

- (6) If a construction code requires changes to undamaged portions of a building when any part of the building is destroyed by an insured hazard, then a Construction Code Endorsement, typically including endorsements for demolition cost, increased cost of construction, and contingent liability from building operation laws;
 - (7) If the property has central heating or cooling, Steamed Boiler and Machinery Coverage Endorsement should provide a minimum liability per accident of \$2,000,000, or the insurable value of the building housing the boiler or machinery, whichever is less;
 - (8) The Association is not obligated to provide intra-Unit public liability insurance or any protection against risks customarily covered under "apartment owners" or "condominium owners" package policies. Owners may individually insure against such risks; and
 - (9) Standard mortgage clause and name as mortgagee either FNMA or servicers (if applicable).
- (o) At least annually, the Board must review the Association's insurance policies.
 - (p) If economically feasible, prior to each annual review the Board shall obtain a current appraisal of the full replacement value of Improvements on the Property (except for foundations and footings) without deduction for depreciation.

S.05 Budget, Financial Statements and Governing Documents.

- (a) The Board of Directors of the Association must perform all of the following on at least a quarterly basis:
 - (1) Review the income and expense statement for the Association's operating and reserve accounts;
 - (2) Cause a reconciliation of the Association's operating and reserve accounts, and a review thereof;
 - (3) Review the current year's actual reserve revenues and expenses compared to the current year's budget; and
 - (4) Review the most current account statements from the financial institutions handling the Association's operating and reserve accounts.
- (b) The Board must regularly distribute the following budgets and financial statements to each Association Member:

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- (1) A pro-forma operating statement (budget) for the immediately ensuing fiscal year not less than forty-five (45) days and not more than sixty (60) days prior to the beginning of the fiscal year, which shall include the following:
 - (A) The estimated revenue and expenses on an accrual basis;
 - (B) A summary of the Association's reserves based upon the most recent review or study conducted pursuant to Section 1365.5, which shall be printed in bold type and include all of the following:
 - (i) The current estimated replacement cost, estimated remaining life, and estimated useful life of each major component.
 - (ii) As of the end of the fiscal year for which the study is prepared:
 - (1) The current estimate of the amount of cash reserves necessary to repair, replace, restore or maintain the major components.
 - (2) The current amount of accumulated cash reserves actually set aside to repair, replace, restore or maintain the major components.
 - (iii) The percentage that the amount determined for purposes of clause (2) of sub-paragraph (ii) above is of the amount determined for purposes of clause (1) of sub-paragraph (ii) above.
 - (C) A general statement of procedures the Board uses to calculate and establish reserves to defray costs of repair, replacement or additions to major components of the Common Area and facilities for which the Association is responsible.
- (2) A statement as to whether the Board has determined or anticipates that the levy of one or more Special Assessments will be required to repair, replace, or restore any major component or to provide adequate reserves therefor.

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- (3) In lieu of the pro-forma budget described in subparagraph (b)(1) above, the Board may distribute a budget statement summary to all Members, accompanied with a written notice in at least 10-point bold type on the front page of the statement summary advising that the complete statement is available at a location on the Property and a copy will be furnished upon request at the Association's expense, delivered by first-class United States mail within five (5) days.
- (4) Within sixty (60) days of the following accounting date, balance sheet with:
 - (A) An accounting date the last day of the month nearest to six (6) months from the closing date of the first Unit sale; and
 - (B) A schedule of Assessments identified by Unit number and the name of the person assessed.
- (5) An operating statement for the period from the closing date of the first sale.
- (6) Within one hundred twenty (120) days after the close of a fiscal year, an Annual Report must be distributed by the Association and include all of the following:
 - (A) A balance sheet as of the end of the fiscal year;
 - (B) An operating (income) statement for the fiscal year;
 - (C) A statement of changes in financial position for the fiscal year;
 - (D) Any information required to be reported by California Corporations Code Section 8322, concerning indemnifications and transactions with interested persons.
 - (E) For any fiscal year in which the gross income to the Association exceeds seventy-five thousand dollars (\$75,000), a copy of the review of the Annual Report prepared in accordance with generally accepted accounting principals by a licensee of the California State Board of Accountancy.
- (7) If the Annual Report referred to in number (6) above is not prepared by an independent accountant, it must be accompanied by the certificate of an authorized Association officer that the statement was prepared from the Association's books and records without independent audit or review.

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- (8) If there are fifty (50) or more Units, the Association must provide an audited statement for the preceding fiscal year when a written request is submitted by the holder, insurer, or guarantor of any first Mortgage.
- (9) If there are fewer than fifty (50) Units and no audited statement is available, a Mortgage holder is permitted (at own expense) to have an audited statement prepared.
- (10) A statement of the Association's policy for enforcement of lien rights or other legal remedies for default of Assessment payments against the Members including the recording and foreclosing of liens against a Member's Condominium, which must be delivered within sixty (60) days prior to the beginning of the next fiscal year.
- (c) The summary of the Association's reserves disclosed in sub-paragraph (b)(1)(B)(ii) above shall not be admissible in evidence to show improper financial management of an Association, provided that other relevant and competent evidence of the financial condition of the Association is not made inadmissible by this provision.
- (d) As used in this Section, "reserve accounts" means money that the Board has identified for use to defray the costs of future improvements or repairs to areas the Association is obligated to maintain. Withdrawal of funds from the Association's reserve account requires the signatures of either:
 - (1) Two (2) Board members; or
 - (2) One (1) Board member and an Officer of the Association who is not a Board member.
- (e) The Board may only expend reserve funds to repair, restore, replace, and maintain the major components for which the Association is obligated (including any related litigation) and for which the reserve fund was established. However, the Board may authorize the temporary transfer of money from a reserve fund to the Association's general operating fund to meet short-term cash-flow requirements of other expenses, provided:
 - (1) The transferred funds must be restored to the reserve fund within three (3) years of the date of the initial transfer; unless
 - (2) Based on documentary support, the Board determines that a delay in restoration of the reserve fund would be in the best interests of the Project. In case of such determination, the Board must:
 - (A) Restore the fund at the time which the Board reasonably determines to be necessary;

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- (B) Exercise prudent fiscal management in delaying restoration of the reserve fund; and
 - (C) If necessary, levy a Special Assessment (not Subject to the limitation imposed by California Civil Code Section 1366) to recover the full amount of the expended funds within the time limits required by this Section.
- (f) At least once every three (3) years, the Board shall cause a study of the reserve account requirements of the Project to be conducted if the current replacement value of the major components for which the Association is obligated to repair, replace, restore or maintain is at least one-half (1/2) of the gross budget of the Association for any fiscal year. The Board shall review this study annually and shall consider and implement necessary adjustments to the Board's analysis of the reserve account requirements as a result of that review. The study must at a minimum include the following:
- (1) Identification of the major components which the Association is obligated to repair, replace, restore or maintain and which have a remaining useful life of less than thirty (30) years as of the date of the study;
 - (2) Identification of the probable remaining useful life of the components identified in paragraph (f)(1) above as of the date of the study;
 - (3) An estimate of the cost of repair, replacement, restoration, or maintenance of each major component identified in paragraph (f)(1) above during and at the end of its useful life; and
 - (4) An estimate of the total annual contribution necessary to defray the cost to repair, replace, restore or maintain each major component during and at the end of its useful life, after subtracting total reserve funds as of the date of the study.
- (g) As used in the Section, "reserve account requirements" means the estimated funds which the Board has determined are required to be available at a specified point in time to repair, replace, or restore those major components which the Association is obligated to maintain.
- (h) Within ten (10) days of receipt of a written request, the Association shall provide an Owner with a copy of the documents listed below. The Association may charge a reasonable fee to the Owner for the Association's cost to prepare and reproduce these documents.
- (1) The Governing Documents;

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- (2) If an age restriction limits occupancy, residency, or use of a separate interest different from Civil Code Section 51.3 or federal law, a statement that specifies the applicable provisions of Section 51.3, and that the restriction is only enforceable to the extent permitted by Section 51.3 or federal law;
 - (3) A copy of the most recent financial statement (distributed pursuant to Civil Code Section 1365);
 - (4) A written statement from an authorized Association representative revealing the amount of the Association's current Regular and Special Assessments and fees, as well as any unpaid Assessments levied on the Owner's Condominium (including information on late charges, interest, and costs of collection which may be a lien on the Owner's Condominium under Civil Code Section 1367); and
 - (5) Any change in the Association's current Regular and Special Assessments and fees which has been approved by the Board but has not become due and payable as of the date disclosure is provided pursuant to this Section.
- (i) The Association shall make the following documents available for inspection and copying by a Member or his duly appointed representative at the office of the Association upon request during normal business hours or under other reasonable circumstances:
- (1) The Membership register, mailing addresses, telephone numbers, books of account and minutes of meetings of the Board for any purpose reasonably related to a Member's interest.
 - (2) For Owners, lenders, holders, insurers and guarantors of a first Mortgage on any Unit, current copies of all Governing Documents, books, records, and financial statements of the Association;
 - (3) The Association may charge a fee to the requesting party for this service which may not exceed the reasonable cost to prepare and reproduce the requested items.

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5.06 Association Performance of an Owner's Obligations.

If an Owner fails to accomplish any maintenance or repair required by this Declaration, the Association has the right (but not the obligation) to cause such maintenance or repair to be accomplished according to the following regulations:

- (a) The Board must give the offending Owner a Notice of Deficiency that outlines the problem and sets a date for a hearing before the Board or its appointed Committee ("Board").
- (b) A hearing must be held from fifteen (15) to thirty (30) days after the Notice of Deficiency's delivery date and must be conducted as follows:
 - (1) According to reasonable rules and procedures adopted by the Board;
 - (2) Owners may present evidence and cross-examine any person offering evidence against the Owner;
 - (3) A decision rendered against the Owner must set a date by which the Owner is to correct the deficiency; and
 - (4) A committee decision may be appealed to the Board, but a decision by the Board is final.
- (d) If the deficiency continues after the time limit imposed by the Board, such maintenance or repair may be accomplished according to the following regulations:
 - (1) After a written Notice of Action by the Board, the Owner has no more than ten (10) days to select a day(s) when such maintenance or repair may be accomplished;
 - (2) The Owner must select a date between fifteen (15) and forty-five (45) days from the final day of the ten (10) day Notice of Action period;
 - (3) If the offending Owner does not select a day(s), the Board may select dates to accomplish the work, between twenty-five (25) and fifty-five (55) days from the last day of the ten (10) day Notice of Action period; and
 - (4) Unless the Owner and Board otherwise agree, such maintenance or repair may take place during daylight hours Monday through Saturday, excluding national holidays.
- (e) Any Association payments for such maintenance or repair must be reimbursed by the Owner within thirty (30) days.

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5.07 Penalties for Non-Compliance.

- (a) In recognition of the need for a reasonable means of encouraging and insisting upon compliance with the provisions of the Governing Documents without resorting to suits for injunctive relief, the Board is authorized to do the following:
- (1) Establish a reasonable policy of reasonable penalties, including monetary penalties (which specifies the amounts of potential monetary penalties); and
 - (2) Assess any Owner found to be in violation of any provision of the Governing Documents.
 - (3) Temporary suspensions of an Owner's voting rights as a Member of the Association for so long as the violation continues.
- (b) Notice and Hearing relating to the imposition of any penalties in this Section must be made in the following manner and at a minimum:
- (1) Notice must be given to the relevant Owner's most recent address in the Association's records at least fifteen (15) days before the proposed effective date of the penalty;
 - (2) Notice must set forth details of the violation itself, the proposed penalty, and the date, time and place of the Hearing;
 - (3) The penalized Owner may be heard (either orally or in writing) at a Hearing held at least five (5) days before the effective date of the proposed penalty;
 - (4) Hearing will be held by the Board of Directors, and their decision is final and binding upon the Owner; and
 - (5) Following the Hearing, the Board must decide whether or not the Owner should in fact be penalized, and the nature of the penalty.
- (c) If an Owner fails to comply with a penalty imposed pursuant to the provisions of this Section, the Board may seek judicial enforcement of the penalty in any court of competent jurisdiction, with the Owner liable for all costs (collection costs, court costs, attorney's fees, etc.). However, such penalties and costs shall not be treated as an assessment that may become a prejudgment lien enforceable by Civil Code Section 2924.
- (d) Notwithstanding the foregoing, the Owner shall be given, at a minimum, the rights set forth in Corporations Code Section 7341 or any successor statute.

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5.08 Right of Entry.

- (a) The Association has the right to enter any Unit or Common Area(s) to determine compliance with the Governing Documents.
- (b) In case of emergency, a Unit may be entered immediately. Otherwise, a Unit may only be entered at reasonable hours after the Owner has received three (3) days notice.
- (c) Entry must be made with as little inconvenience as possible to the Owner, and any damage caused must be repaired by the entering party.

5.09 Utility Easements.

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

5.10 Repair and Maintenance by the Association.

Subject to the Owner's maintenance and repair obligations provided for in this Declaration, the Association (and not individual Owners) is solely responsible for:

- (a) Maintaining the Common Areas in a first-class condition, making necessary repairs, modifications and improvements.
- (b) Repairing and maintaining the Common Area(s) as necessitated by wood-destroying pests or organisms. If the Board considers it economically feasible, the Association shall perform a periodic inspection and preventative program of pest eradication.

5.11 Wood-Destroying Pests.

If the Association is responsible for maintenance and repair necessitated by wood-destroying pests or organisms, the procedure will be as follows:

- (a) The affected Owner must pay all costs of temporary relocation during the repair and maintenance of the area(s) within the Association's responsibility;
- (b) The Association may cause the temporary removal of an occupant from a Unit for a period of time necessary for prompt, effective treatment of wood-destroying pests or organisms; and
- (c) The Association must serve a notice of temporary relocation at least fifteen (15) days prior to the effective date, which states:
 - (1) The reason for relocation;
 - (2) The dates and times of the commencement and termination of treatment; and
 - (3) That the occupants will be responsible for their own accommodations during the temporary relocation.

5.12 Unsegregated Real Property Taxes.

- (a) The Association shall pay all real and personal property taxes and assessments levied upon any portion of the Property that are not assessed to or paid by the Owners.
- (b) If all the Units are taxed under a blanket tax bill covering the entire Project, each Owner shall pay their proportionate share of any installment to the Association at least ten (10) days prior to the delinquency date.
- (c) The Association shall transmit the taxes to the appropriate tax collection agency on or before the delinquency date.
- (d) Blanket taxes for the Project shall be allocated equally among the Owners and their Condominiums, based upon the total number of Units to be constructed in the Project.
- (e) The Association shall deliver the following to each Owner at least forty-five (45) days prior to the delinquency date of any blanket tax installment:
 - (1) A copy of the tax bill; and
 - (2) A written notice setting forth the Owner's obligation to pay their proportionate share of the tax installment and the potential additional charges to the Owner for failure to comply.
- (f) The Association shall pay the taxes on behalf of any Owner who does not pay their proportionate share.

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- (g) The Association shall add the following charges to the Annual Assessment of a delinquent Owner:
- (1) The amount of any sum advanced;
 - (2) Interest at an annual rate of ten percent (10%); and
 - (3) Any amount necessary to reimburse the Association for any penalty or late charge resulting from the delinquent Owner's failure to make timely payment of their proportionate share of the taxes.
- (h) Prior to the close of escrow for the sale of ninety percent (90%) of the Condominiums in the Project, the foregoing provisions relating to the collection of taxes in connection with a blanket tax bill on all or any portion of the Project may not be amended without the express written consent of Declarant.

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ARTICLE VI

COVENANTS FOR ASSESSMENT

6.01 General Purpose of Assessments.

- (a) Assessments may be levied by the Association for improvement and maintenance of the Common Area(s), administration of the Property, and to promote the recreation, safety, and welfare for the common good of all the Owners.
- (b) The Association may not collect an Assessment fee in excess of the amount needed for the purpose levied.
- (c) The Association shall provide notice by first-class mail to the Owners of the separate interests of any increase in Regular or Special Assessments not less than thirty (30) nor more than sixty (60) days prior to the increased Assessment becoming due.
- (d) Annual increases in Regular Assessments for any fiscal year, as authorized in Section 6.03(c), may not be imposed unless:
 - (1) The Board has complied with Section 5.05(b) with respect to that fiscal year; or
 - (2) The Board has obtained the approval of a quorum of Owners (more than fifty percent (50%) of the Owners in the Association) casting a majority of the votes at a meeting or election of the Association conducted in accordance with Chapter 5 (commencing with Section 7510) of Part 3 of Division 2 of Title 1 of the Corporations Code and Section 7613 of the Corporations Code.

6.02 Creation of the Lien and Personal Liability.

- (a) Declarant, and its successor in interest, if any, for each Condominium owned by it, and each Owner, by acceptance of a deed to a Condominium, whether or not it shall be so expressed in any deed, covenants and agrees to pay to the Association:
 - (1) Regular Assessments or charges;
 - (2) Special Assessments;
 - (3) Reconstruction Assessments; and
 - (4) Extraordinary charges/Assessments.

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- (b) Assessments and related interest, collection costs, and reasonable attorneys' fees are the personal obligations of the Owner and binds heirs, devisees, representatives, successors and assigns, but does not pass to successors in title unless expressly assumed by them.

6.03 Regular Assessments.

- (a) Regular Assessments levied annually by the Association may be collected and used for:
- (1) Maintenance and operation of the Common Area(s);
 - (2) Administration of the Property and the Association;
 - (3) Establish reserves for Common Area maintenance and repairs;
 - (4) For purposes reasonably determined by the Board.
- (b) Until January 1 following the first sale of a Condominium, the Regular Monthly Unit Assessment will be subject to the Association budget approved by DRE in connection with the issuance of the most recent Public Report for the Property. Beginning January 1 following the first sale of a Condominium, the Board will annually determine the Regular Monthly Unit Assessment after giving due consideration to current maintenance and operating costs, anticipated future needs, reserves, and all relevant facts.
- (c) Except as provided in "Extraordinary Charges" below, the Board may not increase a regular annual Assessment per Unit more than twenty percent (20%) of the Regular Assessment for the Association's preceding fiscal year unless there is a vote of approval of Owners, constituting a quorum casting a majority of the votes at a meeting or vote without a meeting of the Association conducted in accordance with California Corporations Code Section 7510 et seq. and 7613 et seq., as amended from time to time. For purposes of this section, quorum means more than fifty percent (50%) of the Members of the Association.
- (d) Monthly Unit Assessments for a partial year must be annualized to determine whether proposed Assessments for the Association's first full calendar year exceed a twenty percent (20%) annual increase over the previous Assessment.

6.04 Special Assessments.

- (a) The Board may levy Special Assessments in any year to defray the costs of:
- (1) Capital improvements to be made on the Property by the Association;

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- (2) Other special common expenses; and
 - (3) Any Association undertaking for which funding is not otherwise provided.
 - (b) Except as provided in "Extraordinary Charges" below, Special Assessments may not exceed in the aggregate five percent (5%) of the Association's budgeted gross expenses in that fiscal year without the approval of Owners, constituting a quorum, casting a majority of the votes at a meeting or vote without a meeting of the Association conducted in accordance with California Corporations Code Section 7510 et. seq. and 7613 et. seq. as amended from time to time. For purposes of this section, quorum means more than fifty percent (50%) of the Members of the Association.
 - (c) Written notice of any Special Assessment amount must be:
 - (1) Sent to every Owner;
 - (2) Include the date payment is due.
 - (d) Special Assessments will be levied on the same basis as Regular Assessments, to the extent reasonably possible.

6.05 Extraordinary Charges.

Notwithstanding any other provision contained in this Article, the Board may levy a special assessment for the following:

- (1) A court order;
 - (2) Repair or maintenance in any area of Association responsibility that poses a threat to personal safety; or
 - (3) Repair or maintenance in any area of Association responsibility that was unforeseen by the Board while preparing the proforma operating budget. However, prior to the imposition or collection of such charge, the Board must first pass and distribute a written resolution with the Notice of Assessment to all Members containing written findings as to the necessity for the charge, and why it was not or could not have been reasonably foreseen in the budgeting process charges.
- (b) The provisions relating to Special Assessments notwithstanding, each Owner agrees to pay the Association the following charges:
- (1) Extra maintenance and repair costs caused by the willful or negligent act of the Owner, (family, guests, tenants, lessees, licensees or invitees) and not caused by ordinary wear and tear;

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- (2) Costs to bring the relevant Condominium and Owner into compliance with the provisions of the Restrictions.
- (c) Written notice of an Extraordinary Charge passed by the Board must be delivered to the responsible Owner, and contain the basis and due date for the charge.
- (d) An Extraordinary Charge not paid when due is subject to the same interest and late charges provided for Delinquent Assessments.
- (e) An Extraordinary Charge, late charges, interest, collection costs and reasonable attorneys' fees may be established by the Board and enforced by the relevant civil courts.

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6.06 Uniform Assessment Rate.

- (a) Regular Assessments and Special Assessments must be fixed at a uniform rate for all subject Units, except as otherwise provided.
- (b) Each subject Unit is liable for a pro rata share (the fractional number one (1) over the total number of Units subject to Assessment by the Association at that time).

6.07 Commencement Date of Regular Assessments;
Due Dates of Assessments.

- (a) Regular Assessments commence on the first of the month immediately after conveyance of the first Unit to a purchaser.
- (b) Except for the partial first year, Regular Assessments will be:
 - (1) Levied on a calendar year basis;
 - (2) Due and payable in advance on the first day of every month, or in any other manner established by the Board.

6.08 Assessment Duties of the Board of Directors.

- (a) At least thirty (30) days before each calendar year, the Board of Directors must:

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- (1) Set Regular Annual Assessment amounts for each Unit; and
 - (2) Prepare an Annual Roster of Units that includes relevant Assessments and is made available for inspection by any Owner during normal business hours.
- (b) Written notice of Regular Assessments must be sent to every Owner as follows:
- (1) Annually;
 - (2) At least thirty (30) days before the applicable calendar year; and
 - (3) Specifying when installment payments are due and payable.
- (c) If for some reason a Regular Assessment is not prepared as required, terms of the Regular Assessment in place for the previous year will continue unchanged until the Board enacts a new or supplementary Assessment.
- (d) Upon demand by an Owner (or Mortgagee) whose Condominium is liable for any Assessment, the Association will furnish a written certificate (constituting conclusive evidence of any payment of Assessments) signed by an Association officer that sets forth:
- (1) The nature and extent of the Assessment(s);
 - (2) Due dates and whether any delinquency exists.
 - (3) The Board may impose a reasonable charge for issuing the certificate.

6.09 Effect of Nonpayment of Assessments;
Delinquency and Remedies of the Association.

- (a) An Assessment is delinquent ("Delinquent Assessment") if not paid within fifteen (15) days after the due date. A Delinquent Assessment includes:
- (1) A late charge imposed by the Board to the maximum amount in accordance with California Civil Code Section 1366 (or any successor statutes);
 - (2) Reasonable collection costs and attorney's fees; and
 - (3) Interest on all costs and charges at an annual rate of twelve percent (12%), commencing thirty (30) days after the Assessment is due.
- (b) Delinquent Assessments and related costs will be a continuing lien on the relevant Condominium when a "Notice of Delinquent Assessment" is recorded against an Owner's fee interest in a Condominium.

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This lien is prior and superior to all other monetary liens on the Owner's fee interest except:

- (1) Taxes, bonds, Assessments and other levies that are superior by law; and
- (2) The lien or charge of any first Mortgage of record made for value in good faith.
- (3) The lien for Assessments which were due and payable prior to the transfer of an Owner's interest in a Condominium shall be deemed extinguished upon the transfer of said interest as the result of the exercise of a power of sale or a judicial foreclosure involving a default under the first Mortgage.

(c) In addition to all other legal rights and remedies, the Association may:

- (1) Bring legal action against an Owner who is personally obligated to pay the Assessment and charges (without foreclosing or waiving any lien security);
- (2) Judicially foreclose the lien against the Condominium, including the Assessment, interest, collection costs and late charges;
- (3) Foreclose the lien by power of sale in accordance with California Civil Code Sections 2924-2924h, or any other lawful manner;
- (4) Bid on the Condominium through authorized agents at the foreclosure sale, to acquire, hold, lease, Mortgage or convey; or
- (5) Temporarily suspend the voting rights of the Owner in accordance with the provisions of this Declaration.

(d) Foreclosure action may not proceed until thirty (30) days after a Notice of Claim of Delinquent Assessment is duly recorded with the relevant County Recorder that sets forth:

- (1) The amount claimed (including all charges provided for above);
- (2) Sufficient legal description of the assessed Condominium;
- (3) The name of the record owner;
- (4) The name and address of the Association as claimant; and
- (5) The name and address of the trustee authorized by the Association to enforce the lien by nonjudicial sale.

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- (e) A copy of the Notice of Claim of Delinquent Assessment must be sent by certified or registered prepaid United States mail, addressed to the Owner or his designated agent previously given in writing to the Association at the Condominium (or an address that the Owner has previously given in writing to the Association which address must be within the United States).
- (f) Upon an Owner's timely payment of a default and all related fees, Association officers may prepare and record (at the Owner's cost) a release of the Notice of Delinquent Assessment.
- (g) No transfer of an Owner's interest in a Condominium as a result of a foreclosure or exercise of a power of sale shall relieve the new Owner whether it be the former beneficiary of the first mortgage or another person, from liability for any assessment thereafter becoming due or from the lien thereof.

6.10 Nonuse and Abandonment.

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

6.11 Waiver of Exemptions.

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

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ARTICLE VII

ARCHITECTURAL CONTROL

7.01 Approval by the Committee.

- (a) An Architectural Committee composed of three Members for the control of structural, and landscaping architecture, and design within the Property is hereby established as set forth below.
- (1) The Declarant shall appoint all of the original members of the Architectural Committee and all replacements until the first anniversary of the issuance of the original public report for the Project. The Declarant reserves to himself the power to appoint a majority of the members of the Committee until 90% of all the Condominiums in the Project have been sold or until the fifth anniversary of the original issuance of the final public report for the Project, whichever first occurs.
 - (2) After one year from the date of issuance of the original public report for the Project, the Board shall have the power to appoint one member to the Architectural Committee until 90% of all of the Condominiums in the Project have been sold or until the fifth anniversary date of the original issuance of the final public report for the Project, whichever first occurs. Thereafter, the Board shall have the power to appoint all of the members of the Architectural Committee.
 - (3) Members appointed to the Architectural Committee by the Board shall be from the membership of the Association and may be members of the Board.
- (b) Any exterior alteration or improvement or change to the exterior of a Unit anywhere on the Property (and any Common Area) or any interior alteration or improvement affecting the structure must first be approved in writing by the Architectural Committee.
- (c) Complete plans and specifications must be submitted in writing showing plot layout, materials, sizes, color, design and landscaping, and with the signature of the Owner.

7.02 Certain Procedures for the Committee.

- (a) The Committee shall meet from time to time as necessary.

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

7.03 Enforcement by Owners.

If the Association fails to take corrective action within a reasonable period of time after knowledge of a violation, an Owner may take legal action to enforce these provisions.

7.04 No Waiver.

Committee approval of a proposal does not limit the Committee's right to withhold approval for similar proposals.

7.05 No Liability.

The Association, and Board (including officers, directors, employees, agents and Members) are not liable in any way for loss, damage or injury connected with the Committee's duties, unless there is evidence of willful misconduct or bad faith (in which case only the guilty person(s) are liable).

7.06 Review Standards.

- (a) The Committee must approve or reject plans and specifications submitted for proposed construction or alteration based on:
 - (1) Aesthetic aspects of design, placement, landscaping, color, finish, materials, and harmony with existing structures; and
 - (2) Overall benefit or detriment to the Property and the area immediately surrounding the Unit involved.

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- (b) The Committee is not responsible for approval of plans from the standpoint of structural safety or conformance with building codes.
- (c) Committee approval of solar heating units may not be withheld unreasonably.

7.07 Rules and Regulations.

The Committee may adopt, amend and repeal reasonable Rules and Regulations to implement the provisions hereof.

7.08 Compensation of Members.

Committee Members may not receive compensation for services rendered, (other than reimbursement for reasonable expenses incurred in carrying on the business of the Association unless approved by a vote or written assent of a majority of the Association members), unless approved by a majority vote of Association Members.

7.09 Appeal.

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

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ARTICLE VIII
MORTGAGEE PROTECTION

8.01 Subordination of Lien and Foreclosure.

(a) Any lien created or claimed in this Declaration:

- (1) Is subject and subordinate to the rights of any first Mortgage that encumbers any part of the Property made for value in good faith; and
- (2) May not in any way impair or invalidate the obligation or priority of a first Mortgage unless expressly subordinated in writing by the Mortgagee.

(b) Foreclosure of any Assessment lien created by any provision of this Declaration shall not operate to impair any lien encumbered by a first Mortgage made for value in good faith.

(c) Upon foreclosure of a first Mortgage, the acquirer of title:

- (1) Will take the Condominium title free of any Assessment lien accrued up to the time of the foreclosure sale (provided that nothing herein is intended to impair the rights of the Association to receive payment on any Assessment lien in the event the net sale proceeds are in excess of what is owed on all encumbrances prior to the Assessment lien);
- (2) Is only obligated to pay Assessments or other Association charges accruing after the Unit title is acquired; and
- (3) Where the Mortgagee obtains title with a deed in lieu of foreclosure, any Assessment lien will not be extinguished.

8.02 Mortgagees Are Not Required to Cure Certain Breaches.

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

8.03 Effect of Breach of Declaration.

(a) Breach of this Declaration may not:

- (1) Cause any forfeiture or reversion of title; or
- (2) Bestow any right of reentry.

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- (b) Breach of this Declaration may be enjoined or abated by court action by the Association, Declarant, or any Unit Owner, and damages may also be awarded provided that:

- (1) The violation does not impair or invalidate the Mortgage lien or deed of trust made for value in good faith; and
- (2) This Declaration binds any Owner whose title is derived through foreclosure, trustee's sale or otherwise.

8.04 Exemption From Right of First Refusal.

- (a) No right of first refusal or similar restriction may be placed on an Owner's right to sell, transfer, or otherwise convey a Unit, unless a Mortgagee of the Property grants written consent to the Association.
- (b) Any right of first refusal or option to purchase a Unit that may be granted to the Association (or other party) may not impair the rights of a first Mortgagee to do any of the following:
 - (1) Foreclose or take title to a Unit, pursuant to the remedies provided in the Mortgage;
 - (2) Accept a deed (or assignment) in lieu of foreclosure in the event of default under the Mortgage; or
 - (3) Sell or lease a Unit acquired by the Mortgagee.

8.05 Restrictions on Certain Changes.

Eligible First Mortgagees are holders of First Mortgages who have requested the Association to notify them of specified proposals and changes to the Governing Documents.

At least sixty-seven (67%) percent of Owners and at least fifty-one percent (51%) of the votes of Eligible First Mortgagees must give written approval before the Association may, by act or omission, do any of the following:

- (a) Abandon, partition, subdivide, encumber, sell or transfer any portion of a Common Area (other than granting easements as specified in this Declaration);
- (b) Alter the method of determining Assessments or other charges levied against an Owner;

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- (c) Partition or subdivide any Condominium;
- (d) Seek to abandon or terminate the Condominium Property, (except as provided by statute in case of substantial loss to the Units or Common Areas);
- (e) Use hazard insurance proceeds for losses to the Property (Unit or Common Area) for other than repair, replacement or reconstruction of the relevant Property (except as provided by statute in case of substantial loss to the Units or Common Areas);
- (f) Change, waive or abandon any regulations or enforcement pertaining to the architectural design, the exterior appearance or the maintenance of the Units or the Common Area(s).
- (g) Fail to maintain Fire and Extended Coverage on insurable Common Area(s) as specified in this Declaration.
- (h) Amend any provision of the Governing Documents concerning:
 - (1) Voting rights;
 - (2) Rights to use the Common Area(s), and reallocation of interests in the Common Area (including Exclusive Use Common Areas);
 - (3) Reserves and responsibility for maintenance, repair and replacement of the Common Property;
 - (4) Unit boundaries;
 - (5) Owners' interests in the Common Area;
 - (6) Convertibility of Common Area into Units or Units into Common Area;
 - (7) Unit leasing;
 - (8) Establishment of self-management by the Association where professional management has been required by any beneficiary, insurer or guarantor of a first Mortgage;
 - (9) Annexation or deannexation of real property;
 - (10) Assessments, Assessment liens, or the subordination of such liens;
 - (11) Casualty and liability insurance (or other insurance or fidelity bonds);
 - (12) Imposition of a right of first refusal or similar restriction of an Owner's right to sell, transfer or otherwise convey the Unit;

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- (13) Restoration or repair of the Property after hazard damage or partial condemnation;
 - (14) Action to terminate the legal status of the Property after substantial destruction or condemnation; and
 - (15) Any provisions that are for the express benefit of first Mortgagees, insurers or governmental guarantors of first Mortgages.
- (i) Change, waive or abandon the provisions of this Declaration (and their enforcement) pertaining to architectural design and control of the exterior appearance of structures, maintenance of the Common Area(s), walks, fences, driveways, lawns and plantings on the Property.

When Unit Owners are considering termination of the legal status of the Project for reasons other than substantial destruction or condemnation of the Property, written approval of approximately 67% of Eligible First Mortgagees must be given.

If an amendment or change is not considered material, an Eligible First Mortgagee's approval will be considered granted if a negative response is not delivered to the Board within thirty (30) days after it receives notice of the proposed amendment, provided notice was delivered personally or by certified or registered mail, return receipt requested.

8.06 Inspection of Association Books and Records.

Any first Mortgage holder has the right to examine the books and records of the Association.

8.07 Condemnation Awards and Insurance Proceeds.

- (a) First Mortgagees have priority over any other party (including the Owner) pursuant to their Mortgage in a case of a distribution to Owners of insurance proceeds or condemnation awards for losses to or taking of Units or Common Areas. Any provision to the contrary in this Declaration, the Bylaws, or other Governing Documents is to such extent void.
- (b) All applicable fire, physical loss or extended coverage insurance policy must contain loss payable clauses acceptable to the affected first Mortgagee, naming them Mortgagees as their interests may appear.