. The Association shall establish, fix and levy assessments against the Condominiums and collect and enforce payment of such assessments in accordance with the provisions of **Article 6** of this Declaration.

5.2.2 Imposing Disciplinary Action. In addition to any other enforcement rights described in this Declaration and the Bylaws or as may be authorized by Applicable Laws and subject to the due process requirements imposed by this Declaration, the Bylaws or by Applicable Laws, the Association may take any of the following actions against any Person whose act or failure to act violates or threatens to violate any provisions of the Governing Documents: (a) impose monetary penalties, including late charges and interest; and (b) commence any legal or equitable action for damages, injunctive relief or both. Any legal action may be brought in the name of the Association on its own behalf and on behalf of any Owner who consents and, except as otherwise provided herein, the prevailing party in such action shall be entitled to recover costs and reasonable attorneys' fees.

5.2.3 Delegating Duties. Except as may be limited by the Bylaws, the Association may delegate any of the Association's powers and duties to its employees, committees or agents, including a professional management agent.

5.2.4 Implementing Special Fees. The Association may implement reasonable and customary special fees to reimburse the Association for special costs incurred as a result of actions taken by Owners. Fees not paid in a timely manner may be collected through a reimbursement assessment levied against the Owner's Condominium.

5.3 Duties of the Association. In addition to the duties described in the Articles or Bylaws, or elsewhere in this Declaration, the Association shall have the duty to manage the Common Area; perform the maintenance as described in **Section 4.2**; prepare and distribute financial statements, reports and the other documents and notices required by Applicable Laws. The Association shall perform such other acts as may be reasonably necessary to exercise its powers to perform its duties under any of the provisions of the Governing Documents.

5.4 Taxes and Assessments. The Association shall pay all real and personal property taxes and assessments and all other taxes levied against the Association, the Common Area or the personal property owned by the Association. Such taxes and assessments may be contested or compromised by the Association, provided that they are paid or that a bond insuring payment is posted before the sale or the disposition of any property to satisfy the payment of such taxes. To the extent any Owner is eligible for a property tax abatement, the Association shall take reasonable steps as requested by said Owner to assist in obtaining such property tax abatement, provided that the steps result in no material costs to the Association.

Until such time as real property taxes against the Development are segregated so that real property taxes are assessed against each Condominium (in addition to any supplemental tax assessments levied against any Condominium), the non-segregated tax amount shall be allocated among the Condominiums in the same manner that regular assessments are allocated as described in **Section 6.8**, provided that, to the extent any Owner receives an abatement of property taxes, said Owner will be allocated one hundred percent (100%) of the abatement. The Association shall take all appropriate steps to collect each Condominium's allocable share so that the non-segregated taxes may be paid in a timely and proper

manner. The Association may levy a special assessment against the Condominiums to collect the non-segregated tax amount. Any Owner who breaches the Owner's duty to pay the Owner's allocable share in a timely and proper manner shall be liable for any penalties, interests, fees or other such costs incurred as a result of the breach.

5.5 Utility Service to the Common Area. The Association shall acquire, provide and pay for water, sewer, refuse and trash collection, electrical, gas and other necessary utility services for the Common Area and any commonly metered utility service to the Units.

5.6 Reporting Requirements. The Association shall prepare and distribute such financial statements and reports as may be required by Applicable Laws.

ARTICLE 6 Assessments

6.1 Obligations to Pay Assessments. The Owner of each Condominium is obligated to pay any assessments levied against that Owner's Condominium on or before the due date of the assessment. If there is more than one Owner of the Condominium, the obligation is joint and several. Each Owner on acceptance of a deed to a Condominium automatically personally assumes the obligation to pay any assessments against the Owner's Condominium (including, but not limited to, any portion of the annual regular assessment not yet due and payable) and agrees to allow the Association to enforce any assessment lien established hereunder by nonjudicial proceedings under the power of sale or by any other means authorized by Applicable Laws. The Owner shall be liable for the full assessment levied against that Owner's Condominium regardless of the Owner's possession or use of the Condominium, the Common Area, or any services rendered by the Association. The Owner has no right or power to commit or omit any act, such as waiving the right to use the Common Area, in an attempt to eliminate or reduce the assessments against that Owner's Condominium. An assessment shall be both a personal obligation of the Owners of the Condominium against which the assessment is levied and, on the recordation of a notice of delinquent assessment, a lien against the Condominium. Any Owner who transfers a Condominium shall remain personally liable for any unpaid assessments that accrued on or before the date of the transfer. No Owner shall be liable for any defaults of the Owner's predecessor in interest in the payment of any assessment that has accrued prior to the Owner taking title to the Condominium unless that Owner expressly assumes the obligation to cure the delinquent assessments. Notwithstanding the foregoing, any Owner who takes title to a Condominium on which a lien for a delinquent assessment has been established will take title subject to the lien and the Association's enforcement remedies as a result thereof unless the Owner takes title under a foreclosure or trustee sale resulting from a foreclosure or exercise of a power of sale under a Mortgage, deed of trust, or other lien recorded before the recordation of the notice of delinquent assessment and except as provided in **Section 9.3**.

6.2 Annual Regular Assessment. Prior to the beginning of each fiscal year of the Association, the Association shall meet for the purpose of establishing the annual regular assessment for the forthcoming fiscal year. At such meeting, the Association shall review the preliminary pro forma operating budget prepared for the forthcoming fiscal year, any written comments received from Members' Mortgagees, and such other related information that has been made available to the Association. After making any adjustments that the Association considers appropriate and subject to Approval by the Owners, the Association will establish an annual regular assessment for the forthcoming fiscal year. Each annual regular assessment may include a portion for reserves as described in **Section 6.3**.

If the Association for any reason fails to take the appropriate steps to establish the annual regular assessment for the next fiscal year, the annual regular assessment for the preceding fiscal year shall continue in effect subject to the Association's right at any time during the next fiscal year to adjust the assessment pursuant to the procedures described herein, including, without limitation, paying for the insurance coverage contemplated in **Article 7**.

6.3 Reserves. Each annual regular assessment may include, at the discretion of the Association, a portion for reserves in such amount as the Association in its discretion considers appropriate to meet the cost of the future repair, replacement or additions to the capital Improvements that the Association is obligated to maintain. Reserve funds shall be deposited in a separate account, if collected.

6.4 Special Assessments. The Association may levy a special assessment if it determines that the Association's available funds are inadequate to meet estimated expenses due to unexpected repairs or replacements of capital Improvements or other unanticipated expenses. The Association may levy the entire special assessment immediately or levy it in installments over any period the Association considers appropriate.

6.5 Reimbursement Assessments. The Association shall have the authority to levy reimbursement assessments against Condominium Owners to reimburse the Association for any costs incurred or to be incurred by the Association as the result of any negligent or willful act or omission of any Owner or Occupant or their Permittees. The levy shall not include any portion that is paid or will be paid by any insurer under a policy maintained by the Association. Payment of the deductible amount shall be the responsibility of the Owner and is subject to a reimbursement assessment. If the reimbursement assessment is levied and paid before all or any portion of the costs have been incurred by the Association and the amount paid exceeds the costs incurred, the Association promptly shall refund the excess to the Owner. If the costs exceed the amount, the Owner shall reimburse the Association within thirty (30) days thereafter. If payment is not made when due, the payment shall be considered a delinquent assessment and the Association may enforce the delinquent assessment as described in **Section 6.9**.

A monetary charge imposed by the Association as a means of reimbursing the Association for costs incurred by the Association in the repair of damage to Common Area or Improvements maintained by the Association caused by a Member, or the Member's Occupants or Permittees may become a lien against the Member's separate interest enforceable by sale of the interest under sections 2924, 2924b and 2924c of the Civil Code. A monetary penalty imposed by the Association as a disciplinary measure for failure of Members to comply with the Governing Documents may not be treated as a lien enforceable by sale under Civil Code sections 2924, 2924b and 2924c.

6.6 Commencement of Regular Assessments. Annual regular assessments shall commence for all Condominiums on the first day of the month after transfer of title to the DSCC Unit.

6.7 Due Dates of Assessments. The annual regular assessment shall be collected in twelve (12) monthly installments and each installment shall be due and payable on the first day of each month. Special assessments shall be due on such date or dates as selected by the Association. Reimbursement assessments shall be due and payable ten (10) days after the Owner receives the notice of the reimbursement assessment. The notice shall be deemed received on the date described in **Section 12.13**.

Any annual regular assessment installment (including any accelerated installments), special assessment, or reimbursement assessment not paid within fifteen (15) days after the due date shall be delinquent, shall bear interest at the rate of twelve percent (12%) per annum from thirty (30) days after the due date until paid, and shall incur a late penalty in an amount to be set by the Association from time to time, not to exceed the maximum amount permitted by Applicable Laws.

6.8 Allocation of Regular and Special Assessments. Regular assessments levied by the Association shall be allocated in equal amounts between the Units.

The Association may elect to have submeters installed to measure water uses by each Condominium, which would result in Association costs for domestic water to be allocated between the Condominiums based on the submeter readings. Unless submeters are installed, water and sewer costs shall be allocated pro rata based on each Unit's square footage measurements as described in **Exhibit C**.

Notwithstanding anything herein to the contrary, if the use, management, or maintenance of any Condominium, Exclusive Use Common Area, the equipment or facilities maintained in any Condominium, or any related reason, results in an increase in the Association costs, including, but not limited to, increases in maintenance and repair costs, trash removal costs, commonly-metered utility costs, or insurance costs, the Association may allocate the amount of the increase to the Condominium responsible for the increase and levy a reimbursement assessment to collect the amount due.

6.9 Enforcement of Delinquent Assessments. If an Owner fails to pay an assessment when due (a "Delinquent Owner"), an Owner of the other Condominium (the "Enforcing Owner") may act on behalf of the Association and may elect to pursue one of the following remedies described in this **Section 6.9** in the event of a delinquent assessment. The Enforcing Owner shall for all purposes be deemed the Association for purposes of this **Section 6.9**.

6.9.1 Personal Obligation. The Enforcing Owner may either: (i) bring a legal action directly against the Delinquent Owner for breach of the Delinquent Owner's personal obligation to pay the assessment and, in such action, shall be entitled to recover the delinquent assessment or assessments, accompanying late charges, interest, costs and reasonable attorneys' fees; or (ii) commence the mediation and reference procedures described in **Sections 11.2 and 11.3**. Commencement of a legal action shall not constitute a waiver of any lien rights as described in **Section 6.9.2**. If legal action is commenced, the alternative dispute resolution provisions set forth in **Article 11** shall conclusively be presumed to have been waived by the Owners of both Condominiums with respect to any issues directly relating to the alleged delinquent assessments.

6.9.2 Assessment Lien. The Enforcing Owner may impose a lien against the Delinquent Owner's Condominium for the amount of the delinquent assessment or assessments, plus any costs of collection (including attorneys' fees), late charges and interest by taking steps to enforce the lien as authorized by the applicable provisions in Chapter 7 of the Commercial and Industrial Common Interest Development Act (Civil Code sections 6800 through 6828) or any successor statutes thereto.

6.10 Estoppel Certificate. Within ten (10) days of the mailing or delivery of a written request by any Owner, the Association shall provide the Owner with a written statement containing the following information: (i) whether to the knowledge of the Association, the Owner or Occupant of the Owner's Condominium is in violation of any of the provisions of the Governing Documents; (ii) the amount of regular and special assessments, including installment payments, paid by the Owner during the fiscal year in which the request is received; and (iii) the amount of any assessments levied against the Owner's Condominium that are unpaid as of the date of the statement, including any late charges, interest or costs of collection, and that, as of the date of the statement, are or may be made a lien against the Owner's Condominium as provided by this Declaration. The Association may charge a fee to provide this information provided the fee shall not exceed the Association's reasonable cost to prepare and reproduce the requested items.

ARTICLE 7 Insurance

7.1 Owners' Individual Insurance Requirements. It is each Condominium Owner's responsibility to (i) maintain property insurance against losses to the fixtures, Improvements and personal property located within the Owner's Unit; and (ii) maintain liability coverage against bodily injury or other damage arising out of the ownership, maintenance, or use within the Owner's Unit or for injury to any Person or damage to any Improvements or personal property within the Development caused by any act or omission of Owner or Occupant or their Permittees. **The Association's insurance policies will not provide coverage for losses to the Owner's personal property or for any fixtures or Improvements located within the Unit to the extent not covered under Section 7.3.17.3.1(ii). The Association's insurance policies also will not provide coverage for any damage or destruction to the Solar Energy System exclusively serving a Condominium.** In addition, each Condominium Owner is required to maintain, if applicable, the Solar Energy System insurance required under **Section 3.12**. Nothing herein

imposes any duty on the Association, its directors, officers or agents (including the manager) to confirm or otherwise verify that the Owners are carrying the recommended insurance.

No Owner shall separately insure any property covered by the Association's property insurance policy as described in **Section 7.3** below. If any Owner violates this provision and, as a result, there is a diminution in insurance proceeds otherwise payable to the Association, the Owner will be liable to the Association to the extent of the diminution. The Association may levy a reimbursement assessment against the Owner's Condominium to collect the amount of the diminution.

Each Owner is strongly advised to seek the advice of a qualified insurance consultant regarding the Owner's property and liability insurance obligations under this Section 7.1 and regarding loss assessment insurance coverage. In addition, Owners (particularly subsequent Owners) should determine whether the Owner should acquire additional insurance coverage if a Solar Energy System has been installed.

7.2 Association Liability Insurance. The Association shall obtain and maintain the following liability policies:

7.2.1 General Liability Policy. A general liability insurance policy insuring the Association, any manager, the Association's directors and officers, and the Owners against bodily injury or property damage from an accident or occurrence within the Common Area or as a result of any act or omission of the performance or nonperformance of the Association's duties as set forth herein. The Association shall be the first named insured under the policy. Subject to the terms and conditions of the policy, the policy also shall cover bodily injury or property damage from an accident or occurrence within any Condominium as a result of any act or omission of an agent of the Association in the performance of the Association's duties under this Declaration. The policy shall include, if obtainable, cross liability or severability of interest coverage. The limits of such insurance (including the commercial general liability and any excess liability coverage) shall not be less than the general liability requirements set forth in Civil Code section 6840 or any successor statute thereto covering all claims for bodily injury and property damage arising out of a single occurrence. The coverage may be a combination of primary and excess policies. The insurance shall contain coverage terms equivalent to or better than the terms provided by Insurance Services Offices ("ISO") form CG001 or any successor form thereto. Such insurance shall include coverage against liability for owned, non-owned and hired automobiles and other liability or risk customarily covered with respect to projects similar in construction, location and use. The policy shall be primary and noncontributing with any other liability policy covering the same liability. Any notice of cancellation or material changes to the policy shall be provided by the issuing insurance company in accordance with the notice requirements in the policy. If cancelled, the Association shall replace the policy with a substantially equivalent policy.

7.2.2 Directors and Officers Liability Policy. A directors and officers liability policy containing such terms and conditions as are normally and customarily carried for directors and officers of a commercial common interest development.

7.2.3 Crime Insurance. A blanket commercial crime insurance policy covering the Association, any organization or Person who either handles or administers or is responsible for Association funds, whether or not any Person receives compensation for services.

7.3 Association's Property Insurance. The Association shall obtain and maintain a master property insurance policy that satisfies each of the following conditions. The Association shall also obtain and maintain appropriate coverages typically provided for the benefit of Mortgagees or lenders.

7.3.1 Property Covered. The policy shall cover the following real and personal property:

(i) Common Area. All Common Area Improvements, including the building and any Exclusive Use Common Area maintained by the Association; all fixtures, machinery and equipment

permanently affixed to the building situated outside of the Units (excluding any Solar Energy Systems); windows; fences; monuments; lighting fixtures situated outside the Units wired to a common meter; exterior signs; and personal property owned or maintained by the Association; but excluding land; excavations; Solar Energy Systems, and other items typically excluded from property insurance coverage and excluding signage exclusively serving any of the Condominiums; and

(ii) Units. The building structural components situated within the Unit, including load bearing walls; columns; shafts and beams; roof; foundation; exterior windows and doors; the building's life safety system Improvements; any utility Improvements that serve more than one Condominium; and directional and safety signage. All other fixtures, furnishings, equipment and personal property located within the Unit are to be insured by the Owner as described in **Section 7.1**. In addition, an Owner may add additional Improvements, such as tenant Improvements, to the Improvements covered under the Association policy with Approval by the Owners.

7.3.2 Covered Cause of Loss. The policy shall provide coverage for property insurance, insuring against the risks of direct physical loss, as insured under Insurance Services Office Causes of Loss – Special Form (CP 1030) or its equivalent.

7.3.3 Dollar Limit. The dollar limit of the policy shall not be less than the full insurable replacement value of the covered property described in **Section 7.3.1** above based in insurance industry standards for determination of replacement costs, provided that there may be lower dollar limits for specified items as is customarily provided in property insurance policies.

7.3.4 Primary. The policy shall be primary and noncontributing with any other insurance policy covering the same loss.

7.3.5 Endorsements. The policy shall contain such endorsements as the Association in its discretion shall elect after consultation with a qualified insurance consultant.

7.3.6 Waiver of Subrogation. The Association waives all subrogation rights against any Owner or Occupant and their family members and invitees except to the extent of any deductible. The policy shall include an acknowledgment of the Association's right to waive all subrogation rights against the Owner.

7.3.7 Deductible. Except as otherwise provided by the Association in writing, when a claim is made on the Association's property insurance policy, an Owner is responsible for payment of the deductible in circumstances: (i) where damage is caused by the fault of the Owner or the Owner's Occupants or their Permittees; and/or (ii) where damage is caused primarily by the failure of an Improvement within the Unit that the Owner is responsible for maintaining. If neither of the foregoing applies as determined by the Association, the Association shall pay the deductible. The Association may levy a reimbursement assessment against an Owner's Condominium as authorized under **Section 6.5** to collect the deductible from the Owner as authorized herein.

7.4 Insurance Rating and Cancellation. The insurance company providing the Association's insurance under **Sections 7.1** and **7.3** shall have an A.M. Best rating of not less than A:VII if licensed to do business in the State of California and a rating of not less than A:X if not licensed to do business in the State of California, provided that if the Association determines that insurance from insurance companies with the required ratings is not available at commercially reasonable rates, the Association may reduce the rating requirements after consultation with a qualified insurance consultant. If the A.M. Best ratings are no longer available, the insurance ratings shall be based on equivalent ratings issued by an independent insurer company rating entity used by financial institutions for insurance rating purposes.

7.5 Association's Authority to Revise Insurance Coverage. Subject to the provisions of **Section 7.7**, the Association shall have the power and right to deviate from the insurance requirements contained in this **Article 7** in any manner that the Association, in its discretion, considers to be in its best

interests, provided that the Association shall maintain the minimum insurance requirements set forth in Civil Code section 6840 and any successor statute thereto. If the Association elects to reduce the coverage materially from the coverage required in this **Article 7**, the Association shall make all reasonable efforts to notify the Members of the reduction in coverage and the reasons therefor at least thirty (30) days prior to the effective date of the reduction. Notwithstanding the foregoing, the Association shall not reduce coverage or deviate from coverage required by any Mortgagee whose insurance requirements have been provided to the Association.

The Association is authorized to negotiate and agree on the value and extent of any loss under any policy carried by the Association, including, but not limited to, the right and authority to compromise and settle any claim or enforce any claim by legal action or otherwise and to execute releases in favor of any insurer.

Each Owner, by acceptance of a deed to a Condominium, irrevocably appoints the Association or the Insurance Trustee described in **Section 7.7** as that Owner's attorney-in-fact for purposes of procuring, negotiating, accepting, compromising, releasing, settling, distributing and taking other related actions in connection with any insurance policy maintained by the Association and any losses or claims related thereto and agrees to be bound by the actions so taken as if the Owner had personally taken the action.

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

7.7 Insurance Trustee. All property insurance proceeds payable to the Association under any property insurance policy procured by the Association as described in **Section 7.3**, subject to the rights of Mortgagees under **Article 9**, may be paid to a trustee as designated by the Association to be held and expended for the benefit of the Owners and Mortgagees as their respective interests shall appear. The trustee shall be a commercial bank or other financial institution with trust powers in the county in which the Development is located that agrees in writing to accept such trust. If repair or reconstruction is authorized, the Association will have the duty to contract for such work as provided for in this Declaration.

7.8 Other Insurance. In addition to the policies described in **Sections 7.2 and 7.3**, the Association may obtain and maintain such other insurance as the Association in its discretion considers necessary or advisable.

ARTICLE 8

Damage, Destruction or Condemnation

8.1 Restoration Defined. As used in this **Article 8**, the term "restore" shall mean repairing, rebuilding or reconstructing Improvements damaged or destroyed as a result of a fire or other casualty to substantially the same condition and appearance in which they existed prior to fire or other casualty damage.

8.2 Insured Casualty. If any Improvement is damaged or destroyed from a risk covered by the insurance required to be maintained by the Association and the insurance proceeds are sufficient to cover the loss, then the Association, to the extent permitted under existing Applicable Laws and except as otherwise authorized under this **Article 8**, shall restore the Improvement subject to such changes as may be Approved by the Owners or required by Applicable Laws. The Association shall proceed with the filing and adjustment of all claims arising under the existing insurance policies. The insurance proceeds shall be paid to and held by the Association or an insurance trustee selected under the provisions of **Section 7.7**.

If the insurance proceeds exceed the costs of restoration, the excess proceeds shall be paid into reserves and held for the benefit of the Association.

8.3 Inadequate Insurance Proceeds or Uninsured Loss. If the insurance proceeds are insufficient to restore the damaged Improvement or the loss is uninsured, the Association shall add to any available insurance proceeds all reserve account funds designated for the repair or replacement of the damaged Improvement, if any. If the total funds then available are sufficient to restore the damaged Improvement, the Improvement shall be restored. If the aggregate amount of insurance proceeds and such reserve account funds are insufficient to pay the total costs of restoration, a special assessment shall be levied by the Association up to the maximum amount permitted without the approval of the Members in accordance with the limitations set forth in this Declaration and by Applicable Laws. If the total funds then available are sufficient to restore the damaged Improvement, the Improvement shall be restored. Any special assessment levied to cover a shortfall in available repair proceeds shall be allocated among the Condominiums as described in **Section 6.8** without regard to the extent of damage or destruction to the individual Condominiums.

If the total funds available to the Association are still insufficient to restore the damaged Improvement, then the Association first shall attempt to impose an additional special assessment pursuant to **Section 8.4** below and, second, use a plan of alternative reconstruction pursuant to **Section 8.5** below. Any special assessment levied to cover a shortfall in available repair proceeds shall be allocated among the Condominiums without regard to the extent of damage or destruction to the individual Condominiums. If the Members do not approve such actions, then **Section 8.6** shall apply.

8.4 Additional Special Assessment. If the total funds available to restore the damaged Improvement as provided in **Section 8.3** are insufficient, then a meeting of the Members shall be called for the purpose of approving a special assessment to make up all or a part of the deficiency (“Additional Special Assessment”). The Additional Special Assessment shall be allocated among the Condominiums as described in **Section 6.8** without regard to the extent of the damage or destruction to the individual Condominiums. If the amount of the Additional Special Assessment approved by the Members and the amounts available pursuant to **Section 8.3** above are insufficient to restore the damaged Improvement, or if no Additional Special Assessment is approved, the Association shall consider a plan of alternative reconstruction in accordance with **Section 8.5**.

8.5 Alternative Reconstruction. The Association shall consider and propose plans to reconstruct the damaged Improvement, making use of whatever funds are available to it pursuant to **Section 8.3** and **Section 8.4** above (“Alternative Reconstruction”). All proposals shall be presented to the Owners. If Approved by the Owners, then the Association shall contract for the reconstruction of the damaged Improvement in accordance with the plan of Alternative Reconstruction making use of whatever funds are then available to it. If no plan of Alternative Reconstruction is agreed to, then the provisions of **Section 8.6** shall apply.

8.6 Sale of Condominiums. If the damage renders one or both of the Condominiums uninhabitable for commercial purposes, and the Improvements will not be restored in accordance with the provisions of **Sections 8.3, 8.4 and/or 8.5**, the Association, as the attorney-in-fact for each Owner, shall be empowered to sell the Condominiums in their then present condition.

The proceeds from the sale, together with the insurance proceeds received and any unexpended reserve funds, after deducting therefrom the Association’s sale expenses, including commissions, title and recording fees, legal and related costs, and the payment of any Association liabilities, including a set aside amount for contingent liabilities as determined by the Association, shall be distributed among the Owners of Condominiums and their respective Mortgagees in proportion to the respective fair market values of these Condominiums immediately prior to the date of the event causing the damage as determined by an independent appraisal made by a qualified real estate appraiser selected by the Association. Thereafter the Association shall wind up and dissolve the Association.

8.7 Restoration of Partition Rights. Notwithstanding anything herein to the contrary, if the damage has rendered any Condominium uninhabitable and (i) within one (1) year of the date of the occurrence of the damage, the Association has not elected to repair the damage under the provisions of **Sections 8.2, 8.3, 8.4 or 8.5** or, if so, has not commenced and diligently pursued the repair work; or (ii) the Association has not commenced and diligently pursued the sale of the Development as authorized under **Section 8.6**, the restriction against partition described in **Section 2.9** shall be null and void and any Owner may bring a partition action under the authority of Civil Code section 6656 or any successor statute thereto.

8.8 Rebuilding Contract. If there is a determination to restore, the Association or its authorized representative shall obtain bids from at least two licensed and reputable contractors and shall accept the repair and reconstruction work from whomever the Association determines to be in the best interests of the Members. The Association shall have the authority to enter into a written contract with the contractor for such repair and reconstruction, and the repair and reconstruction funds shall be disbursed to the contractor according to the terms of the contract. The Association shall take all steps necessary to assure the commencement and completion of authorized repair and reconstruction at the earliest possible date. Such construction shall be commenced no later than one hundred eighty (180) days after the event requiring reconstruction and shall thereafter be diligently prosecuted to completion. Such construction shall return the Development to substantially the same condition and appearance in which it existed prior to the damage or destruction.

8.9 Condemnation. If there is a total sale or taking of the Development, meaning a sale or taking (i) that renders more than fifty percent (50%) of the Condominiums uninhabitable (such determination to be made by the Association in the case of a sale and by the Court in the case of a taking) or (ii) that renders the Development as a whole uneconomical as determined by the vote or written consent of seventy-five percent (75%) of those Owners and their respective first Mortgagees whose Condominiums will remain habitable after the taking, the right of any Owner to partition through legal action as described in **Section 2.9** shall revive immediately. However, any determination that a sale or taking is total must be made before the proceeds from any sale or award are distributed. The proceeds of any such total sale or taking of the Development, together with the proceeds of any sale pursuant to any partition action, after payment of all expenses relating to the sale, taking or partition action, shall be paid to all Owners and to their respective Mortgagees as their interests appear in proportion to the ratio that the fair market value of each Owner's Condominium bears to the fair market value of all Owners' Condominiums.

In the case of a partial sale or taking of the Development, meaning a sale or taking that is not a total taking as described above, the proceeds from the sale or taking shall be paid or applied in the following order of priority; and any judgment of condemnation shall include the following provisions as part of its terms:

(i) to the payment of the expenses of the Association in effecting the sale or to any prevailing party in any condemnation action to whom such expenses are awarded by the Court to be paid from the amount awarded; then

(ii) to Owners and their respective Mortgagees as their interests may appear whose Condominiums have been sold or taken in an amount up to the fair market value of such Condominiums as determined by the Court in the condemnation proceeding or by an independent, qualified appraiser selected by the Association, less such Owner's share of expenses paid pursuant to the preceding subsection (i) (which share shall be allocated on the basis of the fair market value of the Condominium). After such payment, the recipient shall no longer be considered an Owner, and the Association or individuals authorized by the Association acting as attorney-in-fact of all Owners shall amend the Condominium Plan, the subdivision map (if necessary), and this Declaration to eliminate from the Development the Condominium so sold or taken and to adjust the undivided ownership interests of the remaining Owners in the Common Area based on the ratio that each remaining Owner's undivided interest bears to all of the remaining Owners' undivided interest in the Common Area; then

(iii) to any remaining Owner and to his or her Mortgagees, as their interests may appear, whose Condominium has been diminished in fair market value as a result of the sale or taking

disproportionately to any diminution in value of all remaining Condominiums but, as of a date immediately after any announcement of condemnation, in an amount up to the disproportionate portion of the total diminution in value; then

(iv) to all remaining Owners and to their respective Mortgagees, as their interests may appear, the balance of the sale proceeds or award in proportion to the ratio that the fair market value of each remaining Owner's Condominium bears to the fair market value of all remaining Owners' Condominiums as determined by the Court in the condemnation proceeding or by an independent, qualified appraiser selected by the Association.

8.10 Dispute Resolutions. If there are any disputes regarding the rights and/or duties of the Owners or the Association under this **Article 8**, the dispute shall be resolved pursuant to the dispute resolution procedures in **Article 11**.

ARTICLE 9 Rights of Mortgagees

9.1 Lender Definitions. Unless the context indicates otherwise, the following terms as used in this **Article 9** shall have the definitions contained in this **Section 9.1**. An "institutional" Mortgagee is a first Mortgagee that is: (i) a federally or state chartered or licensed bank or savings and loan association; (ii) a mortgage company or other entity chartered or licensed under Applicable Laws whose principal business is lending money on the security of real property or investing in such loans; (iii) an insurance company; or (iv) a federal or State agency or instrumentality. A "first Mortgage" or "first Mortgagee" is one having a priority as to all other Mortgages encumbering the same Condominium or other portions of the Development.

9.2 Encumbrance. Any Owner may encumber his or her Condominium with a Mortgage or Mortgages.

9.3 Rights of Institutional Mortgagees. Any institutional Mortgagee who obtains title to a Condominium pursuant to the remedies provided in the first Mortgage, including judicial foreclosure or nonjudicial foreclosure under a power of sale (but excluding voluntary conveyance to the first Mortgagee), shall take the Condominium free of any obligation to pay any assessments that were delinquent as of the date the institutional Mortgagee acquired title to the Condominium, including any interest, penalties or late charges in connection therewith. The institutional Mortgagee as Owner of the Condominium shall be obligated to pay any assessments that were not delinquent as of the date the institutional Mortgagee took title to the Condominium and all future assessments levied against the Condominium as long as the institutional Mortgagee remains in title, including any special assessments levied by the Association to raise operating or reserve funds needed because of uncollected delinquent assessments, as long as the special assessment is allocated among all the Condominiums as provided in **Section 6.8**.

9.4 Subordination. Any assessment lien established under the provisions of this Declaration is expressly made subject to and subordinate to the rights of any Mortgagee under a Mortgage that encumbers all or any portion of the Development or any Condominium made in good faith and for value and recorded before the recordation of a notice of delinquent assessment. No assessment lien shall in any way defeat, invalidate or impair the obligation or priority of such Mortgage unless the Mortgagee expressly subordinates in writing its interest to such lien. If any Condominium is encumbered by a Mortgage made in good faith and for value, the foreclosure of any assessment lien cannot operate to affect or impair the lien of any Mortgage recorded prior to the recordation of the notice of delinquent assessment. Upon the foreclosure of any prior-recorded Mortgage, any lien for delinquent assessment shall be subordinate to the Mortgage lien; and the purchaser at the foreclosure sale shall take title free of the assessment lien. By taking title, the purchaser shall be obligated to pay only assessments or other charges that were not delinquent at the time the purchaser acquired title or that were levied by the Association on or after the date the purchaser acquired title to the Condominium. Any subsequently-levied assessments or other charges may include previously-unpaid assessments, provided all Owners, including the purchaser and its successors and assigns, are required to pay their proportionate share of such unpaid assessments.

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

9.6 Special Voting Requirements. Any action taken by the Association, the Members or the Association are subject to the special voting requirements set forth in this **Section 9.6**.

9.6.1 First Mortgagee Approval Rights. Except as provided otherwise by statute, in case of condemnation or substantial loss to the Units and/or Common Area of the Development, unless at least two-thirds of the first Mortgagees (based on one vote for each first Mortgage owned) and Owners (other than the Declarant) of the individual Condominiums have given their prior written approval, the Association may not:

- (i) by act or omission seek to abandon or terminate the Condominium Development;
- (ii) change the pro rata interest or obligations of any Condominium in order to levy assessments or charges, allocate distribution of hazard insurance proceeds or condemnation awards, or determine the pro rata share of ownership of each Condominium and the Common Area;
- (iii) partition or subdivide any Condominium;
- (iv) seek to abandon, partition, subdivide, encumber, sell or transfer the Common Area by act or omission. The granting of easements for public utilities or other public purposes consistent with the intended use of the Common Area by the Condominium Development or as authorized under **Section 2.6** is not a transfer within the meaning of this clause. In the case of a Condominium Development subject to additions or expansions in which sections or phases are established by the Governing Documents, this requirement will be deemed waived to the extent necessary to allow the phasing or additions in accordance with the Governing Documents; or
- (v) use hazard insurance proceeds for losses to any Condominium property (whether Units or Common Area) for other than the repair, replacement or reconstruction of the Condominium property.

9.6.2 Material Adverse Amendments. The approval of Mortgagees who represent at least fifty-one percent (51%) of the votes of Condominiums that are subject to Mortgages must be obtained prior to: (i) the adoption of any amendment of a material adverse nature to Mortgagees; or (ii) any action to terminate the legal status of the Development after substantial destruction or condemnation or for other reasons. Approval from a Mortgagee shall be assumed if a Mortgagee fails to submit a response to any written proposal for an amendment or proposed action within sixty (60) days after the Mortgagee receives proper notice of the proposal, provided the notice was delivered by certified or registered mail within a "return receipt" requested.

9.7 Distribution of Insurance and Condemnation Proceeds. No Owner, or any other party, shall have priority over any right of any first Mortgagees pursuant to their Mortgages in case of payment to the Condominium Owners of insurance proceeds or a condemnation award for losses to or taking of Condominium Units or Common Area. Any provision to the contrary in this Declaration or in the Bylaws or other documents relating to the Development is to such extent void.

9.8 Mortgagee Notice.

Any Mortgage holder or guarantor shall have the right to timely written notice of any of the following:

- (i) any condemnation or casualty loss that affects either a material portion of the Development or the Condominium securing the Mortgage;

(ii) any sixty (60) day delinquency in the payment of assessments or charges owed by the Owner of any Condominium encumbered by the holder's, insurer's or guarantor's Mortgage;

(iii) a lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and

(iv) any proposed action that requires the consent of a specified percentage of eligible Mortgage holders.

9.9 Right of First Refusal. No right of first refusal or similar restriction on the right of an Owner to sell, transfer or otherwise convey the Owner's Condominium is imposed by the Governing Documents or in any deed restriction of any deed from the Declarant to the first purchaser of the Condominium.

9.10 Unpaid Assessments. Any first Mortgagee of a Mortgage recorded prior to the recordation of a Notice of Delinquent Assessment who obtains title to a Condominium pursuant to the foreclosure procedures will not be liable for unpaid delinquent assessments accrued before the acquisition of title to the Condominium by the Mortgagee.

ARTICLE 10 Amendments

10.1 Amendment Before Close of First Sale. Before the close of the first sale of a Condominium in the Development to a purchaser other than Declarant or an entity controlled by Declarant, this Declaration may be amended or rescinded in any respect by Declarant by recording an instrument amending or rescinding this Declaration. The amending or rescinding instrument shall make appropriate reference to this Declaration and its amendments and shall be acknowledged and recorded in Alameda County, California. For purposes herein, a Person is considered controlled by Declarant if the Declarant holds fifty percent (50%) or more of the capital and profit interests if a partnership or limited liability company, fifty percent (50%) or more of the voting shares if a corporation, and fifty percent (50%) or more of the beneficial interests if a trust.

10.2 Amendment After Close of First Sale. After the close of the first sale of a Condominium in the Development to a purchaser other than Declarant or an entity controlled by Declarant, this Declaration may be amended or rescinded in any respect with the Approval by the Owners. The amendment is effective when the approval has been certified in a writing executed and acknowledged by the Owner of each Condominium and the amendment and certification have been recorded in Alameda County, California.

Notwithstanding anything herein to the contrary, any provision in this Declaration that specifically confers rights or benefits on a Declarant as Declarant may not be amended or rescinded without the prior written consent of the subject Declarant(s).

10.3 Amendment of the Condominium Plan. The Condominium Plan may be amended by the Approval by the Owners and their Mortgagees as required by Civil Code section 6628.

10.4 Corrections. Notwithstanding anything herein to the contrary, Declarant reserves the right as the attorney-in-fact for each Condominium Owner to record an amendment or appropriate instrument of correction to correct any errors in this Declaration, or any exhibits thereto, including the Condominium Plan, and the consent of neither the Association nor any Condominium Owner shall be required, provided that if the correction affects the size, location or access or use rights to any Unit or any Exclusive Use Common Area appurtenant to that Unit, the consent of that Unit Owner shall be required. The amendment shall be effective when recorded in the records of Alameda County, California, signed by an authorized agent of Declarant.

ARTICLE 11
Dispute Resolution

11.1 Disputes Between Owners. If any dispute arises between the Owners regarding any of the rights, duties, benefits or burdens under this Declaration, on request of an Owner, the Owners shall negotiate in person, telephonically, or electronically (“meet and confer”) in good faith, to resolve the dispute. The parties shall meet and confer no later than ten (10) calendar days following delivery of a written request to meet and confer signed by the requesting Owner and delivered to the other Owner(s) (the “Resolution Notice”). If an Owner refuses or fails to meet and confer for any reason or if the dispute cannot be resolved as a result of the discussion, the dispute shall be resolved in accordance with the procedures described in **Section 11.2 and/or 11.3** in that order.

11.2 Mediation. If the parties cannot resolve the claim pursuant to the procedures described in **Section 11.1** within twenty (20) calendar days following the date of the Resolution Notice or if any party to the dispute fails to meet and confer as required in **Section 11.1**, on request of any party to the dispute, the matter shall be submitted to mediation using the mediation services provided by JAMS or any successor thereto or any mediation provider acceptable to the parties. No person shall serve as a mediator in any dispute in which the person has any financial or personal interest in the result of the mediation, except by the written consent of all parties. Prior to accepting any appointment, the prospective mediator shall disclose any circumstances likely to create a presumption of bias or prevent a prompt commencement of the mediation process.

Within ten (10) days of the selection of the mediator, each party shall submit a brief memorandum setting forth its position with regard to the issues that need to be resolved. The mediator shall have the right to schedule a pre-mediation conference, and all parties shall attend unless otherwise agreed. The mediation shall be commenced within ten (10) days following the submission of the memoranda and shall be concluded within fifteen (15) days from the commencement of the mediation unless the parties mutually agree to extend the mediation period. The mediation shall be held in Alameda County, California, or such other place as is mutually acceptable by the parties.

The mediator has discretion to conduct the mediation in the manner in which the mediator believes is most appropriate for reaching a settlement of the dispute. The mediator is authorized to conduct joint and separate meetings with the parties and to make oral and written recommendations for settlement. Whenever necessary, the mediator may also obtain expert advice concerning technical aspects of the dispute, provided the parties agree and assume the expenses of obtaining such advice. The mediator does not have the authority to impose a settlement on the parties.

The mediation shall be subject to the provisions of Evidence Code sections 1115 through 1128, or any successor statutes thereto, except as the parties may agree otherwise in writing or orally in accordance with the requirements of Evidence Code section 1118 and any successor statute thereto.

Persons other than the parties, their representatives, and the mediator may attend mediation sessions only with the permission of the parties and the consent of the mediator. Confidential information disclosed to a mediator by the parties or by witnesses in the course of the mediation shall not be divulged by the mediator. All records, reports, or other documents received by the mediator while serving in such capacity shall be confidential. There shall be no stenographic record of the mediation process.

The expenses of witnesses for either side shall be paid by the party producing such witnesses. All other expenses of the mediation, including required traveling and other expenses of the mediator, and the expenses of any witnesses, or the cost of any proofs or expert advice produced at the direct request of the mediator, shall be borne equally by the parties unless they agree otherwise.

11.3 Binding Arbitration. If the parties cannot resolve the claim pursuant to the procedures described in **Section 11.2** or if any party to the dispute fails to participate in the mediation process, any party may commence binding arbitration under the commercial rules of the JAMS or any other arbitration

provider that may be mutually acceptable to the parties. The following rules and procedures shall apply in all cases unless the parties agree otherwise in writing:

- (i) the proceedings shall be heard in Alameda County, California;
- (ii) the arbitrator need not be an attorney or retired judge but, if not, the arbitrator must have at least five (5) years' experience in real estate matters;
- (iii) any fee to initiate the arbitration shall be paid by the Owner initiating the procedure, provided that the arbitration costs and fees, including any initiation fee, ultimately shall be borne as determined by the arbitrator;
- (iv) the arbitrator shall be appointed within sixty (60) days of the administrator's receipt of a written request to arbitrate the dispute. In selecting the arbitrator, the provisions of section 1297.121 of the Code of Civil Procedure (or any successor statute thereto) shall apply. The arbitrator may be challenged for any of the grounds listed therein or in section 1297.124 of the Code of Civil Procedure (or any successor statute thereto);
- (v) the arbitrator may require one or more pre-hearing conferences;
- (vi) the parties shall be entitled to discovery to the extent allowed by section 1283.05 of the Code of Civil Procedure;
- (vii) the arbitrator shall be authorized to provide all recognized remedies available in law or equity;
- (viii) the arbitrator in his or her discretion may award costs and/or attorneys' fees to the party that the arbitrator determines was the prevailing party, taking into account any party's failure to participate in the procedures described in **Section 11.1 and/or 11.2**; and
- (ix) the arbitrator's decision shall be final and binding on the parties unless corrected or validated under the grounds authorized in Code of Civil Procedure section 1286.2 or 1286.6 (or any successor statute thereto.)

The arbitrator's decision may be enforced in any court of competent jurisdiction.

11.4 Enforcement by Lien. Except as otherwise provided by Applicable Laws, an Owner may impose a lien against the other Condominium for the amount of any delinquent amounts due as a result of the defaulting Owner's failure to comply with the payment requirements described in Article 6. . The lien may include costs of collection, late charges, interest, and any other costs authorized in Article 6.

ARTICLE 12 Miscellaneous Provisions

12.1 Headings. With the exception of **Article 1**, the headings used in this Declaration are for convenience only and are not to be used to interpret the meaning of any of the provisions of this Declaration.

12.2 Severability. The provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any provision or provisions or any portion thereof shall not invalidate any other provision or any portion of the provisions not found invalid or unenforceable.

12.3 Cumulative Remedies. Each remedy provided for in this Declaration shall be cumulative and nonexclusive. Failure to exercise any remedy provided for in this Declaration shall not, under any circumstances, be construed as a waiver of the remedy.

12.4 Discrimination. No Owner shall execute or cause to be recorded any instrument that imposes a restriction on the sale, leasing or occupancy of the Owner's Condominium on the basis of race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, source of income as defined in Government Code section 12955(p), disability, veteran or military status, or genetic information.

12.5 Notification of Sale. No later than five (5) days after the closing of the sale of any Condominium, the new Owner shall notify the Association of such sale. Such notification shall be in writing and shall set forth the name and address of the new Owner and the date of sale. As of the date of sale, the successor Owner shall be liable and responsible as the Owner for any acts or omissions occurring on or after the date of sale, and the transferring Owner shall remain liable for all acts and omissions occurring before the date of sale.

12.6 Reservation or Grant of Easements. Any easements referred to in this Declaration shall be deemed reserved or granted, or both reserved and granted, by reference to this Declaration in any deed to any Condominium.

12.7 Incorporation of Exhibits. All exhibits referred to herein and attached to this Declaration are incorporated herein by reference as fully set forth herein.

12.8 Enforcement Rights and Remedies. The covenants, restrictions, rights and duties contained in this Declaration constitute covenants running with the land and equitable servitudes that benefit and bind each Condominium in the Development, each Owner, and each successive Owner thereto, and may be enforced by the Association, the Declarant or any Owner in any legal or equitable action pursuant to the procedures described herein. Declarant may enforce any covenants, restrictions, and rights set forth in this Declaration that expressly benefit Declarant without regard to whether Declarant owns any Condominiums in the Development.

Each Owner acknowledges and agrees that if any Person breaches any of the restrictions contained herein, money damages may not be adequate compensation. As a result, each Owner agrees that in the event of a breach, the non-breaching party, in addition to any other remedy available at law or equity, shall be entitled to equitable relief, including, but not limited to, an order compelling the breaching party to perform an act which the party is required to perform under this Declaration or which is necessary to bring the breaching party or the breaching party's Condominium into compliance with restrictions contained herein or prohibiting the breaching party from performing any act that violates the restrictions.

Notwithstanding anything herein to the contrary, the Association shall have the exclusive right to levy assessments and to take appropriate action to enforce delinquent assessments, including imposition of an assessment lien and the foreclosure of the lien. Furthermore, the Association shall have the primary responsibility for enforcing the restrictions contained in **Article 3**. If any Owner or Occupant desires the Association to take any enforcement action, the Owner or Occupant shall notify the Association in writing of the alleged violation. On receipt, the Association shall review the matter and shall determine what action, if any, to take. Neither the Association or any director, officer or agent thereof shall be liable if the Association, in the exercise of its judgment, elects not to take any action. To the extent applicable, the Association shall comply with the due process requirements described in this Declaration. If within ninety (90) days after receipt of the notice the Association has failed to take any corrective action and the alleged violation has not been cured and is continuing, any Owner may bring an action on the Owner's behalf for appropriate legal and/or equitable relief. In such action, the Owner shall bear his or her own costs and attorneys' fees, provided that the prevailing party in such action shall be entitled to recovery of such costs and fees.

Prior to the commencement of any action by the Association, the Declarant or Owner to enforce the Governing Documents or the Commercial and Industrial Act, the Association, the Declarant or the Owner shall comply with the applicable requirements the dispute resolution procedures described in **Article 11**.

12.9 Term. The term of this Declaration shall be for a period of fifty (50) years from the date on which this Declaration is recorded in the records of Alameda County, California. After that time, this Declaration and each of its restrictions and covenants and other provisions automatically shall be extended for successive ten (10) year periods unless this Declaration is rescinded by the written consent of Owners holding a majority of the total voting power of the Association. The rescission shall be effective on recordation of a notice of rescission in the records of Alameda County, California.

12.10 Reserved Rights of Declarant. Declarant is recording this Declaration as part of the operation of a commercial development. No covenant or restriction contained herein shall be applied in any manner that would unreasonably interfere with Declarant's rights to complete the construction or renovation of the Improvements and to sell the Improvements. The rights retained by Declarant during the construction and sales period include, but are not limited to, the right to:

(i) maintain construction equipment, personnel and materials within the Development;

(ii) use such portions within the Development as may be necessary or advisable to complete the construction, renovation or sales;

(iii) maintain construction and/or sales offices within the Development and appropriate parking to accommodate the foregoing;

(iv) maintain sale signs or other appropriate advertisements within the Development;
and

(v) allow prospective purchasers access to the Development.

12.11 Assignment by Declarant. Declarant may assign all or any portion of its rights and delegate all or any portion of its duties to any other Person and, from and after the date of such assignment and/or delegation, the Declarant shall have no further rights and/or duties hereunder with respect to the rights assigned and duties delegated. Any successor or assignee of rights and duties of the Declarant shall execute an instrument assuming the rights and duties of the Declarant assigned and delegated hereunder and thereafter shall be entitled to exercise all the rights of Declarant so assigned and shall be obligated to perform all the Declarant's duties so delegated, provided such successor or assignee shall not be liable in any manner for any act or omission committed or omitted by the Declarant before the date the successor or assignee succeeded to the rights of the Declarant hereunder.

12.12 Attorneys' Fees. Except as provided in **Article 11**, in the event of any litigation or alternative dispute resolution procedure regarding the rights or duties under the Governing Documents of the Association or any Member, the prevailing party in such proceeding, in the discretion of the judge or decision-maker, shall be entitled to recover costs, including reasonable attorneys' fees.

12.13 Notices. Any notice permitted or required by the Governing Documents shall be considered received on the date the notice is personally delivered to the recipient or forty-eight (48) hours after the notice is deposited in the United States mail, first-class, registered or certified, postage fee prepaid and addressed to the recipient at the address that the recipient has provided the Association for receipt of notice or, if no such address was provided, at the recipient's Condominium address in the Development.

12.14 No Enforcement Waiver. Failure to enforce a restriction in the past in and of itself shall not constitute a defense to any action brought against any Owner for violation of any restriction contained

herein. Each Owner, by acceptance of a deed to a Condominium in the Development, acknowledges that the enforcement of these restrictions may vary as a result of different Owners, changing conditions, or other reasons and agrees that the failure of any Owner or Association to enforce any particular restriction, even if such failure is for an extended period of time, shall not in any manner restrict or estop the right of any Owner or Association to enforce these restrictions at any future time.

12.15 Statutory Reference. Any reference to a governmental statute in this Declaration includes any amendments to the statute. If the statute is replaced by an equivalent statute, the equivalent statute shall be the applicable statute.

Declarant has executed this Declaration as of _____, 202__.

[DRAFT ONLY – NOT FOR RECORDING PURPOSES]

THE DAVIS STREET COMMUNITY CENTER INCORPORATED,
a California corporation

By: _____
Name: Rose Padilla Johnson
Its: _____

DS REAL PROPERTY INVESTORS LLC,
a California limited liability company

By: _____
Name: Robert S. Enea
Its: Manager

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of _____)

On _____, before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of _____)

On _____, before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

EXHIBIT A – Prohibited Commercial Uses

No Condominium shall be used for any of the following purposes unless otherwise authorized by the Board:

- Animal hospitals
- Dance or night clubs
- Welding or other uses of open fire or flame
- Amusement center
- Bingo or game parlor
- Billiards parlor or pool hall
- Recording studio or any related commercial music production use
- Taxidermy shop
- Sale of or distribution of graphically-explicit sexual images
- Massage or escort services
- Dry cleaning plant
- Funeral parlor or mortuary
- Off-track betting establishment
- Sale, display, rental, leasing, repair or storage of parts for automobiles, motorcycles, boats, trucks, trailers, recreational vehicles, mobile homes or other motor vehicles
- Tattoo parlor
- Church
- Employment agency
- Political campaign offices
- The sale of any firearms, ammunition or weapons, or a shooting gallery or firing range of any type
- Bail bond services of any kind, or any activities of a bail bond agent
- Pawn shops, pawn brokers, car title lender (which, for purposes of this limitation, will not include auto loans made by a state or federally chartered bank or thrift), or any similar type of lending activity
- Pay day lending activities, pay day advances, pay check advances, or any similar type of lending activity

EXHIBIT B – Sign Program

REYNOLDS & BROWN
Commercial Building Sign Standards

SIGN TYPE C-1

PROJECT	
ADDRESS	
TENANT	

STANDARD SIGN

DESCRIPTION

Wall panel

SIZE

18" X 18"

INSERTS

None.

USE & APPLICATION

Tenant and suite identification at back entrance. Also use for miscellaneous information message.

PRODUCT DESCRIPTION

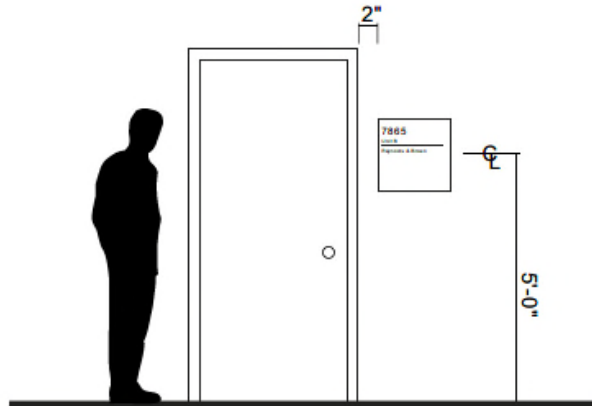
1/8" painted aluminum sheet with vinyl copy.

TYPOGRAPHY

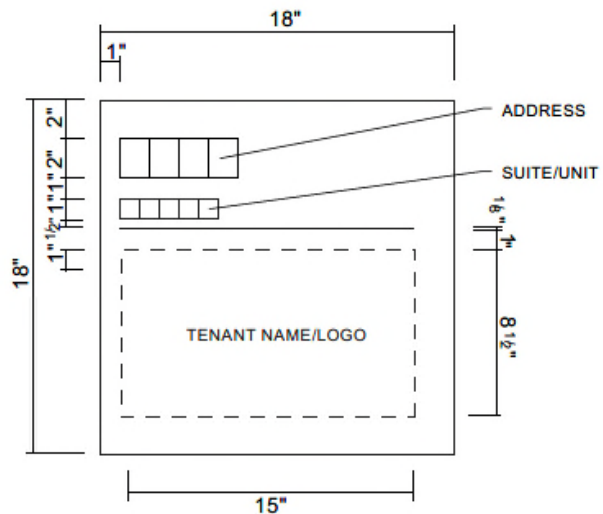
Futura Bold

COLORS

Type: Gloss White
Matthews 77A-2P
Panel: Dark Green
Matthews 61A-1A



TYPEFACE SHOWN: FUTURA BOLD
SEE SEPARATE DRAWINGS FOR FINISH & INSTALLATION DETAILS
DRAWINGS NOT TO SCALE



DESCRIPTION

Dimensional numbers

SIZE

4"

INSERTS

None.

USE & APPLICATION

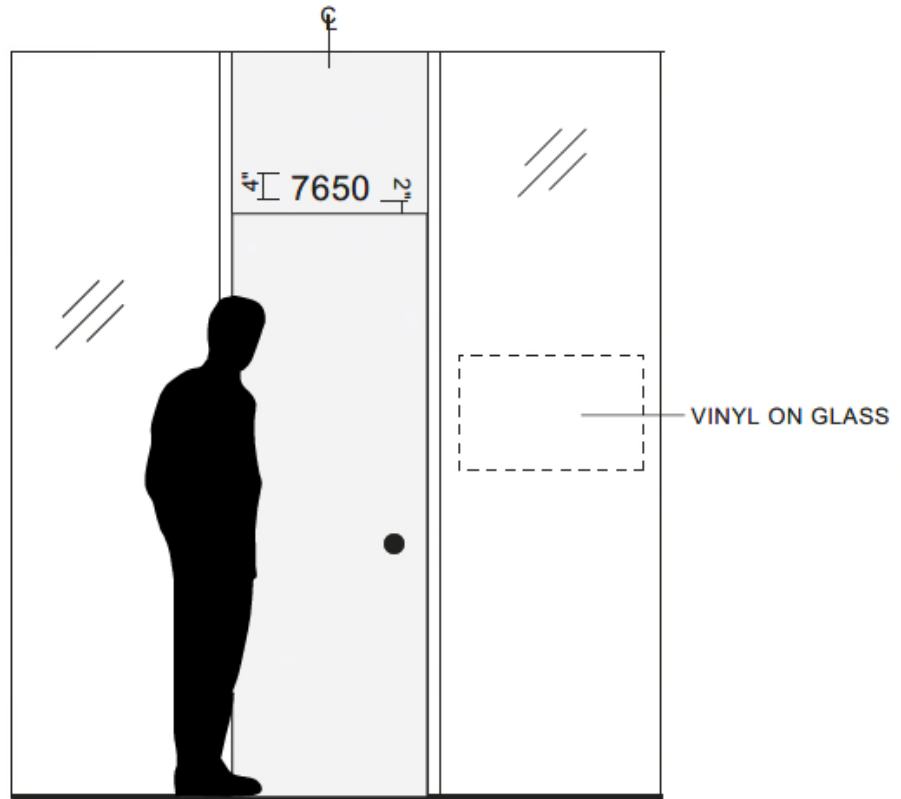
Address centered above
main door entrance.

TYPOGRAPHY

Futura Bold

COLORS

Anodized aluminum finish (silver)



DESCRIPTION
Dimensional letters.

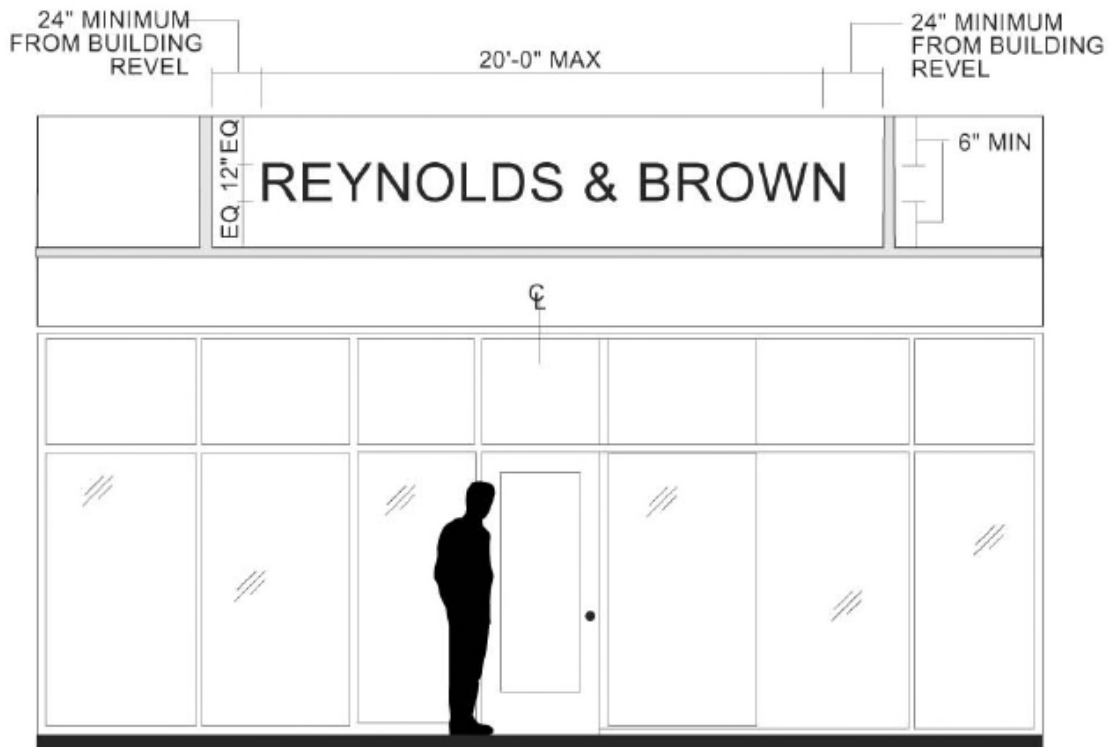
SIZE
12"

INSERTS
None.

USE & APPLICATION
For tenant identification on building facade. Center over main entrance.

TYPOGRAPHY
Optima, Times Bold, Futura Bold

COLORS
Dark green, dark gray, dark blue, white, black.



DESCRIPTION
Vinyl letters.

SIZE
See drawing.

INSERTS
None.

USE & APPLICATION
Suite or address
along with tenant
identification at main
entrance sidelight.

TYPOGRAPHY
Futura Bold

COLORS
White

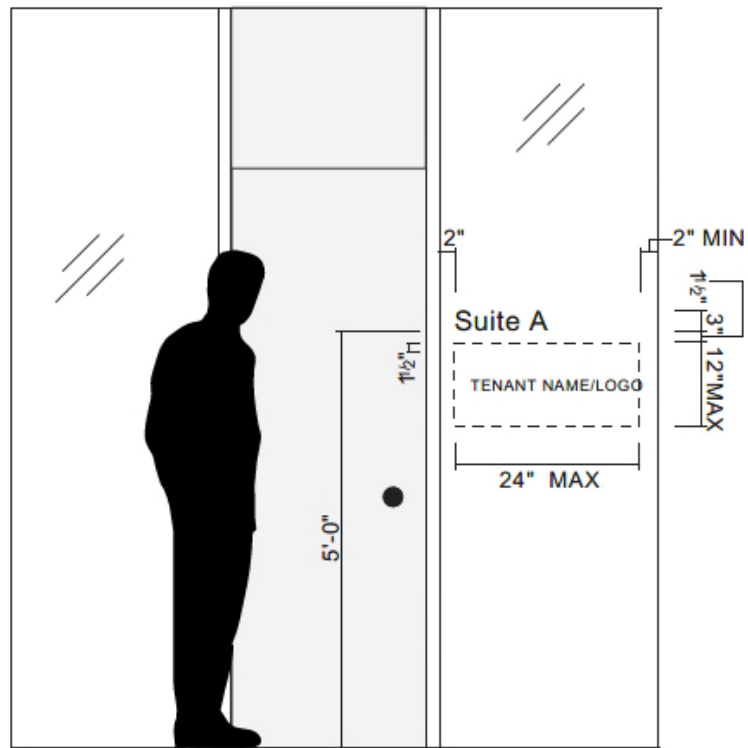
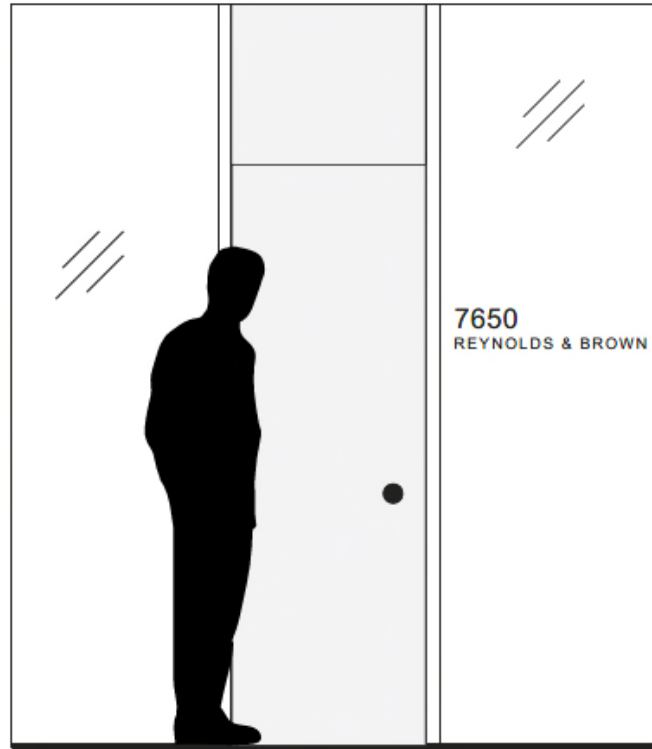


EXHIBIT C – Estimated Square Footage Measurements

These square footages are estimates only. They were obtained from the Proforma Operating Budget described in **Section 6.8** and were derived from plans and not actual measurements. The actual square footage of each Unit may differ. If there is any conflict between the square footage amounts in this **Exhibit C** and the actual square footage measurements, the square footage measurements in this **Exhibit C** shall control for purposes of allocating any prorated budget items in order to maintain a stable, reliable and constant proration schedule.

No prospective Owner should rely on these estimates in making a decision to acquire a Condominium.

Units	Square Footage
Unit 1	7,704 SF
Unit 2	13,784 SF
TOTAL:	21,488 SF