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**DECLARATION OF CONDOMINIUM  
AND COVENANTS, CONDITIONS AND RESTRICTIONS FOR  
LUXTOR RV STORAGE OF GREATER PALM SPRINGS**

NOTE: CERTAIN DISPUTES ARISING UNDER THIS DECLARATION, INCLUDING DISPUTES CONCERNING THE DESIGN OR CONSTRUCTION OF THE PROJECT, SHALL BE SUBMITTED TO JUDICIAL REFERENCE OR ARBITRATION, WHICH ARE FORMS OF ALTERNATIVE DISPUTE RESOLUTION, IN ACCORDANCE WITH ARTICLE XII.

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**DECLARATION OF CONDOMINIUM  
AND COVENANTS, CONDITIONS AND RESTRICTIONS FOR  
LUXTOR RV STORAGE OF GREATER PALM SPRINGS**

THIS DECLARATION is made as of the 7th day of January, 2021, by LUXTOR LIMITED, a Nevada limited liability company qualified to do business in California as LUXTOR LIMITED LLC (“Declarant”).

**RECITALS**

A. Declarant is the owner of that certain real property commonly known as 49751 Oates Lane, City of Coachella, County of Riverside (“County”), State of California (“Property”), and more particularly described as:

PARCEL 1 OF PARCEL MAP NO. 37670 AS PER MAP FILED IN BOOK 248 OF PARCEL  
MAPS, PAGES 7 THROUGH 9 INCLUSIVE, RECORDS OF THE COUNTY OF RIVERSIDE,  
STATE OF CALIFORNIA

B. Declarant intends to subdivide the Property into condominium estates subject to the provisions of the Commercial and Industrial Common Interest Development Act contained in Division 4, Part 5.3 of the California Civil Code, and to establish a plan of condominium ownership for the benefit of all the condominium estates created (upon recordation in the Official Records, the “Condominium Plan”).

C. In furtherance of this intent, Declarant hereby declares that all of the Property is and shall continue to be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied, and improved subject to the declarations, limitations, covenants, conditions, restrictions, reservations, rights, and easements set forth in this Declaration, as this Declaration may be amended from time to time, all of which are declared and agreed to be in furtherance of a plan established for the purpose of enhancing and perfecting the value, desirability, and attractiveness of the Property. All provisions of this Declaration shall constitute covenants running with the land and enforceable equitable servitudes upon the Property, and shall be binding on and for the benefit of all of the Property and all parties having or acquiring any right, title, or interest in all or any part of the Property, including the heirs, executors, administrators, and assigns of these parties and all subsequent owners and lessees of all or any part of a Condominium.

**ARTICLE I. DEFINITIONS**

**1.01 “Articles”** means the Articles of Incorporation of Luxtor Coachella Owners Association, Inc., and any amendments thereto that are or shall be filed in the Office of the Secretary of State of the State of California.

**1.02 “Association”** means Luxtor Coachella Owners Association, Inc., a California nonprofit mutual benefit corporation. The Association is an “Association” as defined in California Civil Code §6528.

**1.03 “Association Manager”** means any person or entity initially appointed by Declarant or by the Board thereafter to manage the Association and such other responsibilities as are not delegated to the Onsite Manager.

**1.04 “Board”** means the Board of Directors of the Association.

**1.05 “Bylaws”** means the Bylaws of the Association and amendments thereto that are or shall be adopted by the Board.

- 1.06** “**Common Area**” means the entire Project except all Units as defined in this Declaration or as shown on the Condominium Plan.
- 1.07** “**Condominium**” means an estate in real property consisting of a fee interest in a Unit, the boundaries of which are shown and described on the Condominium Plan, a fractional undivided interest as a tenant in common in the Common Area of the Project and a Membership in the Association. The fractional undivided interest appurtenant to each Unit shall be an undivided 1/158<sup>th</sup> interest in the Common Area.
- 1.08** “**Condominium Plan**” means that condominium plan described in Recital B of this Declaration and any amendments thereto, entitled.
- 1.09** “**Declarant**” means LUXTOR LIMITED, a Nevada limited liability company qualified to do business in California as LUXTOR LIMITED LLC, its successors and assigns.
- 1.10** “**Declarant Control**” and “**Period of Declarant Control**” is defined in Article XI, and shall terminate as provided in Section 11.05.
- 1.11** “**Declaration**” means this Declaration and any amendments thereto.
- 1.12** “**Development Rights**” means the rights reserved by the Declarant under Article XI of the Declaration to create and add Units and Common Area, and improvements to each, and to withdraw Property subject to development rights.
- 1.13** “**Exclusive Use Area**” means a portion of the Common Area for the exclusive use of an adjacent Unit as defined in this Declaration.
- 1.14** “**Governing Instruments**” means this Declaration, the Articles and Bylaws of the Association, and any Rules and Regulations of the Project.
- 1.15** “**Improvements**” means any construction, structure, fixture or facilities existing or to be constructed on the land included in the Project, including but not limited to: buildings, trees and shrubbery planted by the Declarant or the Association; paving, utility wires, pipes, and light poles.
- 1.16** “**Member**” means every person or entity entitled to membership in the Association (“**Membership**”) as provided in this Declaration.
- 1.17** “**Mortgage**” means a mortgage or deed of trust encumbering a Condominium or any other portion of the Project. “**First Mortgage**” means a mortgage that has priority over all other mortgages encumbering the same Condominium or other portions of the Project.
- 1.18** “**Mortgagee**” means a Person to whom a Mortgage is made and includes the beneficiary of a deed of trust and any guarantor or insurer of a mortgage. “**Institutional Mortgagee**” means a mortgagee that is a financial intermediary or depository, such as a bank, savings and loan, or mortgage company, that is chartered under federal or state law and that lends money on the security of real property or invests in such loans, or any insurance company or governmental agency or instrumentality. “**First Mortgagee**” means a mortgagee that has priority over all other mortgages or holders of mortgages encumbering the same Condominium or other portions of the Project. The term “**Beneficiary**” shall be synonymous with the term “**Mortgagee**.”
- 1.19** “**Mortgagor**” means a Person who mortgages his, her, or its property to another (i.e., the maker of a mortgage), and shall include the trustor of a deed of trust. The term “**Trustor**” shall be synonymous with the term “**Mortgagor**.”
- 1.20** “**Official Records**” means the Office of the County Recorder of Riverside County California.
- 1.21** “**Onsite Manager**” means the person or persons occupying the Onsite Managers Unit and who is

responsible for providing full time security for the Project and other such services as may be delegated by the Manager, the Board and/or the Declarant.

**1.22 "Onsite Managers Unit"** means Unit A-1A and Unit A-1B which together comprise the residence and garage of the Onsite Manager. The Onsite Managers Unit also has rights to the second floor deck adjoining Unit A-1A which is designated as an Exclusive Use Area.

**1.23 "Owner" or "Unit Owner"** means the record holder or holders of record fee title to a Condominium, including Declarant, and any contract sellers under recorded contracts of sale. "Owner" shall not include any persons or entities that hold an interest in a Condominium merely as security for performance of an obligation.

**1.24 "Person"** means a natural individual, a corporation, or any other entity with the legal right to hold title to real property.

**1.25 "Project"** means the entire parcel of real property described on the Condominium Plan and all Improvements thereon.

**1.26 "Project Office"** means the onsite office in Administrative Unit A-2 for management of the Project and services provided in the Service Units.

**1.27 "Property"** means the real property described in the Recitals and in any Supplemental Declaration recorded pursuant to Article XI of this Declaration.

**1.28 "Rules and Regulations"** means any Rules and Regulations for Luxtor RV Storage of Greater Palm Springs regulating the use of the Common Area and adopted by the Declarant, or by the Association pursuant to Section 3.06(b) of this Declaration.

**1.29 "Special Declarant Rights"** means the right reserved for the benefit of a Declarant set forth in Article XI.

**1.30 "Subdivision Map"** means the recorded map described in paragraph A of the Recitals.

**1.31 "Unit"** means that portion of a Condominium that consists of a fee interest in a Unit. "Unit" does not include the other elements of a Condominium. Each Unit shall be a separate fee estate, as separately shown, numbered, and designated in the Condominium Plan or any Supplemental Declaration. Each Unit consists of space or spaces bounded by and contained within the interior unfinished surfaces of the perimeter walls, floors, ceilings, windows, and doors (including the wall coverings and floor coverings), as shown on the Condominium Plan. Units shall be further divided into "Storage Units", "Administrative Units" and "Service Units" as more fully described in Section 2.01 below.

## **ARTICLE II. THE PROPERTY**

### **Project Subject to Declaration**

**2.01** The entire Project shall be subject to this Declaration. The covenants and restrictions set forth in this Declaration shall be enforceable equitable servitudes and shall inure to the benefit of and bind all Owners. These servitudes may be enforced by the Association or any Owner. The Project is comprised of Common Area, Exclusive Use Area, and Units. Units are further broken down into "Storage Units", "Administrative Units" and "Service Units". Storage Units are those reserved for storage purposes by Owners in Buildings C, D and E. Administrative Units are located in Building A and include the Project Office and Onsite Managers Unit and the second floor deck Exclusive Use Area for the Onsite Managers Unit. Service Units are located in Buildings B and F where RV services are provided by the owner or operator of such Units.



### **Prohibition Against Severance of Elements**

**2.02** Any conveyance, judicial sale, or other voluntary or involuntary transfer of a Unit shall include the undivided interest in the Common Area and any Exclusive Use Area designated to such Unit. Any conveyance, judicial sale, or other voluntary or involuntary transfer of the Owner's entire estate shall also include the Owner's Membership interest in the Association, as provided in Section 3.02 of this Declaration. Any transfer that attempts to sever those component interests shall be void.

### **Common Area; Easements**

**2.03** The following provisions govern the use and enjoyment of the Common Area:

(a) The Association shall have an easement in, to, and throughout the Common Area and its improvements to perform its duties and exercise its powers.

(b) Except as provided in this Declaration, there shall be no judicial partition of the Common Area, nor shall Declarant or any person acquiring an interest in all or any part of the Project seek any judicial partition.

(c) Subject to the provisions of this Declaration, each Owner has nonexclusive rights of ingress, egress, and support through the Common Area. These rights shall be appurtenant to and shall pass with title to every Condominium.

(d) The Members' rights of use and enjoyment of the Common Area shall be subject to the restrictions set forth in the Governing Instruments, including the following:

- (1) The right of the Association to adopt and enforce Rules and Regulations for the use of the Common Area.
- (2) The right of the Association to reasonably limit the number of guests and tenants using the Common Area.
- (3) The right of the Association to assign or otherwise control the use of any unassigned parking spaces within the Common Area.
- (4) The right of the Association to suspend the right of any Owner, and the Persons deriving rights from any Owner, to use and enjoy the Common Area for any period during which the Owner is delinquent in the payment of any assessment.
- (5) The right of the Association to cause the construction of additional improvements in the Common Area, or to cause the alteration or removal of existing improvements on the Common Area.
- (6) The right of the Association to grant, consent to, or join in the grant or conveyance of easements, licenses, or rights-of-way in, on, or over the Common Area.
- (7) The rights of Declarant as described in this Declaration.
- (8) The right of the Association to reasonably restrict access to roofs, maintenance facilities or areas, landscaped areas, utility and drainage lines, conduits, areas and equipment, and similar areas of the Project.
- (10) The right of the Board to approve any proposed alteration or modification to the Common Area or within any Unit.

(e) Declarant hereby reserves easements in, on and over the Common Area as provided in Article XI. Declarant shall be exempt from the use restrictions of Article V to the extent necessary to complete any construction work, sales activities, or additions to or affecting the Project. This exemption includes, but is not limited to, maintaining Units as models, placing advertising signs on the Property, and generally using Project

lots and the Common Area to carry on construction activity.

(f) The Declarant and the Association may grant to third-parties easements in, on, and over the Common Area for the purpose of constructing, installing, or maintaining necessary utilities and services, and each Unit Owner, in accepting his or her deed to the Unit, expressly consents to these easements. However, no such easement can be granted if it would materially interfere with any exclusive easement, or with any Owner's use, occupancy, or enjoyment of his or her Unit.

(g) A Class A Owner who has sold his or her Condominium to a contract purchaser or who has leased or rented the Condominium shall be entitled to delegate his or her rights to use and enjoy the Common Area to any contract purchaser, tenant, or subtenant, subject to reasonable regulation by the Board. If the Owner makes such a delegation of rights, the Owner and the Owner's guests, employees, and invitees shall not be entitled to use and enjoy the Common Area for so long as the delegation remains effective.

(h) Each Owner shall be liable to the Association for any damage to the Common Area or to Association-owned property, to the extent that the damage is not covered by insurance, if the damage is sustained because of the negligence, willful misconduct, or unauthorized or improper installment or maintenance of any improvement by the Owner or the Owner's guests, tenants, contract purchasers, or invitees. In the case of joint ownership of a Condominium, the liability of the co-owners shall be joint and several, unless the co-owners and the Association have agreed in writing to an alternative allocation of liability.

(i) Each Owner shall have an easement in rooftop part of the Common Area and stairwell access thereto, to the extent reasonably necessary to maintain, repair and replace mechanical equipment, including but not limited to HVAC and evaporative cooler units. However, the Association shall contract for regularly scheduled routine maintenance of, and shall otherwise properly maintain, repair and replace HVAC units and other mechanical equipment as may be located in the Common Area. An Owner shall not perform major repairs or replacements of HVAC units and other mechanical equipment in the Common Area without the prior written consent of the Association.

(j) Declarant reserves an easement for the Association in each Unit with respect to any utility or service and associated lines, pipes and equipment in order to perform the Association's obligations of repair and maintenance, as set forth in the attached Maintenance and Utility Matrix or as otherwise specified in this Agreement.

#### **Partition**

**2.04** There shall be no judicial partition of the Project or any part of it, nor shall Declarant or any person acquiring an interest in the Project or any part of it seek any judicial partition, except as provided in this Section 2.04. The Owner of a Condominium may maintain a partition action as to the entire Project, as if all of the Owners in the Project were tenants in common in the Project in the same proportion as their interests in the Common Area, and an appropriate court shall order partition by sale of the entire Project, on a showing of any of the following:

- (1) The Project has been in existence for more than 50 years and is obsolete and uneconomical, and owners holding (in the aggregate) more than a 50 percent interest in the Common Area oppose repair or restoration of the Project; or
- (2) The Project has been damaged or destroyed and the other criteria set forth in Section 8.03 of this Declaration have been satisfied.

#### **Maintenance by Owners**

**2.05** Each Owner shall maintain the Owner's Unit, including the equipment and fixtures in the Unit and the interior surfaces of the walls, ceilings, floors, and doors, in a clean, sanitary, and attractive condition. This maintenance shall be at the Owner's expense. The Owner shall not take any actions that would impair or

otherwise alter the structural integrity or mechanical systems or lessen the support of the Unit or any other portion of the Project, without the prior written approval of the Association. The foregoing general provisions shall be subject to the provisions of the Maintenance and Utility Matrix attached hereto, subject to modification and amendment as the Members shall from time to time determine is appropriate.

#### **Presumption Regarding Boundaries of Units**

**2.06** In interpreting deeds, declarations, and plans, the existing physical boundaries of a Unit, including any Unit reconstructed in substantial accordance with the Condominium Plan and the original construction plans for the Project, shall be conclusively presumed to be its boundaries, rather than the description expressed in the deed, Condominium Plan, or Declaration. This presumption applies regardless of settling or lateral movement of the building and regardless of minor variances between boundaries, as shown on the Condominium Plan or described in the deed and Declaration, and the boundaries of the building as constructed or reconstructed.

#### **Exclusive Use Area – Onsite Managers Unit Deck**

**2.07** The deck adjacent to Unit 1-1B and above Unit 1-1A of Onsite Managers Unit and within the Common Area shall be deemed an Exclusive Use Area. The occupant of the Onsite Managers Unit shall be responsible for day to day maintenance and cleaning of the deck. The Association shall be responsible for all other maintenance, repairs, and replacements, except to the extent caused by the neglect or action of the occupant of the Onsite Managers Unit or such persons guest or other invitee.

#### **No Representations or Warranties**

**2.08** Nothing in this Declaration constitutes a representation or warranty, express or implied, in connection with the Project, its physical condition, zoning, compliance with laws, fitness for intended use, or in connection with the subdivision, sale, operation, maintenance, cost of maintenance, taxes or regulation of the Project. Declarant makes no representation or warranty as to the future enforceability of any provision of this Declaration or any other Governing Instruments.

### **ARTICLE III. OWNERS ASSOCIATION**

#### **Organization of the Association**

**3.01** The Association is or shall be incorporated under the name of Luxtor Coachella Owners Association, Inc., as a nonprofit corporation organized under the California Nonprofit Mutual Benefit Corporation Law. From the closing of the escrow for the first sale of a Unit, the Association shall be charged with the duties and invested with the powers prescribed by law and set forth in this Declaration, the Articles of Incorporation, and the Bylaws.

#### **Membership**

**3.02** Every Owner, on becoming an Owner, shall automatically become a Member of the Association. Ownership of a Unit is the sole qualification for Membership. Each Member shall have the rights, duties, privileges, and obligations set forth in the Governing Instruments. Membership shall automatically cease when the Owner no longer holds an ownership interest in a Condominium. All Memberships shall be appurtenant to the Condominium conveyed, and cannot be transferred, assigned, conveyed, hypothecated, pledged, or alienated except as part of a transfer of the Owner's entire ownership interest, and then only to the transferee. Any transfer of the Owner's title to his or her Condominium shall automatically transfer the appurtenant Membership to the transferee. The Association may levy a reasonable transfer fee against a new Owner and such Owner's Condominium (which fee shall be paid through escrow or added to the annual assessment chargeable to such new Owner, at the Board's discretion) to reimburse the Association for the administrative

cost of transferring the Membership to the new Owner on the Association's records.

### **Classes of Membership**

**3.03** The Association shall have two classes of voting Membership, as follows:

(a) All Owners, other than the Declarant, shall be Class A members. Class A Membership entitles the holder to one vote for each Condominium owned. When a Condominium is owned by more than one person, only one vote may be cast for the Condominium, as provided in Section 3.04(b) of this Declaration.

(b) The Declarant shall be the sole Class B member. The Class B member shall be entitled to three votes for each Unit owned. Class B Membership shall cease and be converted to Class A Membership on the occurrence of whichever of the following is first in time:

(1) The total outstanding votes of the Class A members equals or exceeds seventy five percent (75%) of the total outstanding votes of the Class B member; or

(2) Two (2) years after Declarant has ceased to offer Units for sale in the ordinary course of business.

(c) The Declarant shall be the sole Class C member. The Class C member shall not be entitled to vote but shall be entitled to appoint Directors as provided in Section 11.02(e).

### **Voting Rights**

**3.04** All voting rights of the Owners shall be subject to the following restrictions, limitations, and requirements:

(a) Except as provided in this Article, on each matter submitted to a vote of the Owners, each Owner shall be entitled to cast one vote for each Condominium owned.

(b) Fractional votes shall not be allowed. When there is more than one record Owner of a condominium ("co-owners"), all of the co-owners shall be Members, but only one of them shall be entitled to cast the single vote attributable to the Condominium. Co-owners should designate in writing one of their number to vote. If no such designation is made or if it is revoked, the co-owners shall decide among themselves, by majority vote, how that Condominium's vote is to be cast. Unless the Board receives a written objection in advance from a co-owner, it shall be conclusively presumed that the voting co-owner is acting with the consent of his or her co-owners. No vote shall be cast for the Condominium on a particular matter if a majority of the co-owners present in person or by proxy cannot agree on a vote.

(c) Except as provided in Section 3.07(c) of this Declaration, governing the enforcement of certain bonded obligations, and Section 3.06 of the Bylaws, governing the removal of directors, as long as two classes of voting Memberships exist, any provision of this Declaration, the Articles, or the Bylaws that requires the approval of a specified percentage of the voting power of the Association (rather than simply requiring the vote or written consent of a majority of a quorum) shall require the approval of the specified percentage of the voting power of each class of Membership. Except as provided in Section 3.07(c) of this Declaration and Section 3.06 of the Bylaws, when the Class B Membership has terminated, any provision of this Declaration, the Articles, or the Bylaws that requires the approval of a specified percentage of the voting power of the Association shall require the vote or written consent of Owners representing the specified percentage of both the total voting power of the Association and the voting power of the Association residing in Owners other than Declarant.

(d) The Board shall fix, in advance, a record date or dates for the purpose of determining the Owners entitled to notice of, and to vote at, any meeting of Owners. The record date for notice of a meeting shall not be more than 90 or less than 10 days before the date of the meeting. The record date for voting shall not be

more than 60 days before the date of the meeting or before the date on which the first written ballot is mailed or solicited. The Board may also fix, in advance, a record date for the purpose of determining the Owners entitled to exercise any rights in connection with any other action. Any such date shall not be more than 60 days prior to the action.

(e) Every Owner entitled to vote at any election of the Directors may cumulate the Owner's votes and give one candidate a number of votes equal to the number of Directors to be elected multiplied by the number of votes to which the Owner is entitled, or distribute the Owner's votes on the same principle among as many candidates as the Owner thinks fit. No Owner shall be entitled to cumulate votes for a candidate or candidates unless the candidate's name or candidates' names have been placed in nomination prior to voting and an Owner has given notice at the meeting prior to the voting of the Owner's intention to cumulate votes. If any one Owner has given such notice, all Owners may cumulate their votes for candidates in nomination.

### **Membership Meetings**

**3.05** Article II of the Bylaws governing meetings of the Members is hereby incorporated by reference.

### **General Powers and Authority**

**3.06** The Association shall have all the powers of a nonprofit mutual benefit corporation organized under the California Nonprofit Mutual Benefit Corporation Law, subject to any limitations set forth in this Declaration or in the Articles and Bylaws of the Association. It may perform all acts that may be necessary for or incidental to the performance of the obligations and duties imposed on it by this Declaration or the other Governing Instruments. Its powers shall include, but are not limited to, the following:

(a) The Association shall have the power to establish, fix, levy, collect, and enforce the payment of assessments against the Owners in accordance with the procedures set out in Article IV of this Declaration.

(b) The Association shall have the power to adopt reasonable Rules and Regulations governing the use of the Common Area and its facilities, Exclusive Use Area and of any other Association property. These Rules and Regulations may include, but are not limited to: reasonable restrictions on use by the Owners and their guests, employees, tenants, and invitees; rules of conduct; and the setting of reasonable fees for the use of recreational facilities. A copy of the current Rules and Regulations, if any, shall be given to each Owner and shall be posted at conspicuous places in the Common Area. If any provision of the Rules and Regulations conflicts with any provision of this Declaration, the Articles, or the Bylaws, the Declaration, Articles, or Bylaws shall control to the extent of the inconsistency.

(c) The Association shall have the right to institute, defend, settle, or intervene in litigation, arbitration, mediation, or administrative proceedings in its own name as the real party in interest and without joining with it the Owners, in matters pertaining to the following:

- (1) Enforcement of this Declaration, the Articles, Bylaws, and Rules and Regulations.
- (2) Damage to the Common Area and Exclusive Use Area.
- (3) Damage to the Units that the Association is obligated to maintain or repair.
- (4) Damage to the Units that arises out of, or is integrally related to, damage to the Common Area, Exclusive Use Area, or Units that the Association is obligated to maintain or repair.

The Association may enforce payment of assessments in accordance with the provisions of Article IV of this Declaration.

(d) In addition to the general power of enforcement described above, the Association may discipline its Owners for violation of any of the provisions of the Governing Instruments or Rules and Regulations by suspending the violator's voting rights and privileges for use of the Common Area, or by imposing monetary

penalties, subject to the following limitations:

- (1) Any suspension of an Owner's association privileges shall not exceed sixty (60) days for each violation.
- (2) If the Association imposes a monetary penalty, the Board shall distribute to each Owner, by personal delivery or first-class mail, a schedule of the monetary penalties that may be assessed for those violations.
- (3) Except as provided in Article IV of this Declaration, relating to foreclosure for failure to pay assessments, or as a result of the judgment of a court or a decision arising out of arbitration, the Association shall in no way abridge the right of any Owner to the full use and enjoyment of his or her Unit.

(e) The Association, acting through the Board, shall have the power to delegate its authority, duties, and responsibilities to its officers, employees, committees, or agents, including a professional association management agent. The term of any agreement with a manager or the Declarant for the furnishing of maintenance, repair, and related services shall not exceed one year, renewable by agreement of the parties for successive one-year periods. Such an agreement shall be terminable by either party (1) for cause on 30 days' written notice and (2) without cause or the payment of a termination fee on 90 days' written notice.

(f) The Association's agents or employees shall have the right to enter any Unit or Exclusive Use Area when necessary in connection with any maintenance, landscaping, or construction work for which the Association is responsible. This entry shall be made only on notice to the Owner (except in the case of an emergency) and with as little inconvenience to the Owner as is practicable, and the Association shall repair any resulting damage at its own expense.

#### **Duties of the Association**

**3.07** In addition to the duties delegated to the Association or its agents and employees elsewhere in the Governing Instruments, the Association, acting through the Board, shall be responsible for the following:

(a) The Association shall operate, maintain, repair, and replace the Common Area and Exclusive Use Area and its improvements, all landscaping, and the exterior surfaces of all structures and Units in the Project, or contract for the performance of that work, subject to the provisions of the Maintenance and Utility Matrix attached hereto, subject to modification and amendment as the Members shall from time to time determine is appropriate, and subject to Article VIII of this Declaration relating to destruction of improvements, Article IX of this Declaration pertaining to eminent domain, and Section 2.03(h) of this Declaration relating to damage caused by Owners. These areas and improvements shall be kept in a clean, sanitary, and attractive condition. Further, the Association shall keep the Common Area free of infestation by wood-destroying pests or organisms. If infestation is present, the Association shall have the right to cause the temporary, summary removal of any occupant of the Project while the Association has the infestation treated. The temporary relocation must be preceded by notice provided by the Association pursuant to Civil Code Section 6720. The Association shall also have the exclusive right and duty to acquire and maintain any furnishings and equipment for the Common Area that it determines are necessary and proper. As a general rule, maintenance costs shall be included in the regular assessments. However, if additional work is required for a particular Unit, the expenses of that additional work shall be charged solely to the Owner of the Unit in the month in which the work is performed. Further, the Owner of a Unit shall pay the costs of any temporary relocation of any occupant of the Unit occasioned by the presence of wood-destroying pests or organisms. If the Owner does not pay for the additional work within thirty (30) calendar days after receiving the bill, the Association shall institute appropriate collection actions and shall recover the reasonable costs of collection, including attorneys' fees. All such amounts shall bear interest at the maximum rate allowed by law from the due date until paid.

(b) The Association shall use the maintenance fund described in Section 4.03 of this Declaration to, among other things, acquire and pay for the following:

- (1) Water, sewer, electrical, telephone, and other necessary utility service for the Common Area and, to the extent not separately metered and charged, for the Units, provided that the Owner(s) of the Administrative and/or Service Units may, in their sole discretion, elect to pay any or all monthly utility charges for the Common Area;
- (2) The insurance policies described in Article VII of this Declaration;
- (3) The services of any personnel that the Board determines are necessary or proper for the operation of the Common Area, including but not limited to the Onsite Manager and the Association Manager; and
- (4) Legal and accounting services necessary or proper in the operation of the Common Area or the enforcement of this Declaration.

(c) **Capital Improvements.** Subject to the terms of this Declaration, the Association may approve the construction, installation or acquisition of a particular capital improvement to the Common Area ("Capital Improvements"). The Association may approve Capital Improvement Assessments to fund such work pursuant to Section 4.06 below.

(d) Within 120 days after the close of each fiscal year, the Association shall prepare and make available to each Owner by individual delivery, a review of the Association's financial statement consisting of the following:

- (1) A balance sheet as of the end of the fiscal year;
- (2) An operating (income) statement for the fiscal year;
- (3) A statement of changes in financial position for the fiscal year;
- (4) For any fiscal year at the request of not less than ten (10) Members required for a quorum may request, a copy of the review of the annual report prepared by a licensee of the California State Board of Accountancy; and
- (5) A pro forma operating budget for the current fiscal year.

(e) The Association shall prepare a balance sheet, as of an accounting date that is the last day of the month closest in time to six months from the date of closing of the first sale of a Unit in the Project, and an operating statement for the period from the date of the first closing to the above accounting date. The Association shall distribute this statement to the Owners within 60 days after the accounting date. This operating statement shall include a schedule of assessments received and receivable identified by the number of the Unit and the name of the Owner assessed.

(f) The Association shall provide any Owner with the following documents within 10 days of the mailing or delivery of a written request for the documents:

- (1) A copy of the Governing Instruments.
- (2) A copy of the most recent financial statement distributed pursuant to Section 3.07(d) of this Declaration.
- (3) A written statement from an authorized representative of the Association specifying (i) the amount of any assessments levied on the Owner's Unit that are unpaid on the date of the statement; and (ii) the amount of late charges, interest, and costs of collection that, as of the date of the statement, are or may be made a lien on the Owner's Unit pursuant to Section 4.09 of this Declaration. The Association may charge the Owner a reasonable fee to cover its cost to prepare and reproduce those requested items.

(g) The Association shall pay all real and personal property taxes and assessments levied against it, its

personal property and the Common Area.

#### **Board of Directors**

**3.08** The affairs of the Association shall be managed and its duties and obligations performed by a Board of Directors, as provided in the Bylaws, which is hereby incorporated by reference.

#### **Inspection of Books and Records**

**3.09** Article XI of the Bylaws, governing the duty of the Association to maintain certain books and records and the rights of Owners and Directors to obtain and inspect those books and records, is hereby incorporated by reference.

### **ARTICLE IV. ASSESSMENTS AND COLLECTION PROCEDURES**

#### **Covenant to Pay**

**4.01** The Declarant covenants and agrees, for each Unit owned by it in the Project, and each Owner by acceptance of the deed to the Owner's Unit is deemed to covenant and agree to pay to the Association the regular and special assessments levied pursuant to the provisions of this Declaration. A regular or special assessment and any late charges, reasonable costs of collection, and interest, as assessed in accordance with the provisions of this Article, shall be a debt of the Owner of the Unit at the time the assessment or other sums are levied. The Owner may not waive or otherwise escape liability for these assessments by nonuse of the Common Area or abandonment of the Owner's Unit.

#### **Exemptions From Assessments**

**4.02** The obligation to pay assessments shall be subject to the following exemptions:

Any Owner (including Declarant) of a lot in the Project shall be exempted from that portion of any assessment that is for the purpose of defraying expenses and reserves directly attributable to the existence and use of a common facility that is not complete at the time the assessment commences. This exemption shall be in effect only until a notice of completion of the common facility is recorded or the common facility is placed into use, whichever occurs first.

#### **Purpose of Assessments**

**4.03** The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the Owners, for the operation, replacement, improvement, and maintenance of the Property, and to discharge any other obligations of the Association under this Declaration. All assessment payments shall be put into a maintenance fund to be used for these purposes.

#### **Assessment Period; Commencement**

**4.04** The fiscal year for the Association shall be a calendar year, unless the Board decides otherwise. The regular assessment period shall commence on January 1 and terminate on December 31 of each year; provided, however, that the first regular assessment period for all Condominiums in the Project shall commence on the date of the first conveyance of a Unit in the Project, and shall terminate on December 31 of that year.

#### **Regular Assessments; Payment and Collection**

**4.05** The Board shall determine and collect regular assessments as follows:

(a) **Determination of Assessment Amount.** Within 60 days prior to the beginning of each fiscal year



of the Association, the Board shall estimate the net charges to be paid during that year, including a reasonable provision for contingencies, repairs and replacements (Reserve Fund), with adjustments made for any expected income and surplus from the prior year's fund, and shall provide notice of such amount of assessments to Owners not less than 30 days before the beginning of the next fiscal year. The Reserve Fund shall be distinct from funds collected for Capital Improvements as described in 3.07(c) and 4.06(b).

**(b) Payment of Assessments.** Each Unit Owner's assessment amount for any assessment determined under this Declaration is per Unit. Each Owner is obligated to pay assessments to the Board annually in advance on or before January 1 of each year. Regular assessments for fractions of any year shall be prorated on the basis of a 360-day year. Declarant shall pay on a monthly basis its full prorated share of the regular assessments on any unsold or retained Condominiums subject to regular assessments.

**(c) Payment on Close of Escrow.** Notwithstanding anything to the contrary in this Article 4, on the close of escrow for the sale of each Condominium, the Association may collect from the buyer through escrow, in advance:

(1) The annual regular assessment for the current fiscal year applicable to the Condominium for which the close of escrow is occurring, prorated as of the date of closing.

(2) With respect to the first sale of each Condominium from Declarant, the Association may collect from the buyer through escrow, a contribution in the amount of \$400 per Condominium, which shall be used to establish the Reserve Fund as described in Section 10.10 and shall not be deemed regular assessment payments.

#### **Special Assessments; Capital Improvement Assessments**

**4.06** (a) If the Board determines that the amount to be collected from regular assessments will be inadequate to defray the common expenses for the year due to the cost of any construction, unexpected repairs or replacements of capital improvements on the Common Area, or any other reason, it shall make a special assessment for the additional amount needed. Special assessments shall be levied and collected in the same manner as regular assessments.

(b) In addition to the foregoing subparagraph (a), the Association may levy an assessment for the purpose of defraying, in whole or in part, the cost of any construction or replacement of a capital improvement in accordance with the provisions of Section 3.07(c) ("Capital Improvement Assessment"). Capital Improvement Assessments shall be due and payable by all Owners in such installments and during such period or periods as the Board shall designate, and the Board shall deposit and accumulate such funds until used in a separate account ("Capital Improvement Account").

(c) As referenced in Section 4.05(a)(i) and (ii), the Association may levy additional assessments on a one time or annual basis on Buildings A, B and/or F to cover expenses arising from the specific uses of such buildings to the extent such expense is an Association responsibility under this Declaration. Upon collection the Association shall account for such expenses and reconcile annually as necessary.

#### **Limitations on Assessments**

**4.07** The Board shall comply with the following requirements governing the imposition and amounts of assessments:

(a) For any fiscal year, the Board may impose a regular assessment per Unit that is as much as 20 percent greater than the regular assessment for the preceding fiscal year, provided the Board has either (1) distributed the annual budget report described in Section 3.07(d) for the current fiscal year or (2) obtained the approval of a majority of a quorum of Owners, pursuant to Civil Code Section 6524, at an Owner meeting or election.

(b) The Board may impose, for any fiscal year, a regular assessment per Unit that is more than 20 percent greater than the regular assessment for the preceding fiscal year, or may levy special assessments that in the aggregate exceed 5 percent of the budgeted gross expenses of the Association for that fiscal year, provided the increase or levy is approved by a majority of a quorum of Owners, pursuant to Civil Code Section 6524, at an Owner meeting or election.

(c) The Board may, without complying with the above requirements, make an assessment increase that is necessary for an emergency situation. An emergency situation is an extraordinary expense that is:

- (1) Required by a court order.
- (2) Necessary to repair or maintain the Project or any part of it for which the Association is responsible when a threat to personal safety in the Project is discovered.
- (3) Necessary to repair or maintain the Project or any part of it for which the Association is responsible that could not have been reasonably foreseen by the Board in preparing and distributing the pro forma operating budget pursuant to Section 3.07(d).

Before the Board may impose or collect an assessment in the type of emergency situation described in (3), above, it shall pass a resolution containing written findings as to the necessity of the extraordinary expense and why the expense was not or could not have been reasonably foreseen in the budgeting process, and shall distribute the resolution to the Owners with the notice of assessment.

(d) The Board shall provide individual notice pursuant to Civil Code Section 6514 to the Owners of any increase in the regular or special assessments. The Board shall provide this notice not less than 30 or more than 60 days prior to the due date of the increased assessment.

#### **Late Charges**

**4.08** Late charges may be levied by the Association against an Owner for the delinquent payment of regular and special assessments. An assessment is delinquent 15 days after its due date. If an assessment is delinquent the Association may recover all of the following from the Owner:

- (a) Reasonable costs incurred in collecting the delinquent assessment, including reasonable attorneys' fees.
- (b) A late charge not exceeding 10 percent of the delinquent assessment or such other rate as adopted by the Board from time to time, whichever is greater
- (c) Interest on the above sums, at the maximum rate allowed by law, commencing 30 days after the assessment becomes due.

No late charge may be imposed more than once for the delinquency of the same payment. However, the imposition of a late charge on any delinquent payment shall not eliminate or supersede charges imposed on prior delinquent payments.

#### **Enforcement of Assessments and Late Charges**

**4.09** At least 30 days before the Association can place a lien on a Unit for a past due debt for a regular or special assessment, the Association must notify the Owner by certified mail of the following:

- (1) A general description of the Association's collection and lien enforcement procedures.
- (2) The method of calculation of the amount due.
- (3) A statement that the Owner has the right to inspect the Association records.

- (4) A statement prescribed by Civil Code Section 6812(a) informing the Owner that the Owner's Unit may be subject to foreclosure and sale without court action.
- (5) An itemized statement of the charges owed by the Owner, including items on the statement that indicate the amount of any delinquent assessments, the fees and reasonable costs of collection, reasonable attorney's fees, and any late charges and interest.
- (6) A statement that the Owner will not be liable to pay the charges, interest, and costs of collection, if it is determined the assessment was paid on time.
- (7) The Owner's right to request a meeting with the Board if the Owner disputes the debt.

An Owner may dispute the debt by submitting to the Board a written explanation within 15 days of the mailing of the Association's notice. The Board must respond to an Owner's timely explanation within 15 days of the mailing of the Owner's explanation.

An Owner also may submit a written request to meet with the Board to discuss a payment plan for the debt. The request must be mailed within 15 days of the mailing of the Board's notice. The Board must then meet with the Owner in executive session within 45 days of the mailing of the Owner's request. If there is no regularly scheduled Board meeting within that time period, the Board may designate a committee of one or more members to meet with the Owner.

Any partial payments made toward the debt will first be applied to the assessments owed, and only after the principal owed is paid in full will the payments be applied to the fees and costs of collection, attorneys' fees, late charges, or interest. When an Owner makes a payment, the Owner may request a receipt and the Association shall provide it. The receipt shall indicate the date of payment and the person who received it. The Association shall provide a mailing address for overnight payment of assessments.

A debt for a delinquent regular or special assessment and any late charges, reasonable fees and costs of collection, reasonable attorneys' fees, and interest shall become a lien on the Unit from and after the time a notice of delinquent assessment is recorded and mailed in accordance with the requirements of Civil Code Section 6814.

Any such lien may be enforced in any manner permitted by law, including judicial foreclosure or nonjudicial foreclosure. Any nonjudicial foreclosure shall be conducted by the trustee named in the notice of delinquent assessment or by a trustee substituted pursuant to Civil Code Section 2934a, in accordance with Civil Code Sections 2924, 2924b, and 2924c.

If the sums specified in the notice of delinquent assessment are paid before the completion of any judicial or nonjudicial foreclosure, the Association shall record a notice of satisfaction and release of the lien. On receipt of a written request by the Owner, the Association shall also record a notice of rescission of any declaration of default and demand for sale.

## **ARTICLE V. USE RESTRICTIONS AND COVENANTS**

### **Storage Use**

**5.01** In exercising the right to occupy or use a Unit or the Common Area and the Improvements, the Owner and the Owner's guests, employees, tenants, and invitees shall comply with the following storage use restrictions:

(a) Storage Units shall be used for permissible and authorized storage purposes only by the Unit Owner, or by those utilizing the Unit pursuant to a lease or rental agreement or otherwise under a grant of authority from the Unit Owner. Use of the Units and the Common Area shall strictly comply with the permissible uses authorized by the Declaration ("Permissible Uses"). Permissible uses for storage are

limited to: long term storage of **Recreational Vehicles only, Classic or Collector Car, ATV, RV's, Boats**, and such other related personal consumer items as are specifically authorized by this Declaration. No activity shall be carried on which would constitute a violation of any term or condition of the Declaration. "Authorized Storage" shall mean that type of storage of personal property that is incidental to the permissible uses of a Unit, provided that the property is not an improper storage of a "hazardous material" as defined under any applicable law of the City of Coachella or the State of California or the United States, and further that the storage is not incidental to a prohibited use.

(b) Unit Owners or tenants may engage in routine maintenance on a boat, automobile, truck, recreational vehicle or other vehicle and/or other equipment which is stored within their Unit; provided, however, that no such routine maintenance may be engaged in as a business for remuneration, nor may the same be conducted in a manner which will pose any risk to any other Units and/or to any portion of the Common Area; further provided that no routine maintenance shall be conducted outside the Unit and all wasted products or by-products of that routine maintenance, if properly conducted in the Unit, including but not limited to start up gasoline not fully placed in a storage container, no larger than five (5) gallons in capacity, in the boat or vehicle equipment, and all waste oils, waste anti-freeze, petroleum cleaning products, cleaning rags and containers, shall be fully removed from the Unit by the Unit Owner or tenant at the end of each and every routine maintenance session. Routine maintenance products or by-products shall not be stored in a Unit. Isolated sales of one (1) or more items stored in a Unit, is permitted. Garage sales or other sales activity activating heavy traffic are not permitted, without written permission of the Board, which may be withheld at its sole discretion.

(c) This Declaration does not envision or address all potential uses or variations of potential uses of a Unit or the Common Area. The Declarant during the period of Declarant Control, and thereafter the Board, shall be the final determinant as to whether event any activity or use of any Unit or Common Area is permitted or prohibited by Sections 5.01 and 5.02, respectively, and shall have the authority to determine whether uses are to be permitted, prohibited or limited if not directly addressed by this Declaration. Such determination shall be made in in the spirit of and consistent with the provisions of this Declaration.

#### **Prohibited Activities and Uses**

**5.02** In exercising the right to occupy or use a Unit or the Common Area and the Improvements, the Owner and the Owner's guests, employees, tenants, and invitees shall not:

(a) Attempt to further subdivide a Unit without obtaining the prior approval of the Association, Convey a Unit pursuant to a time-sharing plan.

(b) Permit anything to obstruct the Common Area or store anything in the Common Area or Exclusive Use Area without the prior consent of the Board, except as otherwise provided in the Governing Instruments.

(c) Perform any act or keep anything on or in any Unit or in the Common Area that will increase the rate of insurance on the Common Area or Exclusive Use Area without the Board's prior written consent. Further, no Owner shall permit anything to be done or kept in his or her Unit or in the Common Area or Exclusive Use Area that would result in the cancellation of insurance on any Unit or on any part of the Common Area or Exclusive Use Area or that would violate any law.

(d) Utilize Units for the storage of any substance or material defined or designated as hazardous, radioactive or toxic by any applicable federal, state or local statute, ordinance or regulation now in effect or hereafter promulgated; provided, however, that any fuels or other liquids contained within any boat, mobile home, motor home, automobile, truck, recreational vehicle, other vehicle and/or other equipment which is stored within a Unit shall be deemed permitted even if so defined, so long as such fuels or other liquids are necessary for the operation thereof and are lawfully contained within such item of personal property for such purpose. Units Owners shall not, in order to preserve and minimize potential damage and deterioration to the sewer dispose or pour into the storm drains or drainage ditches substances including but not limited to:

flammable substances, grease, oils, cooking fats, oil-based paints, solvents or other hazardous chemicals and substances. The Association may impose a quantity limit on any such fuels or liquids.

(e) Store combustible materials in closely packed piles, on pallets, on racks, or on shelves where the top of that high piled storage is greater than twelve feet (12') in total height. Additionally, when required by a fire code official, or if the high piled combustible materials also include certain high-hazardous commodities, such as rubber tires, Group A plastics, flammable liquids, idle pallets and similar products, then that high piled storage use shall be limited to six feet (6') of total high piled height.

(f) Display any poster or sign to the public view on or from any Unit or the Common Area or Exclusive Use Area without the prior written consent of the Board, except a sign advertising the property for sale, lease, or exchange, or advertising directions to the property, as provided in Civil Code Section 712.

(g) In any part of the Project, cause an unacceptable level of noise, vibration, odor, garbage or other waste, uncleanliness, the precise levels of which shall be determined by the Board and which may be more restrictive than levels established by the City of Coachella or the State of California. No offensive activity shall be carried on in any Unit or in the Common Area, nor shall anything be done which may be or become an annoyance or nuisance to others using the buildings or to the public, create unacceptable risks and/or public intrusion. Nothing shall be done or carried on in a Unit or within the Project which is in violation of any applicable law, ordinance or regulation.

(h) Permit trash to be stored inside or outside of the Unit(s). All trash and trash collection from a Unit shall be the responsibility of the Unit Owner, and no trash shall be. There is no Common Area trash collection center, and all trash produced by the Unit Owner from permitted uses within the Unit, shall be promptly removed by the Unit Owner.

(i) Alter or modify the exterior or interior of any improvements located in a Unit without first obtaining the written consent of the Board, or install a solar energy system in a Unit owned by another without first obtaining the written consent of the such other Unit Owner and the Board.

(j) Alter, construct, or remove anything on or from the Common Area or Exclusive Use Area, except on the written consent of the Board. Without limitation, this provision shall apply to HVAC and other mechanical or utility equipment located in the Common Area and serving an individual Unit.

(k) With the exception of Unit A-1A, utilize Units, or permit another to use their Unit(s), for residential purposes, including without limitation any overnight occupancy by any Person. Utilize Units for the storage of household or personal goods not strictly related to the Permissible Uses.

(l) Install any video or television antenna, including a satellite dish, with a diameter or diagonal measurement greater than 36 inches within the Project. Association reserves the right to impose reasonable restrictions on the installation of any video or television antenna, including a satellite dish with a diameter or diagonal measurement of 36 inches or less.

(m) Utilize Units as a retail or wholesale outlet for the sale of goods or services to any third party. Unit Owners or tenants shall not permit potential customers of goods or services to enter the Project for such purpose. Notwithstanding the foregoing, nothing herein shall prohibit a Unit Owner of an item of personal property held for personal use, such as a boat, automobile, truck, recreational vehicle or other personal vehicle from showing such item for sale while in storage in a Unit on a casual basis only.

(n) Utilize Units as a place of manufacture or assembly of any item or combination of items, however characterized or conceived, whether or not for personal use or profit, nor (i) cause unreasonable noise whether continuous or intermittent, or other such disturbance to other Unit Owners; or (ii) pose any risk to any other Unit and/or a use of or risk to any portion of the Common Area.

(o) Utilize Units as a place of business, whether primary or secondary, including but not limited to the

conducting of repair or maintenance activities and/or services of any sort for third persons, however characterized or conceived, whether or not for profit, where the Unit is used as a storefront or otherwise requires or permits its customers to enter into the Project, or for storage of any business or commercial property, including but not limited to records, equipment and inventory.

(p) Commit or permit waste of any Unit and/or of the Common Area and the elements therein; and the liability in the event of such occurring shall be at the sole cost and expense of the responsible Unit Owner. This Section shall not be construed to permit any interference with or damage to the structural integrity of the buildings or interference with the use and enjoyment by others of the Common Area and/or other Units, nor shall it be construed to limit the powers or obligations of the Declarant or of the Association.

(q) Utilize a Unit for the growth, cultivation, distillation, and/or packaging of any vegetation or plant of any kind for other than modest décor with in Unit, and not in any case with respect to marijuana or any other federally or state-controlled plant, seed or substance.

(r) Maintain or allow any animal(s), including but not limited to pet(s) on the Property except as follows or in accordance with any Rules adopted by Declarant or the Board thereafter.

- (1) Pets shall mean domestic cats and domestic dogs only. No other animals are permitted onto the Common Area or any Unit, without the approval of the Board. Due to health, safety and infestation concerns, the following animals are prohibited on the Property: reptiles, rodents, insects, rabbits, ferrets, birds and pigs.
- (2) Unit Owners shall be responsible for keeping their Units free and clear of their pet's feces and shall immediately remove their pet's animal feces from all areas of the Project.
- (3) Pets shall be leashed and kept under control at all times, when outside a Unit. Pets shall be licensed, vaccinated and maintained in accordance with municipal law.
- (4) Pets causing or creating a nuisance or unreasonable disturbance or noise, so as to interfere with the rights, comfort or convenience of other Unit Owners shall be removed from the Property.

#### **Leases and Rental Agreements-Storage Units**

**5.03** All leases and rental agreements for Units in Buildings C, D and E shall be in writing and subject to the requirements of the Governing Instruments. Each lease will be filed with the Association, and written notice given of commencement and termination of possession. The Board may collect a transfer fee in connection with such lease to cover the administrative costs of updating records and confirming the lease is in conformance with the requirements of the Governing Instruments. Each lease will incorporate the terms and restrictions of the Governing Instruments as a personal obligation of the tenant. Each lease will attorn to the Association as landlord solely for the purpose of enforcing the restrictions of the Governing Instruments following notice and an opportunity to cure the violation, and then by direct levy and/or eviction, against the tenant. The Association will not otherwise assume the responsibilities or obligations of the landlord. The Association will have the right and power to exercise the landlord's rights of summary eviction against any tenant of the Unit Owner who violates the restrictions of the Governing Instruments, provided the landlord has received notice and is given a reasonable opportunity to cure the violation. Each Unit Owner shall notify the Association in writing within five (5) business days following the execution of any lease or rental agreement covering a Unit of the identity, telephone numbers and addresses of each tenant and of the duration of the lease/rental agreement. The Unit Owner of a Unit so leased or rented shall at all times be responsible for and liable to the Association for all acts or neglect of the tenant, including but not limited to fines and assessments levied for Unit use violations caused by the tenant.

## **Parking**

**5.04** Parking or storing of any motor vehicle at any location within the Common Area, outside of the boundaries of a Unit or in a designated parking space, is subject to the absolute limitation that no such motor vehicle shall obstruct in any fashion the free passage of vehicles and/or pedestrians to and from every other Unit.

(a) Unit Owners, and their tenants and guests may park their motor vehicles within their respective Units at any time without limitation. Any motor vehicle parked at any location within a drive aisle or other part of the Common Area other than inside a Unit shall be operable. No motor vehicle shall be stored in the Common Area. A motor vehicle (including boats, motorcycles, snowmobiles, and all forms of recreational equipment) is "stored" when it is parked at any location within the Common Interest Community, outside the boundaries of a Unit, for more than two (2) consecutive hours, unless it is parked directly in front of that Unit Owner's respective Unit, for allowed Unit uses, and in a manner that does not otherwise encumber or limit other Unit Owners' access to their respective Unit and to general ingress and egress.

(b) The Board may require the immediate removal of any inoperable or improperly stored, unsightly vehicle left outside of a Unit and/or any other item of personal property improperly stored within the Common Interest Community, whether or not it is contained within a Unit. If the same not be removed by the responsible Unit Owner, the Executive Board may cause removal thereof at the risk and expense of the Unit Owner thereof.

(c) Driving areas, walkways and corridors within the Common Area shall be used exclusively for normal transit, other than during the process of entering or leaving a Unit, and no obstructions shall be placed within the Common Area except by express written consent of the Association.

## **Lifts**

**5.05** It is the concurrent responsibility of the Association and each Unit Owner to insure the continuing structural integrity of each of the buildings within the Project. The construction characteristics of the buildings do not permit the addition of loads, except as are specifically engineered and approved in accordance with the provisions of the Uniform Building Code. It is anticipated, however, that individual Unit Owners may elect, at the Unit Owner's sole and separate cost, including but not limited to the cost of electrical upgrade and the Board's review of Unit Owner's plans, to erect electric lifts within their Units for the storage of vehicles. Any Unit Owner wishing to install an electric lift within the Unit shall provide written plans to the Board for approval in advance of any construction. Lofts or mezzanine levels are not permitted.

## **Enforcement by Declarant and Association**

**5.06** It is expressly provided that the Declarant, while in control, and thereafter the Association, may enforce the provisions of Article V; may assess penalties to an offending Unit Owner, as shall be adopted by Declarant and thereafter the Board, for a violation of the provisions hereof and to commence an action seeking injunctive relief and damages accruing as a consequence thereof.

## **ARTICLE VI. ARCHITECTURAL AND DESIGN CONTROL**

**6.01** No building, addition, wall, fence, lift or alteration shall be commenced, constructed, maintained, or permitted to remain on or in any Unit, or on the Common Area, until complete plans and specifications of the proposed work have been submitted to and approved by the Board. The Board shall review the plans and specifications to determine whether they are compatible with the standards of design, construction, and quality of the Project, and timeline there for, and, if they are not, shall require that changes be made before approval. The Board may require indemnification of directors and officers of the Association and Unit Owners as a condition of approval. Such review shall be at the expense of the applicant Unit Owner.

## **ARTICLE VII. INSURANCE**

### **Fire and Casualty Insurance**

**7.01** The Association shall obtain and maintain a policy or policies of fire and casualty insurance with an extended coverage endorsement for the full insurable replacement value of the improvements in the Project. The amount of coverage shall be determined by the Board. This insurance shall be maintained for the benefit of the Association, the Owners, and their Mortgagees, as their interests may appear as named insured, subject, however, to any loss payment requirements set forth in this Declaration.

### **General Liability and Individual Liability Insurance**

**7.02** The Association shall obtain and maintain one or more policies of insurance that must include coverage for (1) general liability of the Association, and (2) individual liability of Officers and Directors of the Association for negligent acts or omissions in that capacity.

The limits and coverage shall be reviewed at least annually by the Board and increased in its discretion.

### **Other Association Insurance**

**7.03** The Association shall purchase and maintain workers' compensation insurance to the extent necessary to comply with any applicable laws. The Association also shall purchase and maintain fidelity bond coverage which names the Association as an obligee, for any person or entity handling funds of the Association, whether or not such persons or entities are compensated for their services. This coverage shall be in an amount that is at least equal to the estimated maximum of funds, including reserve funds, in the custody of the Association or the Association Manager at any given time during the term of each bond. However, the aggregate amount of these bonds must not be less than 150 percent of each year's estimated annual operating expenses and reserves. The Association also may purchase and maintain a blanket policy of flood insurance, and demolition insurance in an amount that is sufficient to cover any demolition that occurs following the total or partial destruction of the Project and a decision not to rebuild.

### **Trustee for Policies**

**7.04** The Association, acting through its Board, is hereby appointed and shall be deemed trustee of the interests of all named insureds under all insurance policies purchased and maintained by the Association. All insurance proceeds under any of those policies shall be paid to the Board as trustee. The Board shall use the proceeds for the repair or replacement of the property for which the insurance was carried or for the purposes described in Article VIII of this Declaration. The Board also is authorized to negotiate loss settlements with the appropriate insurance carriers, to compromise and settle any claim or enforce any claim by any lawful action, and to execute loss claim forms and release forms in connection with such settlements.

### **Individual Insurance**

**7.05** (a) No Owner shall obtain or maintain fire and casualty insurance for the improvements in the Owner's Unit. If any Owner does so, he or she shall be liable to the Association for any resulting reduction in the insurance proceeds payable under the policy or policies of fire and casualty insurance maintained by the Association pursuant to Section 7.01.

(b) Notwithstanding the above, an Owner may separately insure his or her personal property, and each owner shall obtain and maintain personal liability and property damage liability insurance for his or her Unit, provided that the insurance contains a waiver of subrogation rights by the carrier as to the other Owners, the Association, Declarant, and the institutional First Mortgagee of the Owner's Unit.



### **Insurance Premiums**

**7.06** Insurance premiums for any insurance coverage obtained by the Association shall be included in the regular assessments. That portion of the regular assessments necessary for the required insurance premiums shall be used solely for the payment of the premiums when due.

## **ARTICLE VIII. DAMAGE OR DESTRUCTION**

### **Duty to Restore and Replace**

**8.01** If any of the improvements in the Project are destroyed or damaged, the Association shall restore and replace the improvements, using the proceeds of insurance maintained pursuant to Article VII of this Declaration, subject to the provisions of this Article.

### **Proceeds Justifying Automatic Restoration and Repair**

**8.02** If the proceeds of any insurance maintained pursuant to Article VII of this Declaration for reconstruction or repair of the Property are equal to at least seventy-five percent (75%) of the estimated cost of restoration and repair, the Board shall use the insurance proceeds for that purpose, shall levy a special assessment to provide the necessary additional funds, and shall have the improvements promptly rebuilt, unless the Owners by the vote or written consent of not less than eighty percent (80%) of the total voting power of each class of Owners object to the restoration or repair work within 30 days of the damage or destruction.

### **Approval by Owners of Special Assessment for Certain Restorations and Repairs**

**8.03** If the proceeds of any insurance maintained pursuant to Article VII of this Declaration for reconstruction or repair of the Property are less seventy-five percent (75%) of the estimated cost of restoration and repair, any restoration and repair work must be authorized by the vote or written consent of Owners representing at least sixty seven percent (67%) of the total voting power of each class of Owners and beneficiaries of at least fifty-one percent (51%) percent of the First Mortgages on Units in the Project. This authorization must be given within 60 days of the damage or destruction and must authorize the Board to levy a special assessment to provide the necessary funds over and above the amount of any insurance proceeds available for the work.

### **Ordering Reconstruction or Repair**

**8.04** If reconstruction or repair work is to take place pursuant to this Article, the Board shall take the following steps:

(a) Prepare the necessary documents, including an executed and acknowledged certificate stating that damage has occurred, describing it, identifying the improvement suffering the damage, the name of any insurer against whom claim is made, and the name of any insurance trustee, stating (if applicable) that the consent described in Section 8.03 has been obtained, and reciting that the certificate is recorded pursuant to this paragraph. That declaration shall be recorded with the Recorder of the County within 90 days from the date of the damage or destruction.

(b) Obtain firm bids (including the obligation to obtain a performance bond) from two or more responsible contractors to rebuild the Project in accordance with its original plans and specifications and, as soon as possible thereafter, call a special meeting of the voting Owners to consider the bids. If the Board fails to do so within 60 days after the casualty occurs, any Owner may obtain the bids and call and conduct the special meeting in the manner required by this paragraph. At the meeting, Owners representing at least 67 percent of the total voting power may elect to reject all of the bids and thus not to rebuild, or Owners representing at least 51 percent of the total voting power may elect to reject all bids requiring amounts exceeding the available insurance proceeds by more than \$500. Failure to reject all bids shall authorize the

Board to accept the unrejected bid it considers most favorable. Failure to call the special meeting or to repair the casualty damage within 12 months from the date the damage occurred shall be deemed for all purposes to be a decision not to rebuild.

(c) If a bid is accepted, the Board shall let the contract to the successful bidder and distribute the insurance proceeds to the contractor as required by the contract.

(d) Levy a special assessment to make up any deficiency between the total insurance proceeds and the contract price for the repair or rebuilding, with the assessment and all insurance proceeds, whether or not subject to liens of mortgagees, to be used solely for the rebuilding. This assessment shall be apportioned equally to each Unit for any damage or destruction to the Common Area. For any damage or destruction to improvements on one or more Units, every Owner shall pay a proportionate share based on the relative square footage of the Unit. If any Owner fails to pay the special assessment within 15 days after it is levied, the Board shall enforce the assessment in the manner described in Section 4.09 of this Declaration.

#### **Election Not to Rebuild**

**8.05** On an election not to rebuild, the Board, as soon as reasonably possible and as agent for the Owners, shall execute and record a certificate stating that the Association shall not rebuild. The Board shall also sell the entire Project on terms acceptable to the Board and free from the effect of this Declaration, which shall terminate on the sale. The net proceeds shall then be distributed to the Owners and their respective Mortgagees proportionately according to the respective fair market values of the Units at the time of the destruction as determined by an independent appraisal. That appraisal shall be performed by an independent appraiser who shall be selected by the Association and who shall be a member of, and apply the standards of, a nationally recognized appraiser organization.

All insurance proceeds for damage or destruction to Units shall be distributed to the Owners of the damaged Units according to the relative fair market value of the Units. This value shall be as of the date immediately preceding the damage or destruction, and shall be determined by an appraisal by an independent appraiser who shall be selected in the manner described above. Any proceeds from damage or destruction to the Common Area shall be distributed to the Owners equally.

#### **Minor Restoration and Repair Work**

**8.06** The Association shall order restoration or repair work without complying with the other provisions of this Article whenever the estimated cost of the work does not exceed \$25,000.00 for the Common Area and \$5,000.00 for one or more Units. If insurance proceeds are unavailable or insufficient, the Association shall levy a special assessment for the cost of the work. The Assessment shall be levied in the manner described in Section 4.05 of this Declaration.

#### **Owner Indemnification for Damage**

**8.07** Each Owner shall be liable to the Association for all damage to the Common Area or other Association property that is sustained by reason of the negligence or willful misconduct of that Owner or his or her guests, employees, tenants, and invitees, to the extent that the damage is not covered by the casualty insurance obtained and maintained by the Association pursuant to Section 7.01 of this Declaration.

In addition to any other indemnity obligations set forth elsewhere in this Declaration, each Owner (the "Indemnifying Owner") shall protect, indemnify, defend, and hold Declarant, each other Owner and the Association, and each of their respective members, managers, partners, directors, officers, employees, shareholder, agents, lenders, successors and assigns harmless from and against all claims, expenses, liabilities, loss, damage, and costs, including reasonable attorney fees, arising as a result (directly or indirectly) of or in connection with (a) any accident, injury, loss, or damage to any Person or loss or damage to the Project occurring on (or resulting from acts committed on) the Indemnifying Owner's Unit, (b) use of the Unit or the

Project by the Indemnifying Owner or its Permittees (defined hereafter), (c) the conduct of any business or work or things done, permitted or suffered in or about the Indemnifying Owner's Unit or the Project by Permittees of the Indemnifying Owner's Unit, and (d) the Indemnifying Owner's breach of this Declaration. Provided, however (i) no Person shall be entitled to indemnification for any damage arising from such Person's gross negligence or willful misconduct or the gross negligence or willful misconduct of such Person's Permittees, and (ii) the Association, Declarant and each Owner, for themselves and their respective Permittees, waive any right of recovery against the other Owners and their Permittees for any loss, damage, or injury to the extent the loss, damage or injury is actually covered by insurance. "Permittee" means any Person from time to time entitled to the use and occupancy of any Unit or any portion thereof under any lease, deed or other arrangement with an Owner, and the officers, directors, employees, agents, contractors, customers, visitors, invitees, licensees and concessionaires of such Person.

## **ARTICLE IX. EMINENT DOMAIN**

### **Definition of Taking**

**9.01** As used in this Article, "taking" means condemnation by any governmental agency having the power of eminent domain or by sale under threat of the exercise of that power.

### **Sale to Condemning Authority**

**9.02** If a governmental agency proposes to condemn all or a portion of the Project, the Association may sell all or any portion of the Project to the condemning authority if all Owners and institutional Mortgagees consent in writing to the sale. Any such sale shall be made by the Association in the capacity of attorney-in-fact for the Owners, acting under an irrevocable power of attorney which each Owner grants to the Association by accepting a Condominium. The sales price shall be any amount deemed reasonable by the Board.

### **Total Sale or Taking**

**9.03** A total sale or taking occurs when (1) there is a permanent taking or a sale to a condemning authority by the Association pursuant to Section 9.02 of an interest in all or part of the Common Area or of all or part of one or more Units, which substantially and adversely affects the ownership, operation, and use of the Project in accordance with the provisions of this Declaration; and (2) 120 days have passed since the effective date of the taking and the Owners whose Units remain habitable after the taking ("Remaining Units") have not by affirmative vote of a majority of their entire voting interest approved the continuation of the Project and the repair, restoration, and replacement to the extent feasible of the Common Area and the Remaining Units. Within 60 days after the effective date of any sale or taking which in the opinion of the Board would constitute a total sale or taking, the Board shall call a special meeting to determine whether or not the Owners of the remaining units will continue the Project as provided in this Section. If there is a total sale or taking, the Board shall distribute the proceeds of the total sale or taking and the proceeds of any sale pursuant to a partition action, after deducting all incidental fees and expenses related to the taking or partition, to all Owners and their Mortgagees in accordance with the court judgment or the agreement between the condemning authority and the Association, if any such judgment or agreement exists. In all other cases, the proceeds shall be distributed among the Owners and their respective Mortgagees according to the relative values of the Condominiums affected by the condemnation as determined by independent appraisal. That appraisal shall be performed by an independent appraiser who shall be selected by the Association and who shall be a member of, and apply the standards of, a nationally recognized appraiser organization.

### **Partial Sale or Taking**

**9.04** A partial sale or taking occurs if there is a sale or taking that is not a total sale or taking as defined in Section 9.03. The proceeds from any sale or taking shall be disbursed in the following order of priority, which shall be incorporated into any court judgment of condemnation or agreement between a condemning authority

and the Association:

(a) To the payment of related fees and expenses.

(b) To Owners of Condominiums that have been sold or taken and their respective Mortgagees, as their interests may appear, in an amount up to the fair market value of the Condominium as that value is determined by the court in the condemnation proceeding or, in the absence of such a determination, by an appraiser selected in the manner described in Section 9.03. Such a payment shall immediately terminate the recipient's status as an Owner, and the Board, acting as the attorney-in-fact of the remaining Owners, shall amend this Declaration and any other documents, as appropriate, to delete the sold or taken Condominiums from the Project and to allocate the former Owner's undivided interest in the Common Area to the remaining Owners, on the basis of their relative ownership of the Common Area. Each Owner whose interest is terminated pursuant to this Section shall, at the request of the Board and expense of the Association, execute and acknowledge any deed or other instrument that the Board deems necessary to evidence the termination.

(c) To the payment of severance damages to First Mortgagees of record of remaining units affected by the partial sale or taking, to the extent that the Mortgagees can prove that their security has been impaired by the taking.

(d) To the repair, restoration, and replacement of the Common Area and any portions of the Remaining Units that the Owners are not obligated to restore, to the extent feasible.

## **ARTICLE X. RIGHTS OF MORTGAGEES**

### **Warranty**

**10.01** Declarant hereby warrants that Mortgagees of Units in the Project shall be entitled to the rights and guaranties set forth in this Article. No amendment of this Article shall affect the rights of the holder of any First mortgage recorded prior to the recordation of the amendment who does not join in the execution of the amendment.

### **Subordination**

**10.02** Notwithstanding any other provision of this Declaration, liens created under Section 4.09 of this Declaration on any Unit shall be subject and subordinate to, and shall not affect the rights of the holder of, the indebtedness secured by any recorded First Mortgage on such an interest made in good faith and for value, provided that any transfer of a Unit as the result of a foreclosure or exercise of a power of sale shall not relieve the new Owner from liability for any assessments that become due after the transfer. Such a transfer shall extinguish the lien of assessments that were due and payable before the transfer of the Unit.

### **Inapplicability of Right of First Refusal**

**10.03** Should any of the Association's Governing Instruments provide for a "right of first refusal," this right shall not impair the rights of a First Mortgagee to:

- (a) Foreclose or take title to a Unit pursuant to the remedies provided in the Mortgage;
- (b) Accept a deed (or assignment) in lieu of foreclosure in the event of default by a Mortgagor; or
- (c) Interfere with a subsequent sale or lease of a Unit so acquired by the Mortgagee.

### **Notice of Default**

**10.04** A First Mortgagee, on request, will be entitled to written notification from the Association of any default in the performance by the Mortgagor of any obligation under the Association's Governing Instruments

that is not cured within 60 days.

#### **Unpaid Assessments**

**10.05** Any First Mortgagee who obtains title to a Unit pursuant to the remedies provided in the Mortgage or foreclosure of the Mortgage shall not be liable for the Unit's unpaid assessments that accrue before the acquisition of title to the Unit by the Mortgagee.

#### **Mortgagee Approval of Material Amendments**

**10.06** Notwithstanding Article XII of this Declaration, any amendments governing any of the following shall require the prior written approval of at least 51 percent of the First Mortgagees and at least 67 percent of the total voting power of the Owners:

- (a) Voting;
- (b) Rights to use the Common Area;
- (c) Reserves and responsibility for maintenance, repair, and replacement of the Common Area;
- (d) Boundaries of any Unit;
- (e) Owners' interests in the Common Area;
- (f) Conversion of Units into Common Area or Common Area into Units;
- (g) Leasing of Units;
- (h) Establishment of self-management by the Association, when professional management has been previously required by any First Mortgagee or any insurer or governmental guarantor of a First Mortgage;
- (i) Annexation, addition, or withdrawal of real property to or from the Project;
- (j) Assessments, assessment liens, or the subordination of these liens;
- (k) Casualty and liability insurance or fidelity bonds; or
- (l) Any provisions expressly benefiting First Mortgagees or insurers or governmental guarantors of first mortgages.

Notwithstanding the above, any first Mortgagee who receives a written request from the Board to approve a proposed amendment or amendments requiring consent under this Section who does not deliver a negative response to the Board within 30 days of the receipt of the request shall be deemed to have approved the proposed amendment or amendments.

#### **Mortgagee Approval of Other Actions**

**10.07** Unless at least fifty-one percent (51%) of the First Mortgagees (based on one vote for each First Mortgage owned), or sixty-seven percent (67%) of the Owners other than Declarant, have given their prior written approval, the Association shall not be entitled to:

- (a) By act or omission, seek to abandon or terminate the Project;
- (b) Change the pro rata interest or obligations of any individual Unit for either of the following purposes:

(1) Levying assessments or charges, or allocating distributions of hazard insurance proceeds or condemnation awards, or

(2) Determining the pro rata share of ownership of each Unit in the Common Area and the improvements thereon;

(c) Partition or subdivide any Unit;

(d) By act or omission, seek to abandon, partition, subdivide, encumber, sell, or transfer the Common Area, provided the granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Area shall not be deemed a transfer within the meaning of this clause; or

(e) Use hazard insurance proceeds for losses to any Project property (whether to Units or to the Common Area) for other than the repair, replacement, or reconstruction of that property, except as provided by statute in case of substantial loss to the Units and/or Common Area of the Project or as provided to the contrary in Article VIII.

Notwithstanding the above and anything to the contrary in this Declaration, any first Mortgagee who receives a written request from the Board for consent under this Declaration who does not deliver a negative response to the Board within 30 days of the receipt of the request shall be deemed to have approved the proposed action.

#### **Liens**

**10.08** All taxes, assessments, and charges that may become liens prior to the First Mortgage under local law, shall relate only to the individual Units and not to the Project as a whole.

#### **Priority**

**10.09** No provision of the Governing Instruments of the Association gives any Owner, or any other party, priority over any rights of the First Mortgagee of the Unit pursuant to its Mortgage in the case of a distribution to the Owner of insurance proceeds or condemnation awards for losses to, or a taking of, all or a portion of a Unit or Units and/or the Common Area.

#### **Reserve Fund**

**10.10** Association assessments shall be large enough to provide for an adequate reserve fund for contingencies and for maintenance, repairs, and replacement of those elements of the Common Area that must be replaced on a periodic basis ("Reserve Fund"). The Reserve Fund shall be initially funded by the Reserve Contribution described in Section 4.05 and thereafter shall be funded by regular assessments rather than by special assessments.

#### **Management**

**10.11** Any agreement for professional management of the Project and or the Association shall not exceed three years and shall provide that either party may terminate the agreement, with or without cause and without the imposition of a termination fee, on 90 days' written notice. The approval of holders of at least 51% percent of First Mortgages shall be obtained before the Association terminates a professional management agreement.

#### **Right to Inspect Books and Records**

**10.12** Institutional First Mortgagees, on written request, shall have the right to (1) examine the books and records of the Association during normal business hours and (2) require the submission of any financial data furnished to the Owners by the Association.

### **Right to Furnish Mortgage Information**

**10.13** Each Owner hereby authorizes the First Mortgagee of a First Mortgage on the Owner's Condominium to furnish information to the Board concerning the status of the First Mortgage and the loan that it secures.

## **ARTICLE XI. DEVELOPMENT RIGHTS; OTHER SPECIAL DECLARANT RIGHTS**

### **Reservation of Development Rights**

**11.01** The Declarant reserves the following Development Rights:

(a) The right to construct underground utility lines, pipes, wires, ducts, conduits and other facilities across the Project for the purpose of furnishing utility and other services to buildings and Improvements to be constructed on the Property. The Declarant also reserves the right to grant easements to public utility companies and to convey Improvements within those easements anywhere in the Project for such purposes.

(b) The Development Rights may be exercised at any time, but not more than seven (7) years after the recording of the initial Declaration

### **Special Declarant Rights**

**11.02** The Declarant reserves the following Special Declarant Rights, to the maximum extent permitted by law, which may be exercised, where applicable, anywhere within the Project:

- (a) To complete Improvements indicated on the plat and plans;
- (b) To exercise a Development Right reserved in the Declaration.
- (c) To maintain a sales office in a trailer or portable office situated within the Project until the Association room, which is also sometimes referred to as Clubhouse, is completed and thereafter within the Clubhouse, until such time as the Declarant no longer owns any Unit within the Project.
- (d) To use easements through the Common Area for the purpose of completing Improvements within the Project;
- (e) To appoint or remove an officer of the Association or any Board member during a Period of Declarant Control subject to the provisions of Section 11.05. of the Declaration.
- (f) To maintain and use certain Units as models for show and demonstration to assist Declarant with its marketing purposes, until all Units currently owned by the Declarant in the Project are sold.
- (g) To post signs and displays in the Common Area to promote sales of Units, and to conduct general sales activities, in a manner as will not unreasonably disturb the rights of Unit Owners.
- (h) To use the Clubhouse for purposes of management of the Project until such time as Declarant no longer owns any Units within the Project.

### **Construction; Declarant's Easement**

**11.03** The Declarant reserves the right to perform warranty work, repairs, and construction work, and to store materials in secure areas, in Units and Common Area, and the further right to control all such work and repairs, and the right of access thereto, until its completion. All work may be performed by the Declarant without the consent or approval of the Board. The Declarant has such an easement through the Project as may be reasonably necessary for the purpose of exercising Special Declarant Rights, whether arising under the Act or reserved in the Declaration. Such easement includes the right to convey utility and drainage easements to public utilities, municipalities, the State, riparian owners or upland owners to fulfill the plan of development.

### **Declarant's Personal Property**

**11.04** The Declarant reserves the right to retain all personal property and equipment used in the sales, management, construction and maintenance of the premises that has not been represented as property of the Association. The Declarant reserves the right to remove from the property, promptly after the sale of the last Unit, any and all goods and Improvements used in marketing and construction, whether or not they have become fixtures.

### **Declarant Control of the Association**

**11.05** (a) During the Period of Declarant Control of the Association, Declarant, or Persons designated by the Declarant, may appoint and remove the officers and members of the Board. The Period of Declarant Control commences on recordation of this Declaration and terminates no later than the earlier of:

- (i) Election of Directors by the Members at the first meeting of Members to be held not later than sixty (60) days after conveyance of the 118<sup>th</sup> Unit to a Unit Owner other than a Declarant or an affiliate of Declarant or a successor Declarant; or
- (ii) two (2) years after Declarant has ceased to offer Units for sale in the ordinary course of business;
- (iii) Declarant voluntarily surrenders Declarant Control to the Association.

(b) At and following the first meeting of Members and thereafter until the Period of Declarant Control terminates, Declarant may, but shall not be required to, appoint three (3) Directors who shall serve a three-year term.

(c) Declarant may voluntarily surrender the right to appoint and remove officers and members of the Board as provided in 11.05 (a) and (b) before termination of the respective periods, but in that event the Declarant may require, for the duration of the period of Declarant Control, that specified actions of the Association or Board, as described in a recorded instrument approved by the Declarant before they become effective.

### **Time Limitations on Special Declarant Rights**

**11.06** Except for Special Declarant Rights that may terminate earlier by statute and unless previously terminated by an amendment to the Declaration executed by the Declarant, Special Declarant Rights terminate at the latest to occur of such time as the Declarant: (1) is no longer obligated under any warranty or obligation; (2) no longer holds any Development Right; (3) no longer owns a Unit intended for immediate sale and not for personal use or commercial use including but not limited to use of Buildings A, B and F; or (4) no longer holds any Security Interest in any Unit.

### **Interference with Special Declarant Rights**

**11.07** Neither the Association nor any Unit Owner may take any action or adopt any rule that will interfere with or diminish any Special Declarant Right without the prior written consent of the Declarant.

### **Ownership of Plans and Specifications**

**11.08** Declarant is the sole owner of the complete Plans and specifications for the Units and the Improvements on the Property. Said plans and specifications are the stock and trade of Declarant and neither the Association nor any Unit Owners shall be entitled to use, transmit or make available information contained in or concerning the Plans and specifications to builders or other third parties without prior written consent of Declarant, which Declarant may withhold in its sole discretion. Any consent given by the Declarant shall be only for the specific request received from the Association or Unit Owner and Declarant's consent shall be requested each time they desire to transmit such information.



## **Onsite Manager, Office and Units A-1A, A-1B and A-2**

**11.09** Declarant shall establish onsite property management for the Project. Declarant shall initially provide a residential, 24/7 Onsite Manager who may also be or be affiliated with the Service Manager for the Service Units). The Onsite Manager shall reside onsite and operate from the Project Office, all located within the Administrative Units (Building A):

(a) Declarant shall contract with an Onsite Manager on behalf of and at the expense of the Association. The Onsite Property Manager shall reside in the Onsite Manager's Unit (Unit A-1A), and may park in the Onsite Manager's Garage (Unit A-1B) pursuant to a rental agreement with Declarant as Owner of Building A, and such Unit shall be designated and reserved for such purpose. After such time as Declarant may no longer be affiliated with the Project, the Association shall assume responsibility for contracting with the Onsite Manager and shall rent the Property Managers Unit from Declarant or the then owner thereof at market rates determined by a mutually selected commercial real estate broker experienced in multifamily rental properties.

(b) The Project Office (Unit A-2) shall be located in Building A as well, pursuant to a rental agreement between the Association and Declarant, as owner of Building A. The initial rent shall be set by Declarant for a period of three (3) years from the date of opening the Project, following which the rent may be adjusted pursuant to agreement between Declarant, or the then owner of Unit A-2, and the Association. Absent agreement, the parties shall consult a mutually selected commercial real estate broker experienced in commercial office space leasing for guidance on pricing of rent.

(c) The Service Building is located in Building B and six (6) Units in Building F (collectively, "Service Units"), and will be owned by Declarant. Declarant shall contract with an RV service provider and shall rent or otherwise designate the Service Units to the provider for such services. The rental or other income from the Service Units shall be that of Declarant and not the Association. The Onsite Manager shall manage the Service Building and the service provider at Declarant's expense, to be established by Declarant as a percentage of Onsite Manager's compensation.

## **ARTICLE XII. DISPUTES WITH DECLARANT**

### **Dispute Resolution Procedures; Notice**

**12.01** In order to avoid costly and potentially lengthy traditional court proceedings, each Unit Owner and the Association shall be bound to follow the dispute resolution procedures set forth in this Article XII in the event of any dispute with the Declarant or any director, officer, partner, shareholder, member, employee, representative, contractor, subcontractor, design professional or agent of the Declarant (each, a "Declarant Party," and collectively the "Declarant Parties") with respect to any alleged defect or condition of any part of the Project or the Governing Documents ("*Dispute*"). Any Person with a Dispute shall give written notice of the Dispute by personal or mail service as authorized by Code of Civil Procedure §415.10, §415.20, §415.21, §415.30, or §415.40 to the party to whom the Dispute is directed ("*Respondent*") describing the nature of the Dispute and any proposed remedy (the "*Dispute Notice*").

### **Right to Inspect and Correct**

**12.02** Commencing on the date the Dispute Notice is delivered to the Respondent and continuing until the Dispute is resolved, the Respondent and its representatives have the right to (a) meet with the party alleging the Dispute at a reasonable time and place to discuss the Dispute, (b) enter the Project to inspect any areas that are subject to the Dispute, and (c) conduct inspections and testing (including destructive or invasive testing) in a manner deemed appropriate by the Respondent. If Respondent elects to take any corrective action, Respondent and its representatives shall be provided full access to the Project to take and complete the corrective action. Respondent is not obligated to take any corrective action. Respondent, with the consent of Declarant, has the right to select the corrective action Respondent believes is appropriate. The right to inspect

and correct granted in this Section is in addition to the rights granted in Civil Code §§6870–6876, the procedures of which may be implemented before, during or after the procedure in this Section is implemented.

### **Mediation**

**12.03** If the Dispute is not resolved within ninety (90) days after the Respondent receives the Dispute Notice, any party may submit the Dispute to mediation by delivering a request for mediation (a “*Mediation Notice*”) in the same manner as allowed for delivery of the Dispute Notice. The Dispute shall be mediated pursuant to (a) the Judicial Arbitration and Mediation Service (“*JAMS*”) mediation procedures in existence when the Dispute Notice is delivered, as modified by this Section, or (b) the mediation procedures of any successor to JAMS in existence when the Dispute Notice is delivered, as modified by this Section, or (c) mediation procedures approved by the parties of any entity offering mediation services that are acceptable to the parties to the Dispute (each, a “*Party*” and collectively, the “*Parties*”). Except as provided in Section 12.06, no Person shall begin litigation regarding a Dispute without complying with this Section 12.03.

(a) **Selection of Mediator.** The mediator shall be selected within sixty (60) days after delivery of the Mediation Notice. The mediator shall be selected by mutual agreement of the Parties. If the Parties cannot agree on a mediator, the mediator shall be selected by the entity providing the mediation service. 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. Before accepting any appointment, the prospective mediator shall disclose any circumstances likely to create a presumption of bias or to prevent a prompt commencement of the mediation process.

(b) **Position Letter; Pre-Mediation Conference.** No later than sixty (60) days after selection of the mediator, each Party shall submit a letter (a “*Position Statement*”) containing (1) a description of the Party’s position concerning the issues that need to be resolved, (2) a detailed description of the defects allegedly at issue, and (3) a suggested plan of repair, remediation or correction. The mediator may schedule a pre-mediation conference. All Parties shall attend unless otherwise mutually agreed. The mediation shall be commenced within twenty (20) days after submittal of all Position Statements and shall be concluded within fifteen (15) days after the mediation began unless either (A) the mediator extends the mediation period, or (B) the Parties mutually agree to extend the mediation period. The mediation shall be held in the County or another place mutually acceptable to the Parties.

(c) **Conduct of Mediation.** The mediator has discretion to conduct the mediation in the manner in which the mediator believes is most appropriate to achieve the goal of settling the Dispute. The mediator is authorized to conduct joint and separate meetings with the Parties and to make oral and written recommendations for settlement. The mediator may also obtain expert advice concerning technical aspects of the Dispute, provided the Parties agree to and do assume the expenses of obtaining such advice. The mediator shall not have the authority to impose a settlement on the Parties.

(d) **Application of Evidence Code.** The provisions of California Evidence Code §§1115–1128 shall be applicable to the mediation process. Use and disclosure of statements, evidence and communications offered or made in the course of the mediation shall be governed by these sections, including the sections which preclude use of material in future proceedings and the sections which provide for confidentiality of material.

(e) **Parties Permitted at Mediation.** Persons other than the Parties, their liability insurers, Declarant, attorneys for the Parties and the mediator may attend mediation sessions only with the permission of the Parties and the consent of the mediator. Declarant has the right to attend the mediation session even if Declarant is not one of the Parties.

(f) **Record.** There shall be no stenographic, video or audio record of the mediation process.

(g) **Expenses.** Each Party shall bear its own attorneys’ fees and costs incurred in connection with the mediation. All other expenses of the mediation including the fees charged by the mediator and the cost of

any proof or expert advice requested by the mediator shall be borne equally by each of Declarant and the Declarant Parties to whom the Dispute is directed, unless the Parties agree otherwise. This provision does not modify any provision of a contract between Declarant and any Declarant Party requiring indemnification or establishing a different allocation of costs between the Declarant and the Declarant Party.

#### **Judicial Reference**

**12.04** If a Dispute remains unresolved after the mediation required by Section 12.03 is completed, any of the Parties may file a lawsuit, provided that the Association must obtain the vote or written consent of Owners other than Declarant who represent not less than sixty-seven percent (67%) of the Association's voting power (excluding the voting power of Declarant) before filing a lawsuit in a Dispute with Declarant or a Declarant Party. All lawsuits regarding Disputes must be resolved by general judicial reference pursuant to Code of Civil Procedure §§638 and 641–645.1, as modified by this Section 12.04. The Parties shall cooperate in good faith to ensure that all necessary and appropriate parties are included in the judicial reference proceeding. No Party shall be required to participate in the judicial reference proceeding if all Parties against whom such Party would have necessary or permissive cross-claims or counterclaims will not or cannot be joined in the judicial reference proceeding. The general referee shall have the authority to try all issues of fact and law and to report a statement of decision to the court. The referee shall be the only trier of fact and law in the reference proceeding, and shall have no authority to further refer any issues of fact or law to any other Person unless all parties to the judicial reference proceeding consent, or the referee determines that a conflict of interest or similar situation has arisen which would make it inappropriate for the referee to act as the trier of fact or law concerning an issue or matter. In the second alternative, an alternative judicial referee shall be selected in accordance with Section 12.04(b) solely for resolving or rendering a decision concerning the issue or matter involved in the conflict.

(a) **Place.** The proceedings shall be heard in the County.

(b) **Referee.** The referee shall be a retired judge who served on the California Superior Court in the County with substantial experience in the type of matter in dispute and without any relationship to the Parties or interest in the Project, unless the Parties agree otherwise. The parties to the judicial reference proceeding shall meet to select the referee no later than thirty (30) days after service of the initial complaint on all defendants named in the complaint. Any dispute regarding the selection of the referee shall be resolved by the court in which the complaint is filed.

(c) **Beginning and Timing of Proceeding.** The referee shall begin the proceeding at the earliest convenient date and shall conduct the proceeding without undue delay.

(d) **Pre-hearing Conferences.** The referee may require pre-hearing conferences.

(e) **Discovery.** The parties to the judicial reference proceeding shall be entitled only to limited discovery, consisting of the exchange of the following: (1) witness lists, (2) expert witness designations, (3) expert witness reports, (4) Exhibits, (5) reports of testing or inspections, and (6) briefs. Any other discovery authorized in the California Code of Civil Procedure shall be permitted by the referee upon a showing of good cause or based on the consent of all parties to the judicial reference proceeding.

(f) **Motions.** The referee shall have the power to hear and dispose of motions, including motions relating to discovery, provisional remedies, demurrers, motions to dismiss, motions for judgment on the pleadings and summary judgment and/or adjudication motions, in the same manner as a trial court judge. The referee shall also have the power to adjudicate summarily issues of fact or law including the availability of remedies whether or not the issue adjudicated could dispose of an entire cause of action or defense.

(g) **Record.** A stenographic record of the hearing shall be made which shall remain confidential except as may be necessary for post-hearing motions and any appeals.

(h) **Statement of Decision.** The referee's statement of decision shall contain an explanation of the factual and legal basis for the decision pursuant to California Code of Civil Procedure §632. The decision of the referee shall stand as the decision of the court, and upon filing of the statement of decision with the clerk of the court, judgment may be entered thereon in the same manner as if the Dispute had been tried by the court.

(i) **Remedies.** The referee may grant all legal and equitable remedies and award damages in the judicial reference proceeding.

(j) **Post-hearing Motions.** The referee may rule on all post-hearing motions in the same manner as a trial judge.

(k) **Appeals.** The decision of the referee shall be subject to appeal in the same manner as if the Dispute had been tried by the court.

(l) **Expenses.** Each Party shall bear its own attorneys' fees and costs incurred in connection with the judicial reference proceeding. All other fees and costs incurred in connection with the judicial reference proceeding, including the cost of the stenographic record, shall be advanced equally by each of Declarant and the Declarant Parties to whom the Dispute is directed. However, the referee shall have the power to reallocate such fees and costs among the Parties in the referee's final ruling. This provision does not modify any provision of a contract between Declarant and any Declarant Party requiring indemnification or establishing a different allocation of costs between the Declarant and the Declarant Party.

#### **Arbitration of Disputes**

**12.05** To the extent that the Dispute is not resolved during mediation and cannot be submitted to Judicial Reference as provided in Section 12.04, the entire matter shall proceed as one of binding arbitration governed by the Federal Arbitration Act (9 USC §§1-16) ("*Arbitration*"). To the extent the rules of procedure set forth herein do not conflict with the Federal Arbitration Act, such rules of procedure shall be the rules of procedure for the Arbitration. Judicial Arbitration and Mediation Services ("*JAMS*"), its successors, or any other entity offering arbitration services agreed to by the Parties shall hear, try and decide all issues of both fact and law and make any required findings of fact and, if applicable, conclusions of law. Notwithstanding the requirements to submit Disputes to Arbitration, if the Party seeking to submit a Dispute to Arbitration chooses, the Dispute may instead, as an alternative to Arbitration, be submitted to the California small claims court subject to the limitations on the jurisdiction of such court. The decision of the small claims court and any small claims appeals court will be final as to the Dispute.

(a) **Interpretation.** The procedures specified in this Section pertaining to Arbitration are to be interpreted and enforced as authorized by the Federal Arbitration Act (9 USC §§1-16), which is designed to encourage use of alternative methods of dispute resolution that avoid costly and potentially lengthy court proceedings. Interpretation and application of those procedures shall conform to Federal court rules interpreting and applying the Federal Arbitration Act. The Project is constructed of or uses materials and products manufactured throughout the United States which are then shipped to the Project for installation in the Project. The shipment of these materials and products across state lines to the Project causes the products and materials to enter into the stream of interstate commerce and become subject to the Interstate Commerce Clause (Article I, Section VIII of the United States Constitution) and ensuing Federal laws. References to California procedural law shall not be construed as a waiver of any rights of the parties under the Federal Arbitration Act or the right of the parties to have the procedures set forth in this Section 12.05 interpreted and enforced under the Federal Arbitration Act.

(b) **Amendment.** The provisions of this Section 12.05 shall not be amended nor shall other provisions be adopted that purport to supersede it without Declarant's prior written consent. The parties shall cooperate in good faith and shall diligently perform such acts as may be necessary to carry out the purposes of this Section.

(c) **Initiation of Claim.** Any Party wishing to initiate Arbitration pursuant to this Section shall serve a demand for Arbitration upon the responding Parties and upon JAMS its successor, or to any other entity offering arbitration services agreed to by the parties. Except as otherwise set forth herein, the Arbitration shall be conducted by and in accordance with the rules of JAMS its successors, or to any other entity offering arbitration services agreed to by the Parties.

(d) **Arbitrator.** The arbitrator to be appointed shall be employed by JAMS, its successor, or to any other entity offering arbitration services agreed to by the Parties. Except as otherwise set forth herein, the arbitration proceedings shall be conducted by and in accordance with the rules of JAMS or any successor thereto. Except for procedural issues, the proceedings, the ultimate decisions of the arbitrator, and the arbitrator himself shall be subject to and bound by existing California case and statutory law. Should JAMS cease to exist, as such, then all references herein to JAMS shall be deemed to refer to its successor or, if none, to the American Arbitration Association (in which case its commercial arbitration rules shall be used). The Parties shall cooperate in good faith and shall diligently perform such acts as may be necessary to ensure that all necessary and appropriate Persons are included in the proceeding. Declarant shall not be required to participate in the proceeding if all Persons against whom Declarant would have necessary or permissive cross-claims or counterclaims will not or cannot be joined in the proceeding.

(e) **Selection of Arbitrator.** The proceeding shall be conducted by one (1) qualified arbitrator selected in accordance with the rules of JAMS. The term "*qualified*" shall mean a retired judge who has experience with the laws governing residential real estate development and construction or an attorney who has actively practiced law in California for at least fifteen (15) years and who has experience with the laws governing real estate development and construction.

(f) **Motions and Remedies.** The arbitrator shall have the power to hear and dispose of motions, including motions relating to provisional remedies, demurrers, motions to dismiss, motions for judgment on the pleadings and summary judgment and/or adjudication motions, in the same manner as a trial court judge. In addition, the arbitrator shall have the power to summarily adjudicate issues of fact or law, including but not limited to the availability of remedies, whether or not the issue adjudicated could dispose of an entire cause of action or defense. The arbitrator shall have the power to grant provisional remedies including preliminary injunctive relief. Before the selection of the arbitrator any Party shall have the right to petition the Superior Court of the County for any necessary provisional remedies.

(g) **Discovery.** Except as limited herein, the Parties shall be entitled to limited discovery consisting of: (i) witness lists; (ii) expert witness designations; (iii) expert witness reports; (iv) exhibits; (v) reports of testing or inspections, including but not limited to, destructive or invasive testing; (vi) arbitration briefs; and (vii) the deposition, under oath, of any designated experts and two other depositions of their choosing without obtaining the consent of the arbitrator. All other discovery shall be permitted by the arbitrator at his discretion upon a showing of good cause or based on the agreement of the Parties. The arbitrator shall oversee discovery and may enforce all discovery orders in the same manner as any trial court judge.

(h) **Full Disclosure.** Each Party shall, in good faith, make a full disclosure of all issues and evidence to the other Parties before the hearing. Any evidence or information that the arbitrator determines was unreasonably withheld shall be inadmissible by the party that withheld it. The initiating Party shall be the first to disclose all of the following, in writing, to the other Party and to the arbitrator: (i) an outline of the issues and its position on each such issue; (ii) a list of all witnesses it intends to call; and (iii) copies of all written reports and other documentary evidence whether or not written or contributed to by its retained experts (collectively, the "*Outline*"). The initiating Party shall submit its Outline to the other Parties and to the arbitrator within thirty (30) days of the final selection of the arbitrator. Each responding Party shall submit its written response as directed by the arbitrator.

(i) **Hearing.** The hearing shall be held in the County. The arbitrator shall promptly commence the hearing giving due consideration to the complexity of the issues, the number of Parties and necessary discovery and other relevant matters. The hearing shall be conducted as informally as possible. Evidence Code

§1152 shall be applicable for the purpose of excluding from evidence offers, compromises, and settlement proposals, unless the Parties thereto consent to their admission. Attorneys are not required and any Party may elect to be represented by someone other than a licensed attorney. Cost of an interpreter shall be borne by the Party requiring the services of the interpreter in order to be understood by the arbitrator and the expenses of witnesses shall be borne by the Party or Parties producing such witnesses.

(j) **Decision.** The decision of the arbitrator shall be binding on the Parties and if the award of the arbitrator is not paid within sixty (60) days of the award it shall be entered as a judgment in the Superior Court of the County. The arbitrator shall cause a complete record of all proceedings to be prepared similar to those kept in the Superior Court, shall try all issues of both fact and law, and shall issue a written statement of decision, such as that described in Code of Civil Procedure §643 (or its successor), which shall specify the facts and law relied upon in reaching his/her decision within twenty (20) days after the close of testimony.

(k) **Fees and Costs.** The total cost of the proceedings, including the initiation fees and other fees of JAMS and any related costs and fees incurred by JAMS (such as experts and consultants retained by it) shall be reallocated in accordance with the Federal Arbitration Act and supporting case law, as determined by the arbitrator. The arbitrator shall not award attorneys' fees to any Party, each Party to bear its own attorneys' fees. The arbitrator may award recoverable costs pursuant to California law. This provision does not modify any provision of a contract between Declarant and any Declarant Party requiring indemnification or establishing a different allocation of costs between Declarant and a Declarant Party.

#### **Statutes of Limitation**

**12.06 (a) No Tolling or Extension.** Nothing in Article XII shall be considered to toll, stay, reduce or extend any applicable statute of limitations; provided, however, that Declarant, the Declarant Parties, the Association and any Owner may begin a legal action which in the good faith determination of that Person is necessary to preserve that Person's rights under any applicable statute of limitations, as limited under Section 12/06(b), as long as no further steps in processing the action are taken except those authorized in this Article XII.

(b) **Limitation of Statute of Limitations.** Consistent with the Agreement for Limitation of Statute of Limitations between Declarant and the first buyer of each Unit, the following shall also apply to the Association:

1. Reduction of Statute of Limitations on Contract. Any proceeding initiated by the Association regarding any matters subject to CCP 337 shall be commenced, if at all, within (2) years from the later of the date of Substantial Completion or the date the Association commences obligations with respect to the Common Area.

2. Reduction of Statute of Limitations on Construction. Any proceeding initiated by the Association regarding any matters subject to CCP 337.1 or 337.15 shall be commenced, if at all, within two (2) years from the later of the date of Substantial Completion or the date the Association commences obligations with respect to the Common Area.

3. Substantial Completion. For purposes of this Section 12.06, the term "Substantial Completion" shall mean the later of:

- i. The date of final inspection by the applicable public agency.
- ii. The date of recordation of a valid notice of completion.
- iii. The date of use or occupation of the improvement.
- iv. One year after termination or cessation of work on the improvement.

The date of Substantial Completion shall relate specifically to the performance or furnishing design, specifications, surveying, planning, supervision, testing, observation of construction or construction services by each profession or trade rendering services to the improvement.

#### **Agreement to Dispute Resolution; Waivers of Jury Trial**

**12.07** DECLARANT, THE ASSOCIATION AND EACH OWNER AGREE TO USE THE PROCEDURES ESTABLISHED IN THIS ARTICLE XII TO RESOLVE ALL DISPUTES AND WAIVE THEIR RIGHTS TO RESOLVE DISPUTES IN ANY OTHER MANNER. DECLARANT, THE ASSOCIATION AND EACH OWNER ACKNOWLEDGE THAT BY AGREEING TO RESOLVE ALL DISPUTES AS PROVIDED IN THIS ARTICLE XII, THEY ARE GIVING UP THEIR RIGHT TO HAVE DISPUTES TRIED BEFORE A JURY. THIS ARTICLE XII MAY NOT BE AMENDED WITHOUT DECLARANT'S PRIOR WRITTEN CONSENT.

#### **Covenant Regarding Proceeds**

**12.08** If the Association or any Owner prevail in a Dispute, and the judgment thereon or settlement terms thereof includes a monetary award, then the proceeds of the award shall be first applied to the remediation of the condition that gave rise to the Dispute.

### **ARTICLE XIII. AMENDMENTS**

#### **Amendment or Revocation Before Close of First Sale**

**13.01** At any time before the close of the first sale of a Condominium to a purchaser other than Declarant, Declarant and any Mortgagee of record may, by executing an appropriate instrument, amend or revoke this Declaration. The executed instrument shall be acknowledged and recorded in the Office of the Recorder of the County.

#### **Amendments by Owners After Close of First Sale**

**13.02** At any time after the close of the first sale of a Condominium to a purchaser other than Declarant, this Declaration may be amended by the vote or written consent of Owners representing not less than fifty-one percent (51%) of the voting power of each class of Owners of the Association. If only one class of Membership exists at the time an amendment is proposed, then it must be approved by not less than fifty-one percent (51%) percent of the voting power of the Association, which shall include at least a majority of the votes residing in Owners other than Declarant. Notwithstanding any contrary provision in this Section, the percentage of the voting power necessary to amend a specific clause or provision of this Declaration shall not be less than the percentage of affirmative votes prescribed for action to be taken under that clause or provision.

An amendment becomes effective after (1) the approval of the required percentage of Owners has been given, (2) that fact has been certified in a writing executed and acknowledged by the Secretary of the Association, and (3) that writing has been recorded in the County.

#### **Amendments Pursuant to Court Order**

**13.03** If this Declaration requires a proposed amendment to be approved by the affirmative vote of a specified percentage (exceeding 50 percent) of this votes in the Association or of Owners having a specified percentage (exceeding 50 percent) of the votes in more than one class (a "supermajority"), and more than 50 percent but less than the required supermajority of the votes approve the amendment, the Association or any Owner may petition the Superior Court of Riverside County, for an order reducing the percentage of the affirmative votes necessary for the amendment or approving the amendment. If such an order is issued, the amendment shall be acknowledged by the President of the Association, and that person shall have the amendment and the court order recorded in the County. On recordation, the amended provision or provisions of this Declaration shall

have the same force and effect as if the amendment were adopted in compliance with every requirement imposed by this Declaration and the other governing documents. Within a reasonable time after recordation, the Association shall mail a copy of the amendment and a statement regarding the amendment to each Owner.

#### **Deletion of Construction or Marketing Provisions**

**13.04** Notwithstanding any other provision of this Declaration, the Board may, under the circumstances described in this Section, adopt an amendment deleting from this Declaration any provision that was unequivocally designed and intended, or that by its nature could only have been designed or intended, to facilitate Declarant in completing the construction or marketing of the Project. To be subject to this amendment procedure, the provision must provide for access by Declarant over or across the Common Area for the purposes of (1) completion of construction of the Project and (2) the erection, construction, or maintenance of structures or other facilities designed to facilitate the completion of construction or marketing of Units. Such an amendment may be adopted only after Declarant has completed construction of the Project, has terminated construction activities, and has terminated its marketing activities for the sale of the Units. At least 30 days prior to taking action to adopt such an amendment, the Board must mail to all Owners, by first-class mail, the following: a copy of the proposed amendment; and a notice of the time, date, and place of the meeting at which the Board will consider adoption of the amendment. All deliberations of the Board on the proposed amendment must be conducted at that meeting. The meeting must be open to all Owners, and the Owners must be given an opportunity at the meeting to comment on the proposed amendment. The Board may not amend the declaration without the approval of a majority of a quorum of the Owners, pursuant to Civil Code Section 6524. For these purposes, "quorum" means more than 50 percent of the Owners who own no more than two Units in the Project.

### **ARTICLE XIV. GENERAL PROVISIONS**

#### **Term**

**14.01** The provisions of this Declaration shall continue in effect until the Membership of the Association decides to terminate it upon a vote of not less than eighty percent (80%) of the Owners.

#### **Nonwaiver of Remedies**

**14.02** Each remedy provided for in this Declaration is separate, distinct, and nonexclusive. Failure to exercise a particular remedy shall not be construed as a waiver of the remedy.

#### **Attorneys' Fees**

**14.03** In any action to enforce this Declaration, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs.

#### **Severability**

**14.04** The provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one provision shall not affect the validity or enforceability of any other provision.

#### **Binding**

**14.05** This Declaration, any amendment to it, and any valid action or directive made pursuant to the Declaration, shall be binding on the Declarant and the Owners and their heirs, grantees, tenants, successors, and assigns.



### **Interpretation**

**14.06** The provisions of this Declaration shall be liberally construed and interpreted to effectuate its purpose of creating a uniform plan for the development and operation of a condominium project. Failure to enforce any provision of this Declaration shall not constitute a waiver of the right to enforce that provision or any other provision of this Declaration.

### **Limitation of Liability**

**14.07** The liability of any Owner for performance of any of the provisions of this Declaration shall terminate on sale, transfer, assignment, or other divestment of the Owner's entire interest in his or her Unit with respect to obligations arising from and after the date of the divestment.

### **Nondiscrimination**

**14.08** Neither Declarant nor any Owner shall, either directly or indirectly, forbid the conveyance, encumbrance, renting, leasing, or occupancy of the Owner's Unit to any person on the basis of race, color, sex, religion, ancestry, national origin, disability, medical condition, marital status, or sexual orientation.

### **Number and Headings**

**14.09** As used in this Declaration, the singular shall include the plural, unless the context requires the contrary. The headings are not a part of this Declaration and shall not affect the interpretation of any provision.

### **Estoppel Certificates**

**14.10** Each Owner, Declarant and the Association shall, upon the written request of Declarant (for so long as Declarant is an Owner) or any other Owner, issue to the requesting party, or to any prospective Mortgagee or purchaser of such requesting party's Unit, an estoppel certificate stating (i) whether the party to whom the request has been directed knows of any default under this Declaration relating to or materially affecting the requesting Owner's Unit and, if there are known defaults, specifying the nature thereof, (ii) whether, to the best knowledge of the responding party, this Declaration has been modified or amended in any respect and, if there are known amendments, specifying the nature thereof, and (iii) whether, to the best knowledge of the responding party, this Declaration is, at that time, in full force and effect.

### **Notice of Emergency Situation**

**14.11** Each Owner shall be responsible for providing to the Association a telephone number or other means of immediate notification for purposes of contacting such Owner upon the occurrence of an emergency situation in or near such Owner's Unit. If the Unit is leased, the Owner may designate the tenant as such Owner's emergency notification contact, and notice of an emergency situation to such tenant shall be deemed notice to the Owner. Failure to provide valid contact information for emergency notification purposes shall be deemed a waiver of the right to prior notice of the exercise of any rights provided to the Association hereunder upon the occurrence of an emergency situation.

**SIGNATURE PAGE FOLLOWS**

Dated as of January 7<sup>th</sup>, 2021.

**DECLARANT**

LUXTOR LIMITED, a Nevada limited liability company  
qualified to do business in California as LUXTOR LIMITED LLC

By:   
Michael Lyon, Manager

**Acknowledgment**

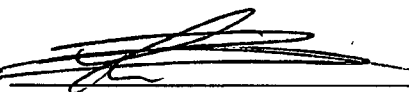
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

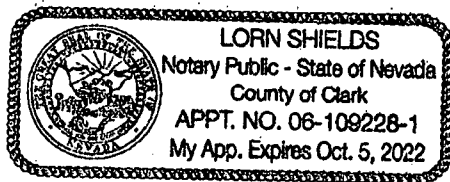
State of Nevada )  
County of Clark )

On January 7, 2021, before me, Lorn Shields  
personally appeared Michael Lyon, 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  [Seal]



**MAINTENANCE AND UTILITY MATRIX**

<b><u>ELEMENT</u></b>	<b><u>MAINTAINED BY</u></b>	<b><u>NOTES</u></b>
<b>ROOFTOP DRAIN LINES:</b> run from rooftop (Common Area) into and along the wall in certain Units, exiting at the face of the building and connecting to a downspout.	Association	Owner may not move or otherwise alter or interfere with Rooftop Drain Lines running within the Unit without prior written approval of the Association in accordance with the Declaration.
<b>FIRE SUPPRESSION:</b> water lines, sprinkler heads and related equipment, whether located within the Common Area or any Unit	Association	Association is solely responsible for maintenance of and Owner shall have no rights with respect to the Fire Suppression System. Owner shall notify Association of any damage or needed repair noted within Unit. Owner may extend the sprinkler line and install one or more additional sprinklers if the Owner installs a loft within a Unit, subject to prior written approval of the Association in accordance with the Declaration.
<b>HVAC:</b>		
HVAC for Storage Units and Admin Units	Association/Owner	Association contracts for periodic maintenance of HVAC systems. Repair and replacement outside of warranty managed by association and paid by Owner.
HVAC for Service Units	Service Unit Owner	Service Unit Owner to provide service, repair and replacement for all HVAC equipment serving Service Units.
<b>ELECTRIC SERVICE:</b>		
Main breaker or primary disconnect switch in Electric Room, and panel cabinet and panel bussing serving each Unit	Association	Association maintains equipment, receives billing and allocates utility charges monthly to Owners as indicated by individual Unit meters.
Fuses and/or breakers within panel in Unit and equipment including but not limited to wiring, outlets, and switches within the Unit	Owner	Owner responsible for electric utility charges to the Unit.
<b>SEWER LINE/VALVE:</b>		
Main line and line to sewer clean-out valve	Association	Sewer utility charges are a common expense collected with the water utility.
<b>WATER SERVICE:</b>		
Main line to and including shutoff/backflow prevention valve serving or within Unit	Association	To the extent not covered by the utility provider, the Association shall be responsible for the repair and maintenance of water service equipment as a common expense.

Lines, fixtures, appliance, connections or add-ons from backflow valve to and within Administrative Units and Service Units.	Owner	Owner may add a connection to the water service from the existing service valve, upon prior written approval of the Association in accordance with the Declaration. There is no water service to Storage Units.
Utility service charges	Service and Administrative Unit Owners	Water utility charges for Common Area and Units is paid by the owner of the Service Units for so long as the Service Units are operated as such and/or RV wash services are provided or made available by the owner of the Service Units, and water charges in general remain relatively nominal, water utility charges shall be paid exclusively by the Owner of the Service Units.
<b>CABLE/INTERNET:</b>		
Service to and within Office, and associated lines and equipment.	Service and Administrative Unit Owners	Owner of Administrative Units, or as may be delegated by any management contract or lease.
Service to Onsite Managers Unit	Service and Administrative Unit Owners	For service, maintenance or repair of any service lines or equipment serving any Unit, work is at the expense of the Owner of the Administrative Units, or as may be delegated by any management contract or lease.
<b>ANY COMMON AREA UTILITY/SERVICE:</b> any of the above services and utilities serving the Common Area, and associated lines and equipment, not otherwise provided for above.	Association	Paid by Association unless the Owner(s) of the Administrative and/or Service Units elects to pay any or all of such service charges.
<b>COMMON AREA MAINTENANCE:</b>		
Landscaping, lighting, access keypad and security monitoring equipment, street and drive cleaning	Association	Association to provide regular maintenance and repair to such areas and equipment.
Exterior walls, roofs, doors, garage doors (except Service Units), windows	Association	Association to provide regular maintenance and repair to such areas outside of Units, subject to Owner's obligations as to damaged caused by such Owner or Owner's invitees.
Garage doors on Service Units	Service Unit Owner	