

FTER RECORDING MAIL TO:

THE ANDEN GROUP  
2483 E. Bayshore Road  
Suite 102  
Alto, CA 94303

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RECORDED AT REQUEST OF  
FIRST AMERICAN TITLE INSURANCE CO  
SAN MATEO COUNTY TITLE DIVISION  
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MARVIN CHURCH, RECORDER  
SAN MATEO COUNTY  
OFFICIAL RECORDS

ENABLING DECLARATION ESTABLISHING A PLAN  
FOR CONDOMINIUM OWNERSHIP

THIS DECLARATION, made on the date hereinafter set forth, by The Anden Group, a California general partnership, a partnership, hereinafter referred to as "Declarant", is made with reference to the following facts:

A. Declarant is the owner of a certain tract of land located in the City of San Mateo, County of San Mateo, State of California, more particularly described in Exhibit A attached hereto and incorporated by reference herein.

B. Declarant intends to improve said property by constructing thereon housing units and Declarant intends to establish a condominium under the provisions of the California Condominium Act, providing for separate title to each unit within said project, each unit to have an undivided interest in portions of the remaining property.

C. The development shall be referred to as the "project" as defined in Section 1.27 herein. The project will be developed in multiple phases. The owner of a unit in phase one will receive title to his individual condominium unit plus an undivided interest as tenant in common in the common area of Lot Two. The owner of a unit in the subsequent phase will receive title to his individual condominium unit plus an undivided interest as a tenant in common in the common area of the lot on which his unit is located. Each unit shall have appurtenant to it a membership in the Edgewater Isle Homeowners Association, a nonprofit mutual benefit corporation, which shall manage the recreational common area.

D. Declarant intends by this document to impose upon the property mutually beneficial restrictions under a general plan of improvement for the benefit of all the owners of the units. Phase I of this project will be subjected to this Declaration upon recordation hereof. Subsequent Phases shall be subjected to this Declaration upon the recording of a declaration of annexation applicable to such phase upon annexation by Declarant as provided in Section 2.4.

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E. Declarant hereby establishes by this Declaration a plan for the individual ownership of the real property estates, consisting of the area of space contained in each unit as well as the co-ownership by the individual owners, as tenants in common and as hereafter set forth, of the common area of the lot on which his unit is situated and the management of the remainder of the project (the "recreational common area") by the Association.

NOW, THEREFORE, Declarant hereby declares that the hereinafter described property shall be held, conveyed, mortgaged, encumbered, leased, rented, used, occupied, sold and improved, subject to the following declarations, limitations, covenants, conditions, restrictions and easements, all of which are imposed as equitable servitudes pursuant to a general plan for the development of the property for the purpose of enhancing and protecting the value and attractiveness of the property, and the project, and every part thereof, in accordance with the plan for the improvements of the property and the division thereof into condominiums. All of the limitations, covenants, conditions, restrictions and easements shall constitute covenants which shall run with the land and shall be binding upon Declarant and its successors and assigns, and all parties having or acquiring any right, title or interest in or to any part of the property or the project.

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ARTICLE I

DEFINITIONS

1.1 "Articles" shall mean and refer to the Articles of Incorporation of the Association as amended from time to time.

1.2 "Assessment" shall mean that portion of the cost of maintaining, improving, repairing, operating and managing the property which is to be paid by each unit owner as determined by the Association.

1.3 "Association" shall mean and refer to the Edgewater Isle Homeowners Association, Inc., a California nonprofit mutual benefit corporation, the members of which shall be the owners of condominiums in the project.

1.4 "Board" or "Board of Directors" shall mean and refer to the governing body of the Association.

1.5 "Bylaws" shall mean and refer to the Bylaws of the Association as amended from time to time.

1.6 "Common area(s)" shall mean and refer to all of the property (excepting the individual condominium units), title to which is held by the owners in common. The common area

includes, without limitation: land; any pool, any spa and any other amenities, parking and driveway areas; trash enclosures; garage and carport areas; exterior stairs, balconies, patios, landings and storage areas; and bearing walls, interior stairs, columns, girders, ceiling joists, subfloors, unfinished floors, roofs, and foundations; fireplaces, central heating, solar heating equipment, water heaters, skylights, reservoirs, tanks, pumps, motors, ducts, flues and chutes; conduits, pipes, plumbing, wires and other utility installations (except the outlets thereof when located within the unit), (and excepting utility installations located within a unit), required to provide power, light, telephone, gas, water, sewerage, drainage, heat, and central television antenna or cable television installation; and the landscaping easement designated on the Map.

1.7 "Common expenses" means and includes the actual and estimated expenses of operating the common area except individual car or garage lighting and any reasonable reserve for such purposes as found and determined by the Board and all sums designated common expenses by or pursuant to the condominium documents. Common expenses shall include the actual and estimated expenses of periodic maintenance and testing of all equipment.

1.8 "Common interest" means the proportionate undivided interest in the condominium common area which is appurtenant to each condominium unit, as set forth in this Declaration.

1.9 "Condominium" shall mean an estate in real property as defined in California Civil Code Section 783, consisting of title to a unit and an undivided interest in a common area. The ownership of each condominium shall include the ownership of a unit and in the respective undivided interest in the condominium common area of the lot on which the unit is located, membership in the Association, and a nonexclusive easements for ingress and egress over the recreational common area, and common area of additional specified lots upon annexation thereof, pursuant to Section 2.4 that are not a part of a condominium building. Each unit shall be a separate freehold estate consisting of the space described and defined in Section 2.2A. Each unit includes the portions of the structure so described and the airspace so encompassed. Each unit shall include the "restricted common area" rights, if any, assigned to the unit in this Declaration and/or in the Condominium Plan.

1.10 "Condominium building" shall mean a residential structure containing condominium units.

1.11 "Condominium common area" shall mean and refer to all of the property (excepting the individual condominium units) (and excepting the land) within the outside perimeter walls of each condominium building (on a lot), excluding patios and restricted common area. The condominium common area includes,

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without limitation: outside perimeter walls, balconies, bearing walls, columns, fireplaces, girders, ceiling joists, beams in cathedral ceilings, subfloors, unfinished floors, roofs, and foundations; chimneys and flues; central hot water, reservoirs, tanks, pumps, motors, ducts, and chutes; conduits, pipes, plumbing, wires, utility meters and other utility installations (except the outlets thereof when located within the unit, and except as provided in Section 2.2A), required to provide power, light, telephone, gas, water, sewerage, and drainage.

1.12 "Condominium documents" shall mean the same as "project documents".

1.13 "Condominium plan" shall mean and refer to the recorded diagrammatic floor plan of the units built or to be built on the property which identifies each unit and shows its dimensions pursuant to Civil Code Section 1351.

1.14 "Declarant" shall mean and refer to The Anden Group, its successors and assigns.

1.15 "Declaration" shall mean and refer to this enabling Declaration, as amended or supplemented from time to time.

1.16 "Eligible holder mortgages" shall mean mortgages held by "eligible mortgage holders".

1.17 "Eligible mortgage holders" shall mean a first lender who has requested notice of certain matters from the Association, in accordance with Section 8.6C.

1.18 "Eligible insurer or guarantor" shall mean an insurer or governmental guarantor of a first mortgage who has requested notice of certain matters from the Association, in accordance with Section 8.6C.

1.19 "First lender" shall mean any person, entity, bank, savings and loan association, insurance company, or financial institution holding a recorded first mortgage on any condominium unit.

1.20 "Map" shall mean and refer to that Map entitled Edgewater Isle Unit No. I, recorded the 29<sup>th</sup> day of NOVEMBER, 1983, in Book 111 of Maps at Page(s) 2 through 3, in the official records of San Mateo County as well as the Condominium Plan as referred hereinabove.

1.21 "Member" shall mean and refer to a person entitled to membership in the Association as provided herein.

1.22 "Mortgage" shall include a deed of trust as well as a mortgage.

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1.23 "Mortgagee" shall include a beneficiary or a holder of a deed of trust as well as a mortgagee.

1.24 "Mortgagor" shall include the trustor of a deed of trust as well as a mortgagor.

1.25 "Owner" or "owners" shall mean and refer to the record holder or holders of title, if more than one, of a condominium in the project. This shall include any person having a fee simple title to any unit and shall not include contract sellers, and shall exclude persons or entities having any interest merely as security for the performance of an obligation. If a unit is sold under a recorded contract of sale, the purchaser, rather than the fee owner, shall be considered the "owner".

1.26 "Person" means a natural person, a corporation, a partnership, a trustee, or other legal entity.

1.27 "Project" shall mean and refer to the entire real property above-described, including property annexed or to be annexed, and including all structures and improvements erected or to be erected thereon.

1.28 "Project documents" shall mean this Declaration, as amended from time to time, the exhibits, if any, attached thereto, together with the other basic documents used to create and govern the project, including the Map, the Articles, the Bylaws, and the Condominium Plan (but excluding unrecorded rules and regulations adopted by the Board or the Association).

1.29 "Property" or "Properties" means and includes the real property above-described and all improvements erected thereon and all property, real, personal or mixed intended for or used in connection with the condominium

1.30 "Recreational common area" shall mean and refer to the pool and spa areas, and all improvements thereon and any subsequently annexed recreational common area parcels managed by the Association.

1.31 "Restricted common area" shall mean and refer to those portions of the common area set aside for exclusive use of a unit owner or owners, pursuant to Section 2.2C.

1.32 "Share" means the percentages in and to the condominium common area attributed to and appurtenant to each unit as set forth in Exhibit C.

1.33 "Unit" shall mean and refer to the elements of the condominium, as defined in Section 2.2A, which are not owned in common with the owners of other condominiums in the Project.

1.34 "Unit designation" means the number, letter, or combination thereof or other official designation(s) shown on the Condominium Plan. Each unit is identified by separate number on the Condominium Plan.

1.35 "Singular and plural": The singular and plural number and masculine, feminine and neuter gender shall each include the other where the context requires.

## ARTICLE II

### DESCRIPTION OF PROJECT, DIVISION OF PROPERTY, AND CREATION OF PROPERTY RIGHTS

2.1 Description of Project: The project consists of the underlying real property with condominium units and all other improvements located thereon. The Project will be built in several phases. Some phases may consist of more than one lot. In addition, the project has recreation facilities and the usual appurtenances and other facilities.

2.2 Division of Property: The property is hereby divided into the following separate freehold estates:

A. Units: Each of the units as separately shown, numbered and designated in the Condominium Plan consists of the space bounded by and contained within the interior unfinished surfaces of the perimeter walls, floors, ceilings, windows, window frames, doors and door frames and trim, of each unit, each of such spaces being defined and referred to herein as a "unit". Bearing walls located within the interior of a unit are common area, not part of the unit, except for the finished surfaces thereof. The air space within bay windows and fireplaces or fireboxes are included within the units. Chimneys and flues are common area. Soffits and exposed beams in ceilings shall not be part of the unit. Areas within dropped ceilings are not part of a unit. Each unit includes the utility installations located within its boundaries that the owner has exclusive use of, including, without limitation: hot water heaters, space heaters, lighting fixtures, which are located entirely within the unit they serve. Each unit includes both the portions of the building so described and the airspace so encompassed. The unit does not include those areas and those things which are defined as "condominium common areas" in Section 1.11. Each unit is subject to such encroachments as are contained in the building, whether the same now exist or may be later caused or created in any manner referred to in Sections 2.5, 5.2(b), 6.2 or 8.5. In interpreting deeds and plans, the then existing physical boundaries of a unit, whether in its original state or reconstructed in substantial accordance

with the original plans thereof shall be conclusively presumed to be its boundaries rather than the boundaries expressed in the deed or plan, regardless of settling or lateral movement of the building and regardless of minor variance between boundaries shown on the plan or deed, and those of the building. If title to a condominium unit is conveyed prior to completion of construction of that unit, the boundaries of that unit shall be the boundaries shown on the Plan.

B. Condominium Common Areas: That portion of the property, referred to herein as "condominium common area", shall include the area defined in Section 1.11. Each unit owner shall have, as appurtenant to his unit, an equal undivided interest in the condominium common area of the lot on which his unit is located. The fractional interest of a unit owner shall be the numerator "1" over the denominator equal to the total number of units on the lot on which the unit is located. The ownership of each condominium shall include such undivided interest in the condominium common area. The common interest appurtenant to each unit is declared to be permanent in character and cannot be altered without the consent of all of the unit owners affected, as expressed in an amended declaration. Such common interest cannot be separated from the unit to which it is appurtenant. Each unit owner may use the condominium common area in accordance with the purposes for which they are intended without hindering the exercise of or encroaching upon the rights of any other unit owners.

C. Restricted Common Areas: The following described portions of the common area, referred to as "restricted common areas", are hereby set aside and allocated for the exclusive use of the owner of the unit to which they are assigned by unit number as shown on the Condominium Plan: Garage space designated "G", (followed by the number of the unit to which it is appurtenant); carport, if any, designated "CP" (followed by the number of the unit to which it is appurtenant); patio designated "PT", (followed by the number of the unit to which it is appurtenant); parking space designated "P", (followed by the number of the unit to which it is appurtenant); balcony designated "B", (followed by the number of the unit to which it is appurtenant); storage space designated "S", (followed by the number of the unit to which it is appurtenant); yard designated "Y", (followed by the number of the unit to which it is appurtenant); deck, if any, designated "D", (followed by the number of the unit to which it is appurtenant).

In addition, the following are also "restricted common areas": roof storage appurtenant to each unit, consisting of that space contained between the vertical limit of the

second floor airspace of the unit as shown on the Condominium Plan, and the inside face of the structural roof framing; that portion of interior stairs which pierces a floor or ceiling and therefore passes through part of the common area shall be restricted common area, the exclusive use of which is reserved to the owner of the unit served by those stairs; bay windows and/or skylights which are part of a unit and which project beyond the boundaries of the unit; fireplace, chimney structure, and flue appurtenant to each unit; greenhouse windows appurtenant to each unit; patios and/or balconies serving only the unit to which they are appurtenant are restricted common areas.

D. Parking: Garage space shall be used for parking of permitted vehicles only and not for the permanent parking or storage of boats, trailers or non-mobile vehicles of any description, nor for the conversion into habitable space such as, by way of definition only, a hobby shop or recreation room. Owners are to use their garages for parking of their vehicles so that common area parking will be available for guest parking. The Association shall establish rules and regulations from time to time for the parking of vehicles in the common areas. The owner or owners of a unit (or their tenants in the case of a leased unit) shall not be permitted to have more than three (3) motor vehicles which are parked or regularly operated within the Project.

E. No Separate Conveyance of Undivided Interests: The foregoing interests are hereby established and are to be conveyed with the respective units as indicated above, cannot be changed, except as herein set forth, and Declarant, its successors, assigns, and grantees covenant and agree that the interests in the common area and the fee title to the respective units conveyed therewith, shall not be separated or separately conveyed, and each such interest shall be deemed to be conveyed or encumbered with its respective unit even though the description in the instrument of conveyance or encumbrance may refer only to the fee title to the unit.

F. Recreational Common Area: The recreational common area, as defined in Section 1.30, shall be controlled and managed by to Association for the benefit of all owners.

2.3 Partition Prohibited: The common areas shall remain undivided as set forth above. Except as provided by California Civil Code Section 1354, no owner shall bring any action for partition, it being agreed that this restriction is necessary in order to preserve the rights of the owners with respect to the operation and management of the project. Judicial partition by sale of a single unit owned by two or more persons and division



of the sale proceeds is not prohibited hereby, but partition of title to a single unit is prohibited.

2.4 Annexation of Additional Parcels: Additional parcels may be annexed to and become subject to this Declaration by any of the following methods set forth in this Section. The effects of annexation shall be as follows: Upon annexation, additional parcels shall become subject to this Declaration without the necessity of amending individual sections hereof.

A. Annexation Pursuant to Plan: The property described in Exhibit B may be annexed to and become a part of the project, subject to this Declaration, and subject to the jurisdiction of the Association, without the assent of the Association or its members, or without the assent of the condominium owners, on condition that:

(1) Date for Annexation: Any annexation pursuant to this section shall be made prior to the third anniversary of the original issuance of the most recently issued public report for a phase of the project.

(2) DRE/CITY Approval: The annexation and development of additional parcels shall be in accordance with a plan of development approved by the Department of Real Estate of the State of California and the City of San Mateo.

(3) Declaration of Annexation: A declaration of annexation shall be recorded covering the applicable portion of the property to be annexed. Said declaration may contain such complementary additions and modifications of the covenants and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the added property, and as are not inconsistent with the scheme of this Declaration.

B. Annexation Pursuant to Approval: As to property not provided for in Exhibit B, upon approval in writing of the Association, pursuant to vote or written consent of a two-thirds (2/3) majority of the voting power of its members, excluding the Declarant, and the approval of the Department of Real Estate of the State of California, and all of all mortgagees of units, the Association and the owner of any property who desires to add it to the scheme of this Declaration and to subject it to the jurisdiction of the Association, may file of record a declaration of annexation in the same manner described in Section 2.4A3.

C. Effect of Annexation: Assessments collected from owners in the property may be expended by the Association without regard to the particular phase from which such assessments came. All owners shall have ingress and egress to all portions of the common area throughout the property, subject to the provisions of this Declaration, the Bylaws of the Association, and to the rules and regulations of the Association in effect from time to time.

D. Quality of Construction: Future improvements to the project will be consistent with initial improvements in terms of quality of construction.

2.5 Reservation of Easements: Declarant contemplates that there will be a compatible development on Lots 1, 3, 4, 5, 6, 7, 8, and 9. Upon annexation of said lot or lots pursuant to Section 2.4, said lot or lots shall be made subject to the terms of this Declaration and thereby become subject to the jurisdiction of the Association, and Declarant hereby reserves to itself, its successors and assigns, the right to, and agrees that it will, grant to the owners of condominium units in said lot, nonexclusive easements for ingress and egress and construction activities over the common area of lot two that is not a part of a condominium building. Declarant further agrees that it will reserve to itself, its successors and assigns, the right to grant, and covenants and agrees that it will grant, to the owners of condominium units in lot two, non-exclusive easements for ingress and egress over the common area of said lots that is not a part of a condominium building upon annexation of said lots pursuant to Section 2.4.

2.6 Public Access Easement: Declarant has dedicated a public access easement to and along the banks of the waterways lying within or adjacent to the project. The Enabling Declaration Establishing Master Association dated DECEMBER 21<sup>ST</sup> 1983 and recorded JANUARY 4<sup>TH</sup> 1984 in the Office of the County Recorder of San Mateo County ["The Enabling Declaration Establishing Master Association"] sets forth certain rules with regard to the continued maintenance of said public access areas. DOCUMENT NO. 84000928

### ARTICLE III

#### ASSOCIATION, ADMINISTRATION, MEMBERSHIP AND VOTING RIGHTS

3.1 Association to Manage Common Areas: The management of the common area shall be vested in the Association in accordance with its bylaws. The owners of all the condominiums covenant and agree that the administration of the project shall be in accordance with the provisions of this Declaration, the articles and Bylaws of the Association.

3.2 Membership: The owner of a unit shall automatically, upon becoming the owner of same, be a member of the Association, and shall remain a member thereof until such time as his ownership ceases for any reason, at which time his membership in the Association shall automatically cease. Membership shall be held in accordance with the Articles and Bylaws of the Association.

3.3 Transferred Membership: Membership in the Association shall not be transferred, pledged, or alienated in any way, except upon the sale or encumbrance of the unit to which it is appurtenant, and then only to the purchaser, in the case of a sale, or mortgagee, in the case of an encumbrance of such unit. Upon death of a member, his membership passes automatically along with title to his unit, to his heirs. A mortgagee does not have membership rights until he becomes an owner by foreclosure or deed in lieu thereof. Any attempt to make a prohibited transfer is void. No member may resign his membership. In the event the owner of any unit should fail or refuse to transfer the membership registered in his name to the purchaser of his unit, the Association shall have the right to record the transfer upon its books and thereupon any old membership outstanding in the name of the seller shall be null and void.

3.4 Membership Classes and Voting Rights: The Association shall have two (2) classes of voting membership:

Class A. Class A members shall be all owners with the exception of the Declarant and shall be entitled to one (1) vote for each unit owned. When more than one person holds an interest in any unit, all such persons shall be members. The vote for such unit shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any unit.

Class B. The Class B member shall be the Declarant and shall be entitled to vote as follows: voting shall be the same as for Class A memberships, except that Class B member may triple its votes for each unit owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(a) When the total votes outstanding in the Class A membership equal the total votes (tripled as stated above) outstanding in the Class B membership; or

(b) On the second anniversary of the original issuance of the most recently issued final public report for a phase of the project;

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(c) On the fourth anniversary of the original issuance of the final public report for the first phase of the project.

Any action by the Association which must have the approval of the members before being undertaken shall require the vote of written assent of at least a majority of each class of membership during the time that there are two outstanding classes of membership. Where the vote or written assent of each class of membership is required, any requirement that the vote of Declarant be excluded is not applicable, except as provided in Section 8.13 hereof, and, in such event, by the vote or written assent of a bare majority of the total voting power of the Association as well as the vote or written assent of 51% of the total voting power of members other than the subdivider is required. Voting rights attributable to units shall not vest until assessments have been levied against those units by the Association. Provided, however, that where a subsidization contract is in effect the voting rights attributable to units owned by Declarant shall vest upon annexation of the phase of the project in which such units are included.

#### ARTICLE IV

##### MAINTENANCE AND ASSESSMENTS

4.1. Creation of the Lien and Personal Obligation of Assessments: The Declarant, for each unit owned within the project, hereby covenants, and each owner of any unit by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges (to be billed and paid monthly); and (2) special assessments for purposes permitted herein, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, penalties, fines, and reasonable attorney's fees, shall be a charge on the condominium and shall be a continuing lien upon the condominium against which each such assessment is made, the lien to become effective upon recordation of a notice of assessment. Each such assessment together with interest, costs, penalties, fines, and reasonable attorney's fees, shall also be the personal obligation of the person who was the owner of such condominium at the time when the assessment fell due. No owner of a condominium may exempt himself from liability for his contribution towards the common expenses by waiver of the use of enjoyment of any of the common areas or by the abandonment of his condominium.

4.2. Purpose of Assessments: The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of all the residents in

the entire project and for the improvement and maintenance of the common area for the common good of the project, and to fulfill the legal obligations of the Association under the terms and conditions of approval fixed by the City of San Mateo.

4.3. Annual Assessment:

A. From and after January 1 of the year immediately following the conveyance of the first unit to an owner, the annual assessment may be increased each year by not more than twenty percent (20%) above the maximum assessment for the previous year without a vote of the membership.

B. The Board may not, without the vote or written consent of a majority of the voting power of the Association residing in members other than the Declarant, impose a regular annual assessment which is more than twenty percent (20%) greater than the regular annual assessment for the immediately preceding fiscal year.

C. Without membership approval, the Board of Directors may fix the annual assessment at an amount not in excess of the maximum. However, the annual assessment may not be decreased either by the Board or by the members, by more than ten percent (10%) in any one year without the approval of a majority of the voting power of the Association residing in members other than the Declarant, or, where the two class voting structure is still in effect, a majority of each class of members. Failure by the Board to set assessments shall not be deemed a waiver of the assessments but rather the prior year's assessment shall continue.

D. Subject to the limitations on the maximum and minimum amount of assessments herein provided, if at any time during the course of any year the Board shall deem the amount of the annual assessment to be inadequate or excessive, the Board shall have the power, at a regular or special meeting, to revise the assessment for the balance of the assessment year, effective on the first day of the month next following the date of the revision.

4.4. Special Assessments for Capital Improvements Or Extraordinary Expenses; Reserves for Replacement; Trust Funds: The Board of Directors may levy in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair, or replacement of a capital improvement upon the common area, including fixtures and personal property related thereto, or for extraordinary expenses incurred by the Association, provided that in the event special assessment(s) exceed in the aggregate five percent (5%) of the budgeted gross expenses of the Association for that fiscal year, the vote or

written consent of a majority of the voting power of the Association residing in members other than the Declarant shall be required to approve such assessment(s). Special assessments shall be levied on the same basis as regular assessments, provided that a special assessment against a member is a remedy utilized by the Board to reimburse the Association for costs incurred in bringing the member and his unit into compliance with the provisions of the Condominium Documents, or is the result of a fine imposed by the Board, and provided that a special assessment against owners to raise funds for the rebuilding or major repair of the structural common area housing units of the project shall be levied upon the basis of the ratio of square footage of the floor area of the unit to be assessed to the total square footage of floor area of all units to be assessed.

As part of the regular annual assessments for maintenance authorized above, the Board of Directors shall annually fix the amount to be contributed pro rata by each member to reserve funds for the purpose of defraying, in whole or in part, the cost or estimated cost of any reconstruction, repair, or replacement of improvements, including fixtures and personal property related thereto. Such determination shall be made after consideration of the need for additional funds and of the Association's capital position. The Board shall maintain a separate account for those funds. The Board shall fix the method of payment of such assessments and shall be empowered to permit either lump sum or monthly payments. Separate records shall be maintained for all funds deposited to the said account, which shall be designated as a "Reserve Account".

Amounts received by the Association as contributions, assessments, or dues from the owners shall be held in one or more accounts. Deposits shall be made, and funds accounted for so that reserves for capital improvements and for replacement, can be clearly separated from funds for operating expenses or repair and maintenance funds. Capital improvement and replacement funds shall be used solely for capital improvements and replacements of the common area within the project.

4.5. Notice and Quorum for any Action Authorized Under Sections 4.3 and 4.4: Any action authorized under Sections 4.3 and 4.4, which requires a vote of the membership, shall be taken at a meeting called for that purpose, written notice of which shall be sent to all members not less than ten (10) nor more than ninety (90) days in advance of the meeting specifying the place, day and hour of the meeting and, in the case of a special meeting, the nature of the business to be undertaken. If a quorum is present and the proposed action is favored by a majority vote of the members present at such meeting, but such vote is less than a majority of the voting power of the Association, including a majority of the members other than the Declarant, members who were not present in person or by proxy

may give their assent in writing, provided the same is obtained by the appropriate officers of the Association not later than thirty (30) days from the date of such meeting.

4.6. Division of Assessments: Except as provided in Section 4.4, all assessments, both annual and special, shall be charged to and divided among the unit owners as provided in Exhibit C attached hereto and incorporated herein by reference.

4.7. Date of Commencement of Annual Assessment: Due Dates: The regular assessments provided for herein shall commence as to all units in the first phase (Phase I) on the first day of the month following the closing of the first sale on the conveyance of the first condominium to the owner in the first phase (Phase I). In subsequent phases the assessments against all units in each phase shall commence on the first day of the month following the closing of the first such sale. The first assessment shall be adjusted according to the number of months remaining in the calendar year.

4.8. Effect of Nonpayment of Assessments: Any assessment not paid within thirty (30) days after the due date shall bear interest at the rate of fifteen percent (15%) per annum from the due date until paid, and shall incur a late payment penalty of \$25.00.

4.9. Transfer of Unit by Sale or Foreclosure: Sale or transfer of any unit shall not affect the assessment lien. However, the sale of any unit pursuant to a mortgage foreclosure of a first mortgage shall extinguish the lien of such assessments (including fees, late charges, fines or interest levied in connection therewith) as to payments which become due prior to such sale or transfer (except for assessment liens recorded prior to the mortgage). No sale or transfer shall relieve such unit from liability for any assessments thereafter becoming due or from the lien thereof.

Where the mortgagee of a first mortgage of record or other purchaser of a condominium obtains title to the same as a result of foreclosure of any such first mortgage, such acquirer of title, his successor and assigns, shall not be liable for the share of the common expenses or assessment by the Association chargeable to such condominium which became due prior to the acquisition of title to such condominium by such acquirer (except for assessment liens recorded prior to the mortgage). Such unpaid share of common expenses or assessment shall be deemed to be common expenses collectible from all of the condominium owners including such acquirer, his successors or assigns.

In a voluntary conveyance of a condominium the grantee and the grantor shall be jointly and severally liable to the Association for all unpaid assessments against the condominium

for the grantor's share of the common expenses up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor. However, any such grantee shall be entitled to a statement from the Association, setting forth the amount of the unpaid assessments against the grantor due the Association and such grantee shall not be liable for, nor shall the condominium conveyed be subject to a lien for, any unpaid assessments made by the Association against the grantor in excess of the amount set forth in the statement, provided, however, the grantee shall be liable for any such assessment becoming due after the date of any such statement.

4.10. Priorities; Enforcement; Remedies: When a notice of assessment has been recorded, such assessment shall constitute a lien on each respective condominium prior and superior to all other liens except (1) all taxes, bonds, assessments, and other levies which, by law, would be superior thereto, and (2) the lien or charge of any first mortgage of record (meaning any recorded mortgage or deeds of trust with first priority over other mortgages or deed of trust made in good faith and for value.

Such lien, when delinquent, may be enforced by sale by the Association, its attorney or other person authorized to make the sale, after failure of the owner to pay such assessment in accordance with its terms, such sale to be conducted in accordance with the provisions of Sections 2924-2924H of the California Civil Code, applicable to the exercise of powers of sale in mortgages and deeds of trust or in any other manner permitted by law.

Fines and penalties for violations of restrictions are not assessments and are not enforceable by assessment lien.

The Association acting on behalf of the condominium owners, shall have the power to bid for the condominium at foreclosure sale, and to acquire and hold, lease, mortgage and convey the same. Where the purchase of a foreclosure unit will result in a five percent (5%) or greater increase in assessments, the purchase shall require the vote or written consent of a majority of the total voting power of the Association, including a majority of the total voting power of the Association, including a majority of the members other than Declarant. During the period a unit is owned by the Association, following foreclosure: (1) No right to vote shall be exercised on behalf of the unit; (2) No assessment shall be assessed or levied on the unit; and (3) Each other unit shall be charged, in addition to its usual assessment, its prorata share of the assessment that would have been charged to such unit had it not been acquired by the Association as a result of foreclosure. Suit to recover a money judgment for unpaid common expenses, rent and attorneys' fees



shall be maintainable without foreclosing or waiving the lien securing the same.

After acquiring title to the unit at foreclosure sale following notice and publication, the Association may execute, acknowledge and record a deed conveying title to the unit which deed shall be binding upon the owners, successors, and all other parties.

The Board may temporarily suspend the voting rights (and right to use recreational facilities) of a member who is in default in payment of any assessment, after notice and hearing, pursuant to California Corporations Code Section 7341 as provided in the Bylaws.

4.11. Unallocated Taxes: In the event that any taxes are assessed against the common area, or the personal property of the Association, rather than against the units, said taxes shall be included in the assessments made under the provisions of Section 4.1 and, if necessary, a special assessment may be levied against the units in an amount equal to said taxes, to be paid in two installments, thirty (30) days prior to the due date of each tax installment.

4.12. Exemption From Assessments: All property dedicated to, and accepted by, a local public authority or public agency, and all property owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of California, shall be exempt from the assessments created herein. However, no land or improvements devoted to dwelling use shall be exempt from said assessments. Those units having no structural improvements for human occupancy, shall be exempt from the payment of that portion of any assessment which is for the purpose of defraying expenses and reserves directly attributable to the existence and use of the structural improvement. The exemption may include, but shall not necessarily be limited to:

- A. Roof replacement
- B. Exterior Maintenance
- C. Walkway and carport lighting
- D. Refuse disposal, if any
- E. Cable Television
- F. Domestic water supplied to living units, if any.

Any such exemptions from the payment of assessments shall be in effect only until a notice of completion of the structural improvement has been recorded or until one hundred twenty (120)

days after the issuance of a building permit for the structural improvement, whichever occurs first.

4.13. Collection of Assessments. Special and annual assessments shall/may be collected monthly at the discretion of the Board.

## ARTICLE V

### DUTIES AND POWERS OF THE ASSOCIATION

5.1. Duties: In addition to the duties enumerated in its Bylaws, or elsewhere provided for in this Declaration, and without limiting the generality thereof, the Association shall perform the following duties:

A. Maintenance: The Association shall maintain, repair, replace, restore, operate and manage all of the common area and all facilities, improvements, furnishings, equipment and landscaping thereon, and all property that may be acquired by the Association. Maintenance shall include (without limitation): Painting, maintaining, cleaning, repairing, and replacing of all common areas, including exterior doors), exterior glass surfaces, windows, landscaping (except for private patio areas which are to be maintained by owners as per Section 8.7), balconies, parking areas, and recreational facilities. The responsibility of the Association for maintenance and repair shall not extend to repairs or replacements arising out of or caused by the willful or negligent act or neglect of an owner, or his guests, tenants, or invitees, the cost of which is not covered by insurance. The cost of repair or replacement resulting from such excluded items shall be the responsibility of each owner; provided, however, that if an owner shall fail to make the repairs or replacements which are the responsibility of such owner, as provided above, then after 30 days notice to the owner and a public hearing, the Association shall enter the condominium (if necessary) and make such repairs or replacements, and the cost thereof shall be paid immediately to the Association by the owner of such condominium.

The Association shall at all times insure that every fire hydrant situated on the project shall be accessible to fire department apparatus by way of emergency vehicle roadways. The emergency vehicle roadways shall be extended to within 150 feet of all portions of the exterior walls of the first story of any building on the project. Upon request, the Association shall dedicate to the City of San Mateo an easement for such emergency access. Such emergency vehicle access roadways shall be an all-weather driving surface capable of supporting a vehicle-laden

weight of 37,000 lbs., be not less than 20 feet in unobstructed width, have an outside turning radius of not less than 40 feet, and an inside turning radius of not more than 18 feet, and a minimum of 13 feet, 6 inches of vertical clearance. The Association shall at all times maintain the emergency vehicle roadways free of obstructions for a width of 20 feet along its entire length and the Association shall prohibit parking or obstructing of said emergency vehicle roadways. Any barricades, fences, or gates to be installed across an emergency vehicle access roadway shall require the prior approval of the fire department of the City of San Mateo.

B. Insurance: The Association shall maintain such policy or policies of insurance as are required by Section 8.8 of this Declaration.

C. Discharge of Liens: After notice and hearing as provided in Section 8.1, the Association shall discharge by payment, if necessary, any lien against the common area, and assess the cost thereof, to the member or members responsible for the existence of said lien, subject to the limitations in Section 8.1.

D. Assessments: The Association shall fix, levy, collect and enforce assessments as set forth in Article IV hereof.

E. Payment of Expenses: The Association shall pay all expenses and obligations incurred by the Association in the conduct of its business including, without limitation, all licenses, taxes or governmental charges levied or imposed against the property of the Association.

F. Enforcement: The Association shall enforce this Declaration.

G. Security: The Association shall provide security for the common area.

5.2 Powers: In addition to the powers enumerated in its Articles of Incorporation and Bylaws, or elsewhere provided for herein, and without limiting the generality thereof, the Association shall have the following powers:

A. Utility Service: The Association shall have the authority to obtain, for the benefit of all of the condominiums, all water, gas, sanitary sewer, storm sewer, and electric service and refuse collection, and janitorial or window cleaning service and CATV.

B. Easements: The Association shall have authority by document signed or approved by three-fourths (3/4) of the total voting power of the Association, including a majority of the members other than Declarant, to grant easements in addition to those shown on the Map, where necessary for utilities, cable television and sewer facilities over the common area, to serve the common and open space areas and the condominium units.

C. Manager: The Association shall have the authority to employ a manager or other persons and to contract with independent contractors or managing agents to perform all or any part of the duties and responsibilities of the Association, except for the responsibility to levy fines, impose discipline, hold hearings, file suit, record or foreclose liens, or make capital expenditures, provided that any contract with a firm or person appointed as a manager or managing agent shall not exceed a one (1) year term, shall provide for the right of the Association to terminate the same at the first annual meeting of the members of the Association, and to terminate the same for cause on thirty (30) days' written notice, or without cause or payment of a termination fee on ninety (90) days' written notice.

D. Adoption of Rules: The Association or the Board may adopt reasonable rules not inconsistent with this Declaration relating to the use of the common area and all facilities thereon, and the conduct of owners and their tenants and guests with respect to the property and other owners.

E. Access: For the purpose of performing construction, maintenance, or emergency repair for the benefit of the common area, or the owners in common, the Association's agents or employees shall have the right, after reasonable notice (not less than 24 hours except in emergencies) to the owner thereof, to enter any unit or to enter any portion of the common area at reasonable hours. Such entry shall be made with as little inconvenience to the owner as practicable and any damage caused thereby shall be repaired by the Board at the expense of the Association.

F. Assessments, Liens and Fines: The Association shall have the power to levy and collect assessments in accordance with the provisions of Article IV. The Association may impose fines or take disciplinary action against any owner for failure to pay assessments or for violation of any provision of the condominium documents. Penalties may include but are not limited to: fines, temporary suspension of voting rights, rights to the use of recreational facilities, or other appropriate discipline, provided that the accused member is given notice and the

opportunity to be heard with respect to the alleged violations before a decision to impose fines to discipline is made.

G. Enforcement: The Association shall have the authority to enforce this Declaration as per Article VIII hereof.

H. Acquisition and Disposition of Property: The Association shall have the power to acquire (by gift, purchase or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, or otherwise dispose of real or personal property in connection with the affairs of the Association. Any transfer of real property shall be by document signed or approved by a majority of the voting power of the Association residing in members other than the Declarant.

I. Loans: The Association shall have the power to borrow money, and only with the assent (by vote or written consent) of three-fourths (3/4) of the total voting power of the Association including three-fourths (3/4) of the members other than Declarant, or where the two class voting structure is still in effect, three-fourths (3/4) of the voting power of each class of members, to mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred.

J. Dedication: The Association shall have the power to dedicate all or any part of the common area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication shall be effective unless an instrument has been signed by a majority of the voting power of the Association residing in members other than the Declarant.

K. Contracts: The Association shall have the power to contract for goods and/or services for the common area(s), facilities and interests or for the Association, subject to limitations of Section 7.3 of the Bylaws or elsewhere set forth in the condominium documents.

L. Delegation: The Association, the Board, and the officers of the Association shall have the power to delegate their authority and powers to committees, officers, or employees of the Association, or to a manager employed by the Association, provided that the Board shall not delegate its responsibility for hearings required to be given by the Board.

M. Use of Recreational Facilities: The Association shall have the power to limit the number of an owner's tenants or guests who may use the recreational facilities, provided that all limitations apply equally to all owners, unless imposed for disciplinary reasons, after notice and hearing.

N. Custodian Unit: Anything in this Declaration or the Bylaws or Articles to the contrary notwithstanding, the Association, upon appropriate resolution of the Board shall have the power and authority, with the vote or written consent of a majority of the members, other than the Declarant, to purchase a Unit (the "custodian unit") to be occupied by the custodian of the project. In such case, during the period the custodian unit is owned by the Association:

(1) No right to vote shall be exercised on behalf of the custodian unit;

(2) No assessment shall be assessed or levied on the custodian unit; and

(3) Each other unit shall be charged, in addition to its usual assessment, its share of the assessment that would have been charged to the custodian unit, but for the provisions of this Section.

O. Security: The Association shall have the power to contract for security services for the common area.

## ARTICLE VI

### UTILITIES

6.1 Owners' Rights and Duties: The rights and duties of the owners of the condominiums within the project with respect to streets, levees, storm and sanitary sewer, water, electricity, gas and television receiving, telephone lines, and facilities, and heating facilities shall be as follows:

A. Whenever storm or sanitary sewer, drainage, levees, plumbing, water, electricity, gas, television receiving, telephone lines, or connections, heating conduits, ducts, or flues, are installed within the property, which connections or any portion thereof lie in or upon condominiums owned by other than the owner of a condominium served by said connections, the owners of any condominium served by said connections shall have the right of reasonable access for themselves or for utility companies to repair, replace, and generally maintain said

connections as and when necessary, due to failure or inability of the Board to take timely action to make such repairs or perform such maintenance.

B. Whenever storm or sanitary sewer, drainage, levees, plumbing, water, electricity, gas, television receiving, or telephone lines or connections, heating conduits, ducts, or flues are installed within the property which connections serve more than one condominium, the owner of each condominium served by said connection shall be entitled to the full use and enjoyment of such portions of the said connections as service his condominium.

C. In the event of a dispute between owners with respect to the repair or rebuilding of said connections, or with respect to the sharing of the cost thereof, then, upon written request of one of such owners addressed to the Association, the matter shall be submitted to arbitration pursuant to the rules of the American Arbitration Association, and the decision of the arbitrator(s) shall be final and conclusive on the parties.

6.2 Easements for Utilities and Maintenance: Easements over and under the property for the installation, repair, and maintenance of electric, telephone, water, gas, and storm and/or sanitary sewer lines and facilities, heating facilities, cable or master television antenna lines, drainage facilities, levees, walkways, and landscaping as may be hereafter required or need to service the property, are hereby reserved by Declarant and its successors and assigns, including the Association, together with the right to grant and transfer the same.

6.3 Association's Duties: The Association shall maintain all utility installations located in the common area except for those installations maintained by the Master Association utility companies, public, private or municipal. The Association shall pay all charges for utilities supplied to the project except those metered or charged separately to the units. Unit owners shall maintain the heater system servicing their respective units, and all light fixtures and appliances therein.

## ARTICLE VII

### USE RESTRICTIONS

In addition to all of the covenants contained herein, the use of the property and each condominium therein is subject to the following:

7.1 Condominium Uses: No condominium shall be occupied and used except for residential purposes by the owners, their tenants, and social guests, and no trade or business shall be conducted therein, except that Declarant, its successors and

assigns, may use any unit or units in the project owned by Declarant for a model home site or sites, and display and sales office during construction and until the last unit is sold by Declarant. No tent, shack, trailer, basement, garage, out-building or structure of a temporary character shall be used at any time as a residence, either temporarily or permanently.

Residents shall be limited as follows:

No more than two (2) persons per bedroom in any unit.

No unit or units or any portion thereof in the project shall be leased, subleased, occupied, rented, let, sublet, or used for or in connection with any time-sharing agreement, plan, program, or arrangement, including, without limitation, any so-called "vacation license", "travel club", "extended vacation" or other membership or time-interval ownership arrangement. The term "time-sharing" as used herein shall be deemed to include, but shall not be limited to, any agreement, plan, program, or arrangement under which the right to use, occupy, or possess the unit or units or any portion thereof in the project rotates among various persons, either corporation, partnership, individual or otherwise, on a periodically recurring basis for value exchanged, whether monetary or like-kind use privileges, according to a fixed or floating interval or period of time of twenty-five (25) consecutive calendar days or less. Provided, this section shall not be construed to limit the personal use of any unit or any portion thereof in the project by any unit owner or his or her or its social or familial guests.

7.2. Nuisances: No noxious, illegal, or seriously offensive activities shall be carried on upon any condominium, or in any part of the property, nor shall anything be done thereon which may be or may become a serious annoyance or a nuisance to or which may in any way interfere with the quiet enjoyment of each of the owners of his respective unit, or which shall in any way increase the rate of insurance for the project, or cause any insurance policy to be cancelled or to cause a refusal to renew the same, or which will impair the structural integrity of any building.

7.3. Vehicle Restrictions: Parking shall be limited or prohibited on private streets upon which emergency vehicle access easements have been dedicated to the City of San Mateo to insure access. Signs which comply with applicable codes of the City of San Mateo giving notice of the restriction, together with appropriate street markings, shall be posted and maintained in place. No trailer, camper, mobile home, motor home, house car, commercial vehicle, truck (other than standard size pickup truck or standard size van) boat, inoperable automobile, or similar equipment shall be permitted to remain upon any area within the property, other than temporarily, unless placed or

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maintained within an enclosed garage or carport or in the recreational vehicle storage area. Commercial vehicles shall not include sedans or standard size vans and pickup trucks which are used both for business and personal use, provided that any signs or markings of a commercial nature on such vehicles shall be unobtrusive and inoffensive as determined by the Board. No noisy or smoky vehicles shall be operated on the property. No unlicensed motor vehicles shall be operated upon the property. Garages shall be used to park permitted vehicles, and not for storage. Twenty-four (24) hours after notice has been personally delivered to the owner or placed on the windshield of a vehicle or seventy-two (72) hours after notice has been mailed to the address of the registered owner of a vehicle parked, stored, or maintained on the premises, in violation of the provisions of this Declaration, or without notice if said vehicle is parked in an emergency access easement, the owner shall be deemed to have consented to the removal of said vehicle from the project, and the Association or its agents or employees or the City of San Mateo or any property owner or member of the Association, in accordance with the applicable provisions of the San Mateo Municipal Code and the California Vehicle Code, shall have the authority to tow away and store any such vehicle, whether said vehicle shall belong to a unit owner, or his tenant, a member of his family, or his guest or invitee, or any other person. The owner of said vehicle shall be responsible for all charges and expenses incurred in said towing as then provided for in the Municipal Code of the City of San Mateo. The Association shall post appropriate signs setting forth the required notice under the then-applicable City of San Mateo Municipal Code with regard to towing of unauthorized vehicles. Charges for such towing and storage shall be paid either by the owner of such vehicle or by the unit owner responsible for the presence of such vehicle. In addition, the City of San Mateo may issue a citation for the prohibited parking.

7.4. Recreational Vehicle Parking: The Enabling Declaration Establishing Master Association at Section 5.2 sets forth rules with regard to the operation and maintenance of a recreational vehicle parking area to serve the residents of the condominium units. Such rules and regulations as established by the Master Association shall be binding upon the condominium owners.

7.5. Signs: No signs shall be displayed to the public view on any units or on any portion of the property except such signs as comply with applicable codes of the City of San Mateo and as are approved by the Board or committee appointed by the Board. One (only) "For Sale" or "For Rent" sign per unit shall be allowed provided it does not exceed three (3) square feet in size.

7.6. Animals: Subject at all times to all applicable ordinances of the City of San Mateo, no animals, reptiles, insects or birds of any kind shall be raised, bred, or kept in any condominium, or on any portion of the property; except pets kept in cages or aquariums, that no more than a total of one (1) usual and ordinary household pet, such as a dog, cat, bird, etc. may be kept provided that it is not kept, bred, or maintained for any commercial purposes, and it is kept under reasonable control at all times.

No pet weighing more than twenty (20) pounds shall be kept on the property. Notwithstanding the foregoing, no pet may be kept on the property which is obnoxious or annoying to other unit owners. No pet shall be allowed in the common area except as may be permitted by rules of the Board. No dog shall enter the common area except while on a leash which is held by a person capable of controlling it.

After making a reasonable attempt to notify the owner, the Association or any owner may cause any unleashed dog found within the common area to be removed by the Association or any owner to a pound or animal shelter under the jurisdiction of the City of San Mateo, County of San Mateo, by calling the appropriate authorities, whereupon the owner may, upon payment of all expense connected therewith, repossess the dog. Owners shall prevent their pet from soiling all portions of the common area and shall promptly clean up any mess left by their pet. Owners shall be fully responsible for any damage caused by their pet.

7.7. Garbage and Refuse Disposal: All rubbish, trash, and garbage shall be regularly removed from the property, and shall not be allowed to accumulate thereon. Trash, garbage and other waste shall not be kept except in sanitary containers. All equipment, garbage cans, woodpiles, or storage piles, shall be kept screened and concealed from view of other units, streets, and common areas.

7.8. Radio and Television Antennas: No alteration to or modification of a central radio and/or television antenna system or cable television system, whichever is applicable, if developed by Declarant or a cable television franchisee and as maintained by the Association or said franchisee, shall be permitted, and no owner may be permitted to construct and/or use and operate his own external radio and/or television antenna without the consent of the Board.

7.9. Right to Lease: No owner shall be permitted to lease his unit for any period less than thirty (30) days. Any lease agreement shall be required to provide that the term of the lease shall be subject in all respects to the provisions of the Declaration and the Bylaws and that any failure of the lessee to comply with the terms of such documents shall be a default under

the lease. All owners leasing or renting their units, shall promptly notify the Secretary of the Association in writing of the names of all tenants and members of tenant's family occupying such unit and of the address and telephone number where such owner can be reached. All leases shall be required to be in writing.

All common area recreational facilities are for the use of the owners or their tenant and their respective guests. Others who do not reside within the project and who have rented or leased their unit or units are not permitted to use the recreational facilities. In such cases, said facilities are to be used only by the occupying tenants. Tenants are subject to all the rules and regulations and are responsible for any damage to the common area. Owners are also responsible for their tenants for violations of rules and for damage to the common area.

7.10. Architectural Control: No building, fence, wall, obstruction, outside or exterior wiring, balcony, screen, patio, patio cover, tent, awning, carport, carport cover, hottub, sauna, improvement, or structure of any kind shall be commenced, installed, erected, painted, repainted, or maintained upon the property, nor shall any alteration or improvement of any kind be made thereto until the same has been approved in writing by the Board, or by an architectural control committee appointed by the Board and a building permit when applicable has been obtained from the City of San Mateo.

Plans and specifications showing the nature, kind, shape, color, size, materials and location of such improvements, alterations, etc., shall be submitted to the Board or to the architectural control committee for approval as to quality of workmanship and design and harmony of external design with existing structures, and as to location in relation to surrounding structures, topography, and finish grade elevation. No permission or approval shall be required to repaint in accordance with Declarant's original color scheme, or to rebuild in accordance with Declarant's original plans and specifications. No permission or approval shall be required to repaint in accordance with a color scheme previously approved by the Board or the Committee or to rebuild in accordance with plans and specifications previously approved by the Board or by the committee. Nothing contained herein shall be construed to limit the right of an owner to paint the interior of his unit any color desired.

No landscaping of patios or yards visible from the street or from the common area not involving the use of natural plants, grass, trees, or shrubs, and which does involve the use of synthetic materials or of concrete, rock or similar materials, shall be undertaken by any owner until plans and specifications showing the nature, kind, shape, and location of the materials

shall have been submitted to and approved in writing by the Board or by an architectural control committee appointed by the Board.

The architectural control committee shall consist of three (3) members. Declarant may appoint all of the original members of the committee and all replacements until the first anniversary of the issuance of the original final public report for the first phase of the project. The Declarant reserves to itself the power to appoint a majority of the members to the committee until ninety (90%) percent of all the units in the project (including subsequent phases, if any) have been sold or until the fifth anniversary of the issuance of the final public report for the first phase of the project, whichever occurs first. After one (1) year from the date of issuance of the original public report for the first phase of the project, the Board shall have the power to appoint one (1) member to the architectural control until ninety percent (90%) of all the units in the overall project have been sold or until the fifth anniversary date of the issuance of the final public report for the first phase of the project, whichever occurs first. Thereafter, the Board shall have the power to appoint all of the members of the architectural control committee. Members appointed to the architectural control committee by the Board shall be from the membership of the Association. Members appointed to the architectural control committee by the Declarant need not be members of the Association. A majority of the architectural control committee may designate a representative to act for it. In the event of death or resignation of any member of the committee, the successor shall be appointed by the person, entity or group which appointed such member until Declarant no longer has the right to appoint any members to the committee, and thereafter, the Board shall appoint such a successor. Neither the members of the committee nor its designated representatives shall be entitled to any compensation for services performed pursuant hereto. In the event the committee fails to approve or disapprove plans and specifications within thirty (30) days after the same have been submitted to it, approval will not be required and the related covenants shall be deemed to have been fully complied with.

7.11. Drapes: That portion of all drapes, curtains, window coverings, shutters, or blinds visible from the street or common areas shall be of colors, materials, and patterns which are approved by the Board or its authorized committee.

7.12. Clothes Lines: There shall be no outside laundering or drying of clothes, except inside fenced patios, with colors to be hung below fence level so as not to be visible from streets or common area or other units, and then only if the clothes cannot be seen from the street, common area or other units.

7.13. Power Equipment and Car Maintenance: No power equipment, hobby shops, or car maintenance, (other than emergency work) shall be permitted on the property except with prior written approval of the Board and unless it complies with all applicable codes of the City of San Mateo. Approval shall not be unreasonably withheld and in deciding whether to grant approval the Board shall consider the effects of noise, air pollution, dirt or grease, fire hazard, interference with radio or television reception, and similar objections.

7.14. Liability of Owners for Damage to Common Area: The owner of each unit shall be liable to the Association for all damage to the common area or improvements thereon caused by such owner or occupancy of his unit or guest or by owner's pet, except for that portion of said damage, if any, fully covered by insurance. Liability of an owner shall be established only after notice to the owner and hearing before the Board. In the event an owner disagrees with the decision of Board on the question of liability, the owner may petition a court of law or submit the matter to arbitration under the rules of the American Arbitration Association.

7.15. Basketball Standards: No basketball apparatus attached to the exterior of any building or affixed to the common area shall be permitted on the property.

7.16. Parking Spaces; Storage: The project includes uncovered outside parking spaces. Some are designated as "restricted Common Area" on the Condominium Plan, and are reserved for the exclusive use of the owners of the units to which they are assigned. The remaining undesignated spaces shall be controlled by the Board, which shall assign said spaces and charge fees therefor, in accordance with rules to be adopted by the Board. The Board shall also control the allocation and use of storage space in the garage and shall set and assess fees to be charged for the use thereof.

7.17. Levee:

The Board shall adopt rules and regulations for the use of the levee adjacent to the Project, and shall coordinate the enforcement of the same with the Edgewater Isle Master Association and with the City of San Mateo. The Enabling Declaration Establishing Master Association sets forth rules and regulations with regard to public access along said levee.

7.18. Joining Units: An owner of horizontally adjacent units shall have the right upon first obtaining a building permit from the City of San Mateo, to join such units. In furtherance thereof an owner may modify and utilize common areas between such units so long as such modifications do not affect the structural integrity of the project or impair any other

owner's reasonable use of such common areas, or the utilities that may be located therein, or the value of the project, subject to the prior approval of any such modifications by the Architectural Control Committee. All costs and expenses of such modifications, and subsequent restoration of said areas shall be borne by the owner of the units so joined. After approval of the proposed modifications by the Committee and prior to commencement of work, the owner making such modifications shall post a bond or bonds in an amount acceptable to the Committee to protect the Association and project against liens and to insure completion of the work. In joining units an owner shall have such reasonable access to other units as may be required to accomplish the modifications approved by the Architectural Control Committee. Such modifications shall not, however, change the status of units which shall continue to be treated legally as separate condominium units, each entitled to one vote, and each required to pay its separate assessment. In the event common ownership of joined units is for any reason terminated, common areas which have been altered shall be immediately restored to their original design and status.

7.19. Fire Protection: The Association [if this is not undertaken by the Edgewater Isle Master Association] shall be responsible for assuring that private fire hydrants, valves, markers and mains shall be maintained in an operable condition at all times. Annual tests of said system shall be conducted by qualified persons approved by the Fire Chief of the City of San Mateo. A written record of said tests shall be maintained and made available to the Fire Chief. The Association shall reimburse the City of San Mateo for all costs the City may incur in the maintenance of the fire hydrant system within the Project.

7.20. Building Identification: All street addresses shall be clearly visible from the street. Numerals shall be a minimum of four (4) inches in height. All units not facing on a street shall be identified in a manner acceptable to the Police Chief and Fire Chief of the City of San Mateo.

7.21. Post Tension/Floor Slabs: The foundation "floor slab" is a design integral unit using post tensioning cables. There is one foundation slab for both your neighbor and your structure, do not cut, chip, drill or alter the foundation "floor slab" in any way. If one of the reinforcing members is broken, the structural integrity of the foundation could be jeopardized and there is a possibility of serious injury to workers or damage to your neighbors foundation.

If at any time damage is caused to the foundation "floor slab" a qualified post tension foundation engineer must be contacted for appropriate construction sequence for making repairs. In the event damage is caused to the foundation "floor

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slab" by a homeowner, it is the responsibility of said homeowner to bear the cost of making such repairs as are deemed necessary.

## ARTICLE VIII

### GENERAL PROVISIONS

8.1. Enforcement: The Association or the Edgewater Isle Master Association or the City of San Mateo, at its sole discretion and within the legitimate exercise of its police power, after giving due notice to the Association or to the affected owner shall have the right, but not the obligation, to enforce, by any proceeding, at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration, the Articles and Bylaws and in such action, shall be entitled to recover reasonable attorneys' fees as are ordered by Court. Failure by the Association or by any owner (or by the City of San Mateo) to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Further provided the Association shall discharge by payment, if necessary, any lien against the common area and assess the cost thereof to the member or members responsible therefor; provided, however:

(1) The Association may not cause a forfeiture or abridgment of a member's right to the full use and enjoyment of his individually owned Unit on account of the failure by the member to comply with the provisions of this Declaration or of duly enacted rules of operation with regard to the common area and facilities, except by judgment of a court or a decision arising out of arbitration or on account of a foreclosure or sale under a power of sale for failure of the member to pay assessments duly levied by the Association.

(2) The procedures for notice and hearing satisfying the minimum requirements of Section 7341 of the Corporations Code must be followed with respect to any accused member before the Association may render a decision to impose monetary penalties, temporary suspension of the member's rights as a member of the Association, or other appropriate discipline for failure to comply with this Declaration.

(3) A monetary penalty or fine imposed by the Association as a disciplinary measure for failure of a member to comply with the governing instruments or as a means of reimbursing the Association for costs incurred by the Association in the repair of damage to common areas and

facilities for which the member was allegedly responsible or in bringing the member and his Unit into compliance with the governing instruments may not be treated as an assessment which may become a lien against the member's Unit, enforceable by a sale of the Unit in accordance with the provisions of Sections 2924, 2924(b), and 2924(c) of the Civil Code, with the exception of charges imposed against an Owner consisting of reasonable late payment penalties for delinquent assessments and/or charges to reimburse the Association for the loss of interest and for costs reasonably incurred [including attorney's fees] in its effort to collect delinquent assessments, which charges and penalties may become a lien against the member's Unit enforceable by a sale of the interest in accordance with the provisions of Sections 2924, 2924(b) and 2924(c) of the Civil Code.

8.2. Invalidity of any Provision: Should any provision or portion hereof be declared invalid or in conflict with any law of the jurisdiction where this project is situated, the validity of all other provisions and portions hereof shall remain unaffected and in full force and effect.

8.3. Term: The covenants and restrictions of this Declaration shall run with and bind the property, and shall inure to the benefit of and shall be enforceable by the Association or the owner of any property subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of thirty (30) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years, unless an instrument in writing, signed by a majority of the then owners of the condominiums, has been recorded within the year preceding the beginning of each successive period of ten (10) years, agreeing to change said covenants and restrictions in whole or in part, or to terminate the same.

8.4. Amendments: After sale of the first Unit, this Declaration may be amended only by the affirmative vote (in person or in proxy) or written consent of members representing a majority of the total voting power of the Association and a majority of the affirmative votes or written consent of members other than the Declarant or where the two (2) class voting structure is still in effect, a majority of each class of membership. However, the percentage of voting power necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. Any amendment must be recorded in the Recorder's Office of the County of San Mateo. No amendment shall adversely affect the rights of the holder of any mortgage of record prior to the recordation of such amendment.

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8.5. Encroachment Easements: Each condominium within the property is hereby declared to have an easement over all adjoining condominiums and the common area for the purpose of accommodating any encroachment due to minor engineering errors, minor errors in original construction, reconstruction, repair, settlement, shifting, or movement of the building [even if by design due to the existence of post tension floors] or any other cause. There shall be valid easements for the maintenance of said encroachments as long as they shall exist, and the rights and obligations of the owners shall not be altered in any way by said encroachment, settlement or shifting; provided, however, that in no event shall a valid easement for encroachment be created in favor of an owner or owners if said encroachment occurred due to the intentional conduct of said owner or owners. In the event a structure is partially or totally destroyed, and then repaired or rebuilt, the owners of each condominium agree that minor encroachments over adjoining condominiums or common area shall be permitted and that there shall be valid easements for the maintenance of said encroachments so long as they shall exist.

8.6. Rights of First Lenders: No breach of any of the covenants, conditions and restrictions herein contained, nor the enforcement of any lien provisions herein, shall render invalid the lien of any first mortgage (meaning a mortgage with first priority over any other mortgage) on any unit made in good faith and for value but all of said covenants, conditions and restrictions shall be binding upon and effective against any owner whose title is derived through foreclosure or trustee's sale, or otherwise. Notwithstanding any provision in the condominium documents to the contrary, first lenders shall have the following rights:

A. Copies of Project Documents: The Association shall make available to unit owners and lenders, and to holders, insurers, or guarantors, of any first mortgage, current copies of the Declaration, Bylaws, Articles, or other rules concerning the project and the books, records, and financial statements of the Association. "Available" means available for inspection and copying, upon request, during normal business hours, or under other reasonable circumstances.

B. Audited Statement: Any holder, insurer, or guarantor of a first mortgage shall be entitled, upon written request, to an audited financial statement for the immediately preceding fiscal year, free of charge to the party so requesting. Such statement shall be furnished within a reasonable time following such request.

C. Notice of Action: Upon written request to the Association, identifying the name and address of the eligible mortgage holder or eligible insurer or guarantor, and the unit number or address, such eligible mortgage holder or eligible insurer or guarantor will be entitled to timely written notice of (1) condemnation loss or any casualty loss which affects a material portion of the project or any units on which there is a first mortgage held, insured, or guaranteed by such eligible mortgage holder or eligible insurer or guarantor, as applicable; (2) any default in performance of obligations under the project documents or delinquency in the payment of assessments or charges owed by an owner of a unit subject to a first mortgage held, insured or guaranteed, by such eligible mortgage holder, or eligible insurer or guarantor, which remains uncured for a period of sixty (60) days; (3) any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association; (4) any proposed action which would require the consent of a specified percentage of eligible mortgage holders as specified in Section 8.6D. The Association shall discharge its obligation to notify eligible holders or eligible insurers or guarantors by sending written notices required herein to such parties at the address given on the current request for notice, in the manner provided by Section 8.13.

D. Consent to Action:

(1) Except as provided by statute or by other provision of the project documents in case of substantial destruction or condemnation of the project, and further excepting any reallocation of interests in the common area(s) which might occur pursuant to any plan of expansion or phased development contained in the original project documents:

(a) The consent of owners of units to which at least sixty-seven percent (67%) of the votes in the Association are allocated and the approval of eligible mortgage holders holding mortgages on units which have at least sixty-seven percent (67%) of the votes of units subject to eligible holder mortgages, shall be required to terminate the legal status of the project as a condominium project.

(b) The consent of owners of units to which at least sixty-seven percent (67%) of the votes in the Association are allocated and the approval of eligible mortgage holders holding mortgages on units which have at least fifty-one percent (51%)

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of the votes of the units subject to eligible holder mortgages, shall be required to add or amend any material provisions of the project documents which establish, provide for, govern or regulate any of the following: (i) voting; (ii) assessments, assessment liens, or subordination of such liens; (iii) reserves for maintenance, repair and replacement of the common area(s) or units if applicable; (iv) insurance or fidelity bond; (v) rights to use of common area(s); (vi) responsibility for maintenance and repair of the several portions of the project; (vii) expansion or contraction of the project or the addition, annexation, or withdrawal of property to or from the project (except as provided for in paragraph D (1) above); (viii) boundaries of any unit; (ix) the interests in the general or restricted common areas; (x) convertibility of units into common areas or of common areas into units; (xi) leasing of units; (xii) imposition of any right of first refusal or similar restriction on the right of a unit owner to sell, transfer, or otherwise convey his or her unit; (xiii) any provisions which are for the express benefit of mortgage holders, eligible mortgage holders, or eligible insurers or guarantors of first mortgages on units.

(c) An addition or amendment to such document shall not be considered material if it is for the purpose of correcting technical errors, or for clarification only. An eligible mortgage holder who receives a written request to approve additions or amendments who does not deliver or post to the requesting party a negative response within thirty (30) days shall be deemed to have approved such request.

(2) Except as provided by statute in case of condemnation or substantial loss to the units and/or common elements of the condominium project, unless the holders of at least two-thirds (2/3) of the first mortgages (based upon one vote for each first mortgage owned) or owners of the individual condominium units have given their prior written approval, the Association and/or the owners shall not be entitled to:

(a) By act or omission, seek to abandon or terminate the condominium project (except for abandonment or termination provided by law in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain).

(b) Change in the pro rata interest or obligations of any individual condominium unit for the purpose of: (i) levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards, or (ii) determining the pro rata share of ownership of each condominium unit.

(c) Partition or subdivide any condominium unit.

(d) By act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the common area. (The granting of easements for public utilities or for other public purposes consistent with the intended use of the common area by the condominium project shall not be deemed a transfer within the meaning of this clause).

(e) Use hazard insurance proceeds for losses to any condominium property (whether to units or to common area) for other than the repair, replacement, or reconstruction of such condominium property.

E. Right of First Refusal: The condominium documents contain no provisions creating a "right of first refusal" but should any such rights be created in the future, any such rights shall not impair the rights of any first lender to: (1) foreclose or take title to a condominium unit pursuant to the remedies provided in the mortgage; or (2) accept a deed (or assignment) in lieu of foreclosure in the event of default by a mortgagor, or (3) sell or lease a unit acquired by the mortgagee.

F. Contracts: Any agreement for professional management of the condominium project or lease or any other contract providing for services of the developer, sponsor, or builder, may not exceed one (1) year. Any agreement, contract, or lease, including a management contractor entered into prior to passage of control of the Board of Directors of the Association to unit purchasers, must provide for termination by either party for cause on thirty (30) days' written notice, or without cause and without payment of a termination fee or penalty on ninety (90) days' written notice.

G. Reserves: Condominium dues or charges shall include an adequate reserve fund for maintenance, repairs, and replacement of those improvements which the Association

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is obligated to maintain that must be replaced on a periodic basis, and shall be payable in regular installments rather than by special assessments.

H. Priority of Liens: Each holder of a first mortgage lien on a unit who comes into possession of the unit by virtue of foreclosure of the mortgage, or any purchaser at a foreclosure sale under a first deed of trust, will take the unit free of any claims for unpaid assessments and fees, late charges, fines or interest levied in connection therewith against the unit which accrue prior to the time such holder comes into possession of the unit, except for claims for a pro rata share of such assessment or charges resulting from a pro rata reallocation of such assessments or charges to all project units including the mortgaged unit, and except for assessment liens.

I. Distribution of Insurance or Condemnation Proceeds: No provision of the condominium constituent documents gives a condominium unit owner or any other party, priority over any rights of first mortgagees of condominium units pursuant to their mortgages in the case of a distribution to condominium unit owners of insurance proceeds or condemnation awards for losses to or taking of condominium units and/or common elements.

J. Restoration or Repair: Any restoration or repair of the project, after a partial condemnation or damage due to an insurable hazard, shall be performed substantially in accordance with the Declaration and the original plans and specifications, unless other action is approved by eligible mortgage holders holding mortgages on units which have at least fifty-one (51%) of the votes of units subject to eligible holder mortgages.

K. Termination: Any election to terminate the legal status of the project after substantial destruction or a substantial taking in condemnation of the project property must require the approval of eligible mortgage holders holding mortgages on units which have at least fifty-one (51%) percent of the votes of units subject to eligible holder mortgages.

L. Reallocation of Interests: No reallocation of interests in the common areas resulting from a partial condemnation or partial destruction of the project may be effected without the prior approval of eligible mortgage holders holding mortgages on all remaining units whether existing in whole or in part, and which have at least fifty-one (51%) percent of the votes of such remaining units subject to eligible holder mortgages.

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M. Termination of Professional Management: When professional management has been previously required by an eligible mortgage holder, eligible insurer or guarantor, whether such entity became an eligible mortgage holder or eligible insurer or guarantor at that time or later, any decision to establish self management by the Association shall require the prior consent of owners of units to which at least sixty-seven percent (67%) of the votes in the Association are allocated and the approval of eligible mortgage holders holding mortgages on units which have at least fifty-one percent (51%) of the votes of units subject to eligible holder mortgages.

8.7. Owner's Right and Obligation to Maintain and Repair: Except for the portions of the project which the Association is required to maintain and repair, each unit owner shall, at his sole cost and expense, maintain and repair his unit (and shall maintain the landscaping within the private patio area appurtenant thereto which is a part of the restricted common area), keeping the same in good condition. Each owner shall bear the cost of maintenance, repair and replacement of the following items within or serving such owner's unit: patio, garage interior, and entrance and stairway, interior surface of all perimeter and interior walls, ceilings, and floors including carpeting, tile, wallpaper, paint or other covering, garbage disposals, hot water heaters, ranges, refrigerators, dishwashers, washing machines, dryers, light fixtures, and any and all other appliances of any nature whatsoever, heating and ventilating equipment servicing such unit, interior and exterior doors, including all hardware thereon, window panes and light bulbs; plumbing and other fixtures of any nature whatsoever, "built-in" features; and decorative features, fireplaces, if any, and any furniture and furnishings. All electric utilities serving individual units including garages and carports shall be separately metered and shall be the expense of each individual unit owner. Electric utilities serving the general common elements shall be a common expense of the Association. Each unit owner shall keep those portions of the restricted common area to which he has exclusive easement rights clean and neat. Each owner shall have the exclusive right to paint, plaster, panel, tile, wax, paper, or otherwise refinish and decorate the inner surfaces of the walls, ceilings, floors, windows, and doors, bounding his unit. In the event an owner fails to maintain the interior of his unit, or the landscaping within his private patio area, in a manner which the Board deems necessary to preserve the appearance and value of the property, the Board may notify owner of the work required and request it be done within sixty (60) days from the giving of such notice. In the event owner fails to carry out such maintenance within said period, the Board may, following notice and hearing, cause such work to be done and may charge the cost thereof to such owner, and, if necessary file suit for the amount thereof.

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8.8 Insurance; Damage or Destruction: In the event of damage to or destruction of any unit, the same shall be reconstructed as soon as reasonably practicable, and substantially in accord with the original plans and specifications therefor.

Each unit owner appoints the Association, or any insurance trustee to be designated by the Association, as attorney in fact for the purpose of purchasing and maintaining the Association's insurance, including: The collection and appropriate disposition of the proceeds thereof; the negotiation of losses and execution of releases of liability; the execution of all documents; and the performance of all other acts necessary to accomplish such purpose. The Association or any insurance trustee shall be required to receive, hold or otherwise properly dispose of any proceeds of insurance in trust for unit owners and their first mortgage holders, as their interests may appear.

The Association shall obtain and continue in effect a master policy of insurance covering all of the personal property and supplies of the Association, and all of the real property and improvements of the project, including the common area and all fixtures and building service equipment therein, and the units and any fixtures, equipment, or property therein covered by a first mortgage on the unit, and protecting the interests of the Association and its members, including without limitation, fire and extended coverage and special form and insuring one hundred percent (100%) of current replacement costs for all improvements in the project, including the units, comprehensive general liability insurance, insuring the Association and each owner for his liability for the common area, and a fidelity bond covering officers, directors, and employees in an amount to be determined by the Board, but in no event less than a sum equal to three (3) months aggregate assessments on all units plus reserve funds.

All insurance shall contain "severability of interest provision", "cross liability endorsement" and waiver of subrogation as to the Association, officers, directors, members, guests, agents and employees.

The master policy shall be issued in the name of the Association for the use and benefit of the owners.

The minimum limits on the liability insurance policy shall be \$1,000,000 single limit, and shall include personal injury, bodily injury, property damages and liability for non-owned automobiles. In addition, the Association shall obtain and continue in effect additional umbrella coverage of \$1,000,000, or as an alternative may carry a \$2,000,000 single limit policy. Workers compensation insurance shall at all times be carried to the extent required to comply with any applicable law. Officers'

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and directors' liability insurance shall be carried by the Association to cover persons serving in such capacities and to cover committee members, if available.

Where the project is located within an area having special flood hazards and for which flood insurance has been made available under the National Flood Insurance Program (NFIP), the Association shall obtain and pay, as a common expense, the premiums upon a master policy of flood insurance on the buildings and any other property covered by the required from of policy herein "insurable property", in an amount deemed appropriate, but not less than the following: The lesser of: (1) the maximum coverage available under the NFIP for all buildings and other insurable property within any portion of the condominium project located within a designated flood hazard area; or (2) one hundred percent (100%) of current replacement costs of all such buildings and other insurable property.

In addition to the master liability policy which the Association shall carry, each unit owner may carry public liability insurance covering damage to the property or injury to person or others within the project resulting from negligence of the owner or his agents in an amount not less than \$300,000 for each occurrence.

Insurance premiums for the master policy shall be a common expense to be included in the monthly assessments levied by the Association and the portion of such payment necessary for the insurance premiums may be held in a separate account of the Association and shall be used solely for the payment of the master insurance policy premiums as such premiums become due.

Each buyer of a unit shall pay the portion of the premium(s) attributable to his unit (prorated to the date of close of escrow) for the policy of policies purchased by Declarant for the Association.

All insurance policies shall be reviewed at least annually by the Board in order to ascertain whether the coverage contained in the policies is sufficient to make any necessary repairs and replacement of the property which may have been damaged or destroyed.

If any of the project improvements are materially damaged or destroyed by fire or other casualty (materially damaged is defined for the purposes of this section as any damage for which the cost of repair or reconstruction is more than fifty percent (50%) of the full replacement value of the improvements), the project shall be repaired or reconstructed in accordance with the original as built plans and specifications unless the owners



vote not to undertake such repair or reconstruction in a special election held in accordance with the following procedures:

A. In the event any portion of the project improvements are materially damaged (as defined above) or destroyed, a special election shall be held, after not less than thirty (30) days written notice to all owners, and their first mortgagees of records, at a suitable location on the property, or as close thereto as practicable, which location shall be specified in such notice.

B. The project shall be repaired or reconstructed in accordance with the original as-built plans and specifications as hereinafter provided, unless: (1) in such special election at least two-thirds (2/3) of the total voting power of the Association residing in members other than Declarant votes against such repair or reconstruction or (2) the available insurance proceeds surplus reserves of the Association are inadequate to pay the cost of repair or reconstruction and a special assessment in excess of five percent (5%) of the budgeted gross expenses of the Association for that fiscal year is required to provide such funds and such assessment fails to pass by majority vote as provided in Section 4.4.

C. In the event the requisite number of votes are not cast against such repair or reconstruction, and if a special assessment in excess of five percent (5%) (if required) passes, all of the insurance proceeds payable on account of such damage or destruction shall be made available for such repair or reconstruction and shall be deposited with a commercial lending institution experienced in the disbursement of construction loan funds (the "Depository"). The Depository shall be appointed by the Association. Such funds shall be disbursed in accordance with the normal construction loan practices for the Depository, which are reasonably acceptable to the Association. The restoration or reconstruction shall be substantially in accordance with the original as-built plans and specification for the building, modified as may be required by applicable building codes and regulations in force at the time of such repair or reconstruction or in accordance with such other plans and specifications as may be approved by the Association, and the respective first mortgagees.

D. The Association shall designate a construction consultant (the "Construction Consultant"), general contractor (the "General Contractor"), and architect (the "Architect") for the repair or reconstruction contemplated by this paragraph. In the event of a dispute regarding the selection of the Construction Consultant, the General

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Contractor and the Architect, the selection of such individuals or firms shall be submitted to and be subject to the rules of the American Arbitration Association.

E. The insurance proceeds payable on account of such damage or destruction shall be deposited with the Depository and shall be disbursed in accordance with the normal construction loan practices of the Depository and upon the certification of the Construction Consultant, General Contractor and Architect dated not more than ten (10) days prior to any such request for disbursement, setting forth the following:

(1) That all of the work completed as of the date of such request for disbursement has been done in compliance with the approved plans and specifications;

(2) That such disbursement request represents monies which either have been paid by or on behalf of the Construction Consultant, the General Contractor or the Architect and/or are justly due to contractors, subcontractors, materialmen, engineers, or other persons (whose name and address shall be stated) who have rendered or furnished certain services or materials for the work and giving a brief description of such services and materials and the principal subdivisions or categories thereof and the respective amounts paid or due to each of said persons in respect thereof and stating the progress of the work up to the date of said certificate;

(3) That the sum then requested to be disbursed plus all sums previously disbursed does not exceed the cost of the work insofar as actually accomplished up to the date of such certificate;

(4) That no part of the cost of the services and materials described in the foregoing paragraph (1) has been or is being made the basis for the disbursement of any funds in any previous or then pending application; and

(5) That the amount held by the Depository will, after payment of the amount requested in the pending disbursement request, be sufficient to pay in full the cost of such repair or reconstruction.

F. In the event the insurance proceeds available for repair or construction are less than the total cost of such repair or reconstruction the Association may use sums from its account or if necessary from levying special assessments on the members of restore or rebuild the areas

affected, provided that any assessment that exceeds five percent (5%) of the budgeted gross expenses of the Association for the fiscal year shall require the vote or written assent of a majority of the voting power of the Association residing in members other than the Declarant, and provided, further, if such special assessment fails to be approved by the requisite majority, and the project cannot be repaired or reconstructed without the funds from such special assessment, the provisions of paragraph G, below, shall apply, and if the first lenders are unable or unwilling to supply the necessary funds, the provisions of paragraph I, below, shall apply.

G. In the event any portion of the common area has been damaged or destroyed and that portion of the insurance proceeds applicable to the damage or destruction is sufficient to reconstruct or repair the damaged or destroyed portion, the Association shall supply the excess funds required to restore or rebuild the affected area, as provided in F, above; provided, however, that in the event the Association and the members refuse or are unable to supply such excess funds, the first lenders of the units affected shall have the option of supplying such excess funds or of applying that portion of the insurance proceeds allowable to that damaged or destroyed area to the debt secured by such mortgagee's mortgages or deeds of trust, as provided in paragraph I, below.

H. All such funds to be supplied by the Association, or individual owners, shall be deposited with the Depository and shall be disbursed pursuant to the provisions of this Section. In the event that there is any dispute over the allocation of insurance proceeds or the amount of funds in excess of the insurance proceeds which any party must deposit with the Depository such dispute shall be submitted to and be subject to the rules of the American Arbitration Association.

I. In the event the owners elect not to repair or reconstruct a building or elect not to approve a special assessment to provide funds for rebuilding as provided in B and F, above, the provisions of Civil Code Section 1354 (regarding partition and sale) shall be deemed satisfied, and the insurance proceeds payable on account of such damage or destruction shall be disbursed as follows; and in the event of partition and sale under any conditions stated in Civil Code Section 1354, the proceeds of sale shall be disbursed as follows:

First, to the mortgagees in order of their priority to the extent of monies owed such mortgagees;

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Second, to the cost of removing any remaining or destroyed portions of the project improvements and complying with all other applicable requirements of governmental agencies;

Third, to the owners in proportion to the respective fair market values of their units and their interests in the common area at the time of the destruction as determined by the Association; provided, however, that if any owner or mortgagee protests the proposed distribution based upon said fair market values as so determined, a licensed independent appraiser acceptable to the Association and to the protesting members or mortgagees shall be appointed by the Association to make the determination of the respective fair market values of the units at the time of the destruction. In the event of a failure to agree upon an appraiser, the appraiser shall be appointed by the then President of the San Mateo County Bar Association.

J. In the event there is any damage or destruction to the project improvements which is not material, as that term is defined above, the damaged improvements shall be repaired and reconstructed (without the necessity of any special election) in accordance with the applicable provisions of this section.

Any election to terminate the legal status of the project after substantial destruction or a substantial taking in condemnation of the project property shall require the approval of eligible holders holding mortgages on units which have at least fifty-one percent (51%) of the votes of units subject to eligible holder mortgages.

8.9 Condemnation: The Association shall represent the unit owners in any condemnation proceedings or in negotiations, settlements and agreements with the condemning authority for acquisition of the common area(s), or part thereof. In the event of a taking or acquisition of part or all of the common area(s) by a condemning authority, the award or proceeds of settlement shall be payable to the Association, or any trustee, for the use and benefit of the unit owners and their mortgagees as their interests may appear. In the event of an award for the taking of any unit in the project by eminent domain, the owners of such unit shall be entitled to receive the award for such taking and after acceptance thereof he and his mortgagee shall be divested of all interest in the project if such owners shall vacate his unit as a result of such taking. The remaining owners shall decide by majority vote whether to rebuild or repair the project, or take other action. The remaining portion of the project shall be resurveyed, if necessary, and the Declaration shall be amended to reflect such taking and to readjust proportionately the percentages of undivided interest

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of the remaining owners in the project. In the event of a taking by eminent domain of any part of the common area, the Association shall participate in the negotiations, and shall propose the method of division of the proceeds of condemnation, where units are not valued separately by the condemning authority or by the court. Proceeds of condemnation shall be distributed among owners of units and their respective mortgagees according to the relative values of the units affected by the condemnation, said values to be determined by the method provided in Section 8.8.

8.10 Limitation of Restrictions on Declarant: Declarant is undertaking the work of construction of residential condominium dwellings and incidental improvements upon the subject property. The completion of that work and the sale, rental, and other disposal of said condominium units is essential to the establishment and welfare of said property as a residential community. In order that said work may be completed and said property be established as a fully occupied residential community as rapidly as possible, nothing in this Declaration shall be understood or construed to:

A. Prevent Declarant, its contracts, or subcontractors from doing on the property or any unit, whatever is reasonably necessary or advisable in connection with the completion of said work; or

B. Prevent Declarant or its representative from erecting, constructing and maintaining on any part or parts of the property, such structures as may be reasonable and necessary for the conduct of its business of completing said work and establishing said property as a residential community and disposing of the same in parcels by sale, lease or otherwise; or

C. Prevent Declarant from conducting on any part of the property its business of completing said work and of establishing a plan of condominium ownership and of disposing of said property in condominium units by sale, lease or otherwise (including use of one or more units as a sales office); or

D. Prevent Declarant from maintaining such sign or signs on any of the property as may be necessary for the sale, lease or disposition thereof.

The foregoing limitations or the application of the restrictions to Declarant shall terminate upon sale of Declarant's entire interest in the project, or three (3) years after the date of recordation of the deed of the first unit to be sold in the last phase of the project to be annexed, whichever occurs first.

So long as Declarant, its successors and assigns, owns one or more of the condominiums established and described herein, Declarant, its successors and assigns, shall be subject to the provisions of this Declaration. Declarant shall make reasonable efforts to avoid disturbing the use and enjoyment of their units (and the common area) by owners, while completing any work necessary to said units or common area.

8.11 Termination of any Responsibility of Declarant: In the event Declarant shall convey all of its right, title and interest in and to the property to any partnership, individual or individuals, corporation or corporations, then and in such event, Declarant shall be relieved of the performance of any further duty or obligation hereunder, and such partnership, individual or individuals, corporation or corporations, shall be obligated to perform all such duties and obligations of the Declarant.

8.12. Owners' Compliance: Each owner, tenant or occupant of a condominium shall comply with the provisions of this Declaration, and to the extent they are not in conflict with the Declaration, (the Articles,) and Bylaws, decisions and resolutions of the Association or its duly authorized representative, as lawfully amended from time to time and failure to comply with any such provisions, decisions, or resolutions shall be grounds for an action to recover sums due, for damages, or for injunctive relief.

All agreements and determinations lawfully made by the Association in accordance with the voting percentages established in this Declaration or in (the Articles) or Bylaws may be delivered either personally or by mail. If delivery is by mail, it shall be deemed to have been delivered seventy-two (72) hours after a copy of the same has been deposited in the United States mail, first class or registered, postage prepaid, addressed to the person to be notified at the current address given by such person to the Secretary of the Board or addressed to the unit of such person if no address has been given to the Secretary.

8.13. Special Provisions Relating to Enforcement of Declarant's Obligation to Complete Common Area Improvements: Where the project includes common area improvements which have not been completed prior to the close of escrow on the sale of the first unit, and where the Association is obligee under a bond or other arrangement (hereafter "bond") to secure performance of the commitment of Declarant to complete said improvements, the Board shall consider and vote on the question of action by the Association to enforce the obligations under the bond with respect to any improvements for which a notice of completion has been filed within sixty (60) days after the completion date specified for that improvement in the planned

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construction statement appended to the bond. If the Association has given an extension in writing for the completion of any common area improvement, the Board shall consider and vote on the aforesaid question if a notice of completion has not been filed within thirty (30) days after the expiration of the extension. A special meeting of members of the Association for the purpose of voting to override a decision by the Board not to initiate action to enforce the obligations under the bond or on the failure of the Board to consider and vote on the question shall be held not less than thirty-five (35) days nor more than forty-five (45) days after receipt by the Board of a petition for such a meeting signed by members representing five percent (5%) or more of the total voting power of the Association. At such special meeting a vote of a majority of members of the Association other than the Declarant shall be required to take action to enforce the obligations under the bond and a vote of a majority of the voting power of the Association, excluding Declarant, shall be deemed to be the decision of the Association, and the Board shall thereafter implement this decision by initiating and pursuing appropriate action in the name of the Association.

8.14. Fair Housing: No owner shall, either directly or indirectly, forbid or restrict the conveyance, encumbrance, leasing or mortgaging, or occupancy of his unit to any person of a specified race, sex, marital status, color, religion, ancestry, physical handicap, or national origin.

8.15. Rules and Regulations: All owners, tenants, or their employees, or any other person that might use the facilities of the project in any manner, are subject to rules and regulations as may be established from time to time by the Board. Acquisition, rental, or occupancy of any unit shall constitute acceptance and ratification of the provisions of this Declaration, the rules and regulations, the Enabling Declaration Establishing a Plan for the Edgewater Isle Master Commercial Association dated DEC 21<sup>ST</sup> 1983, and recorded JAN 4<sup>TH</sup> 1984, in <sup>DOC.</sup> ~~Book~~ 84000926, at Page —, of the Official Records of San Mateo County, and the Enabling Declaration Establishing Master Association dated DEC 21<sup>ST</sup> 1983, and recorded JAN 4<sup>TH</sup> 1984, in <sup>DOC.</sup> ~~Book~~ 84000928, at Page —, of the Official Records of San Mateo County.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has executed this Declaration this 21st day of December, 1983.

THE ANDEN GROUP, a California General Partnership  
BY: MIDEN CORPORATION, a California Corporation  
General Partner

  
Dennis O'Brien, Vice President

3005 (6/82) — (Corporation as Partner of Partnership)  
First American Title Company

STATE OF CALIFORNIA  
COUNTY OF Santa Clara ss.

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On Dec. 21, 1983, before me, the undersigned, a Notary Public in and for  
said State, personally appeared Dennis O'Brien and

\_\_\_\_\_ personally known to me (or proved to me on the basis  
of satisfactory evidence) to be the persons who executed the within instrument as

Uwe President and \_\_\_\_\_ Secretary, on behalf of Trisdon

the corporation therein named, and acknowledged to me that said  
corporation executed the within instrument pursuant to its by  
laws or a resolution of its board of directors, said corporation being

known to me to be one of the partners of he  
Archie J. Hays

the partnership that executed the within instrument, and ac-  
knowledged to me that such corporation executed the same  
such partner and that such partnership executed the same.

WITNESS my hand and official seal.

Signature [Signature]



(This area for official notarial seal)