

COVENANTS, CONDITIONS AND RESTRICTIONS

Kamilah Deyn Townhomes

DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION is made on the date hereinafter set forth by Shawki Deyn Properties, LLC., a California limited liability company, hereinafter referred to as "Declarant", being the owner of the certain real property situated in the County of Santa Cruz, State of California, more particularly described as Lots 1 through 49, inclusive and Common Area as shown on the Subdivision Map entitled Kamilah Deyn Townhomes Tract No. 1592

Declarant does hereby declare, for the purpose of establishing a general plan for the creation of a planned residential development, within the meaning of California Civil Code Section 1351, that all of the property described above shall be held, occupied, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, liens and charges, set forth hereinafter, all of which shall run with the real property described above and shall be binding on all parties having any right, title or interest therein, their heirs, successors, and assigns, and which shall inure to the benefit of each Owner thereof, and all of which are imposed upon said real property and every part hereof as a servitude in favor of each and every Lot thereof as the dominant tenement and may be enforced by Declarant, or his or her successors and assigns, and each Owner, his or her successors and assigns or by the Association, its successors and assigns.

ARTICLE I DEFINITIONS

Section 1.01. "Articles" means the Articles of Incorporation of Kamilah Deyn Homeowners Association and any amendments hereof that are or shall be filed in the Office of the Secretary of State of the State of California

"Association"

Section 1.02 "Association" means Kamilah Deyn Homeowners Association, a California nonprofit mutual benefit corporation.

Board"

Section 1.03 "Board" means means Board of Directors of Association .

"Bylaws"

Section 1.04. Bylaws means the Bylaws of the Association and the amendment thereto that are or shall be adopted by the Board.

"Common Area"

Section 1.05 "Common Area" Means the entire Project, including "pavements and lighting" except all Units as Defined in this Declaration or as shown on the Townhouse plan.

"The Homeowner's Association shall be responsible for the operation, maintenance, repair and replacement of the on-site storm drain facilities, up to the point of tie-in to existing City mains, and driveway sight visibility by keeping landscape shrubs by driveways to a maximum of three feet in height, not allowing vegetation to impede the required twenty foot minimum road width and maintaining trees for a minimum vertical roadway clearance of 13'-6"

"Townhouse"

Section 1.06. "Townhouse" means an estate in real property consisting of a fee interest in a Unit; the boundaries of which are shown and described on the Townhouse Plan, a fractional undivided interest as a tenant in common in the Common Area of the Project, a Membership in the Association, and any Exclusive Use Common Area appurtenant of the Unit. The Fractional undivided interest appurtenant to each Unit shall be undivided one-sixteenth.

"Townhouse Plan"

Section 1.07 "Townhouse Plan" means the townhouse plan described in Recital A of this Declaration.

"Declarant"

Section 1.08 "Declarant means Shawki Deyn Properties LLC, and its successors and assigns

"Declaration"

Section 1.09. "Declaration" means this Declaration and any amendments thereto

"Exclusive Use Common Area"

Section 1.10 "Exclusive Use in Common Area" mean those portions of the Common Area reserved for the exclusive use of one or more Owners Pursuant to Section 2.06 of this Declaration.

"Governing Instruments"

Section 1.11 "Governing Instruments" means this Declaration, the Articles and Bylaws of the Association, and any Rules and Regulation of the Project

"Manager"

Section 1.12. "Manager" means any person or entity appointed by the Board to manage the Project.

"Member"

Section 1.13. "Member" means every person or entity entitled to membership in the Association as provided in this Declaration.

"Mortgage" and "First Mortgage"

Section 1.14. "Mortgage" means a mortgage or deed of trust encumbering a Townhouse or any other portion of the Project. "First Mortgage" means a mortgage that has priority over all other mortgages encumbering the same Townhouse or other portions of the Project.

"Mortgagee" and Related Terms

Section 1.15. "Mortgagee" means a Person to whom a Mortgage is made and includes the beneficiary of a deed of trust and any guarantor or insurer of a mortgage. "Institutional Mortgagee" means a mortgagee that is a financial intermediary or depository, such as a bank, savings and loan, or mortgage company, that is chartered under federal or state law and that lends money on the security of real property or invests in such loans, or any insurance company or governmental agency or instrumentality, including the Federal National Mortgage Association (FNMA), the Federal Home Loan Mortgage Corporation (FHLMC), and the Government National Mortgage Association (GNMA). "First Mortgagee" means a mortgagee that has priority over all other mortgages or holders of mortgages encumbering the same Townhouse or other portions of the Project. The term "Beneficiary" shall be synonymous with the term "Mortgagee."

"Mortgagor" and "Trustor"

Section 1.16. "Mortgagor" means a Person who mortgages his, her, or its property to another (i.e. the maker of a mortgage), and shall include the Trustor of a deed of trust. The term "Trustor" shall be synonymous with the terms "Mortgagor."

"Owner"

Section 1.17. "Owner" means the record holder or holders of record fee title to a Townhouse, including Declarant, and any contract sellers under recorded contracts of sale. "Owner" shall not include any persons or entities who hold an interest in a Townhouse merely as security for performance of an obligation.

"Person"

Section 1.18. "Person" means a natural individual, a corporation, or any other entity with the legal right to hold title to real property.

"Plan"

Section 1.19. "Plan" means the Townhouse Plan which will be filed for the Project shown and described in the parcel map attached as Exhibit A to this Declaration.

"Project"

Section 1.20. "Project" means the entire parcel of real property described on the Plan and all improvements thereon.

"Property"

Section 1.21. "Property" means the real property described in the Recitals.

"Rules and Regulations"

Section 1.22. "Rules and Regulations" means any Rules and Regulations for

Kamilah Deyn Townhomes regulating the use of the Common Area and adopted by the Association pursuant to Section 3.06(b) of this Declaration.

"Subdivision Map"

Section 1.23. "Subdivision Map" means the subdivision map recorded in connection with the Project.

"Unit"

Section 1.24. "Unit" means that portion of a Townhouse that consists of a fee interest in a Unit. "Unit" does not include the other elements of a Town homes. Each Unit shall be a separate freehold estate, as separately shown, numbered, and designated in the Townhouse Plan. Each Unit consists of a living area space and yard area as shown on the Townhouse Plan.

ARTICLE II. THE PROPERTY

Section 2.01. The entire Project shall be subject to this Declaration.

Annexation of Additional Property

Section 2.02. Additional property may be annexed to the Project, but only as provided in Article XI of this Declaration.

Common Area

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

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

(1) Common Area landscaping, street trees, and driveways, which shall be maintained on an ongoing basis by a professional landscape company. Dead and diseased plant material shall be replaced with like material.

(2) Common Area walk ways, sidewalks, stairs, driveways exterior fences, retaining walls, exterior building surfaces, roofs, building siding, storm drains and sewer facilities. The Association shall provide perpetual operation, maintenance, repair and replacement of these structures and facilities. The Association shall use Best Practices in the maintenance and repair of the storm drainage system.

(3) Additional parking, including guest parking, which may be provided by the Association. Parking and storage of boats or recreational vehicles is prohibited in any Common Area.

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

(c) Subject to the provisions of this Declaration, each Owner has non-exclusive rights of ingress, egress, and support through the Common Area. These rights shall be appurtenant to and shall pass with title to every Townhouse. However, these rights shall not interfere with, and shall be subordinate to, any exclusive right to use an Exclusive Use Common Area.

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

- (1) The right of the Association to adopt and enforce Rules and Regulations for the use of the Common Area.

- (2) The right of the Association to reasonably limit the number of guests and tenants using the Common Area.
- (3) The right of the Association to assign or otherwise control the use of any unassigned parking spaces within the Common Area.
- (4) The right of the Association to suspend the right of any Owner, and the Person deriving rights from any Owner, to use and enjoy the Common Area for any period during which the Owner is delinquent in the payment of any assessment.
- (5) The right of the Association to cause the construction of additional improvements in the Common Area, or to cause the alteration or removal of existing improvements on the Common Area.
- (6) The right of the Association to grant, consent to, or join in the grant or conveyance of easements, licenses, or rights-of-way in, on, or over the Common Area.
- (7) The right of each Owner to the exclusive use of any Exclusive Use Common Area appurtenant to the Owner's unit.
- (8) The right of the Declarant as described in this Declaration.
- (9) The right of the Association to reasonably restrict access to roofs, maintenance facilities or areas, landscaped areas, and similar areas of the Project.

(10) The right of the Architectural Control Committee to approve any proposed alteration or modification to the Common Area or any Unit, including the exterior of all Units and exterior paint colors.

(e) Declarant hereby reserves easements for common driveway purposes, for drainage and encroachment purposes, and for ingress too and egress from the Common Area. These easements may be used to complete improvements on the Common Area and to perform necessary repair and maintenance work.

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

Trash and recycling trucks serving the Project shall begin as early as 5:30 Monday through Friday, collecting from individual carts along the private driveway. All Owners, including Declarant, shall provide potential buyers a separate disclosure advising that early morning noise from these trucks, including the sounding of back up beepers, may occur on a regular basis.

(g) A Class A Owner who has sold his or her Townhouse to a contract purchaser or who has leased or rented the Townhouse shall be entitled to delegate his or her rights to use and enjoy the Common Area to any contract purchaser, tenant, or subtenant who resides in the Owner's Townhouse, subject to reasonable regulation by the Board. If the Owner makes such a

delegation of rights, the Owner and the Owner's family, guests, employees, and invitees shall not be entitled to use and enjoy the Common Area for so long as the delegation remains effective.

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

Partition

Section 2.04. There shall be no judicial partition of the Project or any part of it, nor shall Declarant or any person acquiring an interest in the Project or any part of it seek any judicial partition, except as follows:

(a) If two or more persons own any Townhouse as tenants in common or as joint tenants they may maintain a partition action as to their co-tenancy.

(b) The Owner of a Townhouse may maintain a partition action as to the entire Project, as if all of the Owners in the Project were tenants in common in the Project in the same proportion as their interests in the Common Area, and an appropriate court shall order partition by sale of the entire Project, on a showing of any of the following:

- (1) The Project has been in existence for more than 50 years and is obsolete and uneconomical, and owners holding (in the aggregate) more than a 50

percent interest in the common area oppose repair or restoration of the Project.

- (2) The Project has been damaged or destroyed and the other criteria set forth in Section 8.03 of this Declaration have been satisfied.

Exclusive Use Common Area

Section 2.05. The portions of the Common Area listed below are or shall be for the exclusive use of certain Owners of Units and shall be appurtenant to those Units. An Exclusive Use Common Area may not be transferred independently of any other interest of the Owner. Additional Exclusive Use Common Areas may be designated in the future by the Association, provided that the designation is not inconsistent with the rights of any Owner.

(a) Each Owner shall have the exclusive right to use their Unit's garage space. Garages shall be used for parking only. Two car garages shall remain 19 feet by 19 feet clear without obstructions. Parking and storage of boats or recreational vehicles is prohibited in any exterior area.

(b) Each Owner shall have the exclusive right to use, for any reasonable purpose, any backyard area that is designated as the backyard area for his or her Unit. No sheds or additional structures, including overhead trellis features, shall be constructed in the rear yards of any Units. The Owner shall be responsible for keeping that area in good condition and repair.

(c) All of the fixtures and items designed to serve a single Unit, but located outside the boundaries of the Unit, are Exclusive Use Common Areas allocated exclusively to that separate interest including window boxes, doorsteps, stoops, balconies, rear patios, and hardware, in incident thereto. These items are to be maintained in good condition and repair and any repair

and maintenance costs shall be the responsibility of the Owner. Any repair or maintenance not completed in a timely manner by the Owner shall be completed by the Association and the cost added to the Owner's regular monthly assessment.

(d) All internal and external telephone wiring designed to serve a single Unit, but located outside the boundaries of the Unit, is Exclusive Use Common Area allocated exclusively to that Unit. The Owner of the Unit shall be entitled to reasonable access to the Common Area for the purpose of maintaining this wiring, subject to the consent of the Association and to any other conditions reasonably imposed by the Association. The Association's consent shall not be unreasonably withheld.

Maintenance by Owners

Section 2.06. Each Owner shall maintain the Owner's Unit, including but not limited to, the equipment and fixtures in the Unit and the interior surfaces of the walls, ceilings, floors, and doors, in a clean, sanitary, and attractive condition. This maintenance shall be at the Owner's expense. However, the Owner shall not take any actions that would impair or otherwise alter the structural integrity or mechanical systems or lessen the support of the Unit or any other portion of the Project, without the prior written approval of the Architectural Control Committee, as

provided in Article VI of this Declaration.

Each Owner shall be responsible for maintaining landscaping horizontal & vertical roadway clearance and driveway sight visibility and driveway sight visibility by keeping landscape shrubs by driveways to a maximum of three feet in height, not allowing vegetation to impede the required twenty foot minimum road width and maintaining trees for a minimum vertical roadway clearance of 13'-6"

Presumption Regarding Boundaries of Units

Section 2.07. In interpreting deeds, declarations, and plans, the existing physical boundaries of a Unit, including any Unit reconstructed in substantial accordance with the Townhouse Plan and the original construction plans for the Project, shall be conclusively

presumed to be its boundaries, rather than the description expressed in the deed, Townhouse Plan, or Declaration. This presumption applies regardless of settling or lateral movement of the building and regardless of minor variances between boundaries, as shown on the Townhouse Plan or described in the deed and Declaration, and the boundaries of the building as constructed or reconstructed.

Prohibition. Against Severance of Elements

Section 2.08. Any conveyance, judicial sale, or other voluntary or involuntary transfer of a Unit shall include the undivided interest in the Common Area and any Exclusive Use Common Areas appurtenant to the Unit. Any conveyance, judicial sale, or other voluntary or involuntary transfer of the Owner's entire estate shall also include the Owner's Membership interest in the Association, as provided in Section 3.02 of this Declaration. Any transfer that attempts to sever those component interests shall be void.

Text

ARTICLE III. OWNER'S ASSOCIATION

Organization of the Association

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

Membership

Section 3.02. Every Owner, on becoming an Owner, shall automatically become a Member of the Association. Ownership of a Unit is the sole qualification for membership. Each Member shall have the rights, duties, privileges, and obligations set forth in the Governing Instruments. Membership shall automatically cease when the Owner no longer holds an ownership interest in a Townhouse. All memberships shall be appurtenant to the Townhouse conveyed, and cannot be transferred, assigned, conveyed, hypothecated, pledged, or alienated except as part of a transfer of the Owner's entire ownership interest, and then only to the transferee. Any transfer of the Owner's title to his or her Townhouse shall automatically transfer the appurtenant membership to the transferee.

Classes of Membership

Section 3.03. The Association shall have two classes of voting membership, as follows:

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

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

- (1) The total outstanding votes of the Class A members equals or exceeds the total outstanding votes of the Class B member; or

- (2) On a prescribed date to be established by the Board, which must not be later than the second anniversary of the first conveyance of a Unit following the original issuance of the final subdivision public report for the Project.

Voting Rights

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

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

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

(c) Except as provided in Section 3.06 (c) of this Declaration, governing the enforcement of certain bonded obligations, and any section of the Bylaws governing the removal of directors, as long as two classes of voting memberships exist, any provision of this Declaration, the Articles, or the Bylaws that requires the approval of a specified percentage of

the voting power of the Association (rather than simply requiring the vote or written consent of a majority of a quorum) shall require the approval of the specified percentage of the voting power of each class of membership. Except as provided herein, when the Class B Membership has terminated, any provision of this Declaration, the Articles, or the Bylaws that requires the approval of a specified percentage of the voting power of the Association shall require the vote or written consent of Owners representing the specified percentage of both the total voting power of the Association and the voting power of the Association residing in Owners other than Declarant.

(d) The Board shall fix, in advance, a record date or dates for the purpose of determining the Owners entitled to notice of, and to vote at, any meeting of Owners. The record date for notice of a meeting shall not be more than 90 or less than 10 days before the date of the meeting or before the date on which the first written ballot is mailed or solicited. The Board may also fix, in advance, a record date for the purpose of determining the Owners entitled to exercise any rights in connection with any other action. Any such date shall not be more than 60 days prior to the action.

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

one Owner has given such notice, all Owners may cumulate their votes for candidates in nomination.

Membership Meetings

Section 3.05. The provisions of the Bylaws governing meetings of the Members are hereby incorporated by reference.

General Powers and Authority

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

(a) The Association shall have the power to establish, fix, levy, collect, and enforce the payment of assessments against the Owners in accordance with the procedures set out in Article IV of this Declaration. Assessments shall cover the operation, maintenance and repair of all Common Area structures and facilities and the costs of administration, including insurance and management fees

(b) The Association shall have the power to adopt reasonable Rules and Regulations governing the use of the Common Area and its facilities, and of any other Association property. These Rules and Regulations may include, but are not limited to: reasonable restrictions on use by the Owners and their families, guests, employees, tenants, and

invitees; rules of conduct; and the setting of reasonable fees for the use of recreational facilities. A copy of the current Rules and Regulations, if any, shall be given to each Owner and shall be posted at conspicuous places in the Common Area. If any provision of the Rules and Regulations conflicts with any provision of this Declaration, the Articles, or the Bylaws, the Declaration, Articles, or Bylaws shall control to the extent of the inconsistency.

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

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

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

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

for use of the Common Area, or by imposing monetary penalties, subject to the following limitations:

- (1) The accused Owner shall be given notice and an opportunity to be heard with respect to the alleged violation in accordance with the provisions of Civil Code §1363(h).
- (2) If the Association imposes a monetary penalty, the Board shall distribute to each Owner, by personal delivery or first-class mail, a schedule of the monetary penalties that may be assessed for those violations.
- (3) Except as provided in Article IV of this Declaration, relating to foreclosure for failure to pay assessments, or as a result of the judgment of a court or a decision arising out of arbitration, the Association shall in no way abridge the right of any Owner to the full use and enjoyment of his or her Unit.

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

(f) The Association's agents or employees shall have the right to enter any Unit when necessary in connection with any maintenance, landscaping, or construction work for which the

Association is responsible. This entry shall be made only on notice to the Owner (except in the case of an emergency) and with as little inconvenience to the Owner as is practicable, and the Association shall repair any resulting damage at its own expense.

Duties of the Association

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

(a) The Association, acting through the Board, shall operate, maintain, repair, and replace the Common Area and its improvements, or contract for the performance of that work, subject to the provisions of Article VIII of this Declaration relating to destruction of improvements, Article IX of this Declaration pertaining to eminent domain, and Section 2.03(h) of this Declaration relating to damage caused by Owners. These areas and improvements shall be kept in a clean, sanitary, and attractive condition.

The Association shall keep the Common Areas free of infestation by wood-destroying pests or organisms. The Owner shall keep the Exclusive Use Common Areas of that Unit free of infestation by wood-destroying pests or organisms. If infestation is present, the Association shall have the right to cause the temporary, summary removal of any occupant of the Project while the Association has the infestation treated. The temporary relocation must be preceded by notice provided by the Association pursuant to Civil Code § 1364. The Owner of a Unit shall pay the costs of any temporary relocation of any occupant of the Unit occasioned by the presence of wood-destroying pests or organisms.

The Association shall not be responsible for maintaining Exclusive Use Common Areas.

The Association shall have the exclusive right and duty to acquire and maintain any furnishings and equipment for the Common Area that it determines are necessary and proper. As a general rule, maintenance costs shall be included in the regular assessments. However, if additional work is required for a particular Unit, the expenses of that additional work shall be charged solely to the Owner of the Unit in the month in which the work is performed.

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

- (1) Water, sewer, garbage, electrical, telephone, gas, elevator, and other necessary utility service for the Common Area and, to the extent not separately metered and charged, for the Units;
- (2) The insurance policies described in Article VII of this Declaration;
- (3) The services of any personnel that the Board determines are necessary or proper for the operation of the Common Area; and
- (4) Legal and accounting services necessary or proper in the operation of the Common Area or the enforcement of this Declaration.

(c) If the Association is obliged under a bond or other arrangement to secure the performance of Declarant as to any Common Area improvements that were not completed prior to the issuance of the final public report on the Project, the following provisions shall govern the initiation of action to enforce the bond:

- (1) The Board of Directors of the Association shall consider and vote on the question of action by the Association to enforce the obligations under the

bond with respect to any improvement for which a Notice of Completion has not been filed within 60 days after the completion date specified for the improvement in the Planned 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 above question if a Notice of Completion has not been filed within 30 days after the expiration of the extension.

- (2) If the Board votes not to initiate action to enforce the obligations under the bond, or if it fails to consider and vote on the matter as required, a special meeting of the Owners of the Association shall be called for the purpose of overriding the Board's decision or for taking action on the matter, on receipt of a petition calling for such a meeting signed by Owners representing at least 1/13 percent of the total voting power of the Association. The meeting shall be held not less than 35 days or more than 45 days after receipt of the petition by the Board. At the special meeting, only the Owners other than Declarant shall be allowed to vote on the matter. A vote by a majority of the voting power of the Association residing in Owners other than Declarant to take action to enforce the obligations under the bond shall be deemed to be the decision of the Association, and the Board shall implement this decision by initiating and pursuing appropriate action in the name of the Association.

(d) The Association shall prepare a pro forma operating budget for each fiscal year, and shall distribute a copy of the budget to each Owner not less than 45 and no more than 60 days before the beginning of the fiscal year. As an alternative to this distribution of the budget, the Association may elect to do all of the following in the manner required by statute: distribute a summary of the budget to each Owner, make the budget available for inspection at a designated location, and provide copies of the budget to the Owners on request and at the expense of the Association. The budget shall contain at least the following:

- (1) The estimated revenue and expenses on an accrual basis.
- (2) A summary (printed on bold type) of the Associations' reserves that is based on the most recent review or study conducted pursuant to Civil Code § 1365.5. This summary shall include the following: (I) the current estimated replacement cost, estimated remaining life, and estimated useful life of each major component that the Association is obligated to maintain (hereafter referred to as the "major components"); (ii) the current estimate, as of the end of the fiscal year for which the study is prepared, of the amount of cash reserves necessary to repair, replace, restore, or maintain the major components; (iii) the current amount, as of the end of the fiscal year for which the study is prepared, of accumulated cash reserves actually set aside to repair, replace, restore, or maintain the major components; and (iv) the percentage that the amount described in (iii), above, is of the amount determined for purposes of (ii), above (that is, the percentage

obtained by dividing the amount described in (iii), above, by the amount described in (ii), above).

- (3) A statement as to whether the Board has determined or anticipates that the levy of one or more special assessments will be required to repair, replace, or restore any major component or to provide adequate reserves for such work.
- (4) A general statement addressing the procedures used for the calculation and establishment of reserves to defray the future repair, replacement, or additions to the major components.

(e) Within 120 days after the close of each fiscal year, the Association shall prepare and distribute to the Owners an annual report consisting of the following:

- (1) A balance sheet as of the end of the fiscal year;
- (2) An operating (income) statement for the fiscal year;
- (3) A statement of changes in financial position for the fiscal year; and
- (4) For any fiscal year in which the gross income to the Association exceeds \$75,000, a copy of the review of the annual report prepared in accordance with generally accepted accounting principles by a licensee of the California State Board of Accountancy. If this report is not prepared by an independent accountant, it shall be accompanied by the certificate of an authorized officer of the Association that the statement was prepared without independent audit or review from the books and records of the Association.

(f) Within 60 days before the beginning of each fiscal year, the Association shall prepare and distribute to the Owners a statement describing the Association's policies and practices in enforcing lien rights or other legal remedies for default in payment of assessments against Owners.

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

(h) Each year, the Association must provide the Owners with a summary of the provisions of Civil Code §§ 1369.510 through 1369.590. These statutes require that alternative dispute resolution be pursued before a civil action may be filed in connection with certain disputes related to enforcement of the governing documents, the David-Stirling Common Interest Development Act (Civil Code §1350 et seq.), or the Nonprofit Mutual Benefit Corporation Law (Corp. Code §7110 et seq.). The required summary must include a specific reference to Civil Code §§ 1369.510 through 1369.590, and the statutory language set forth in Civil Code § 1369.590(a). This summary must be provided either (1) at the time the pro forma operating budget described in §3.07(d) of this Declaration is distributed, or (2) in the manner specified in Corporations Code §5016.

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

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

(j) The Association shall pay all real and personal property taxes and assessments levied against it, its personal property, the Common Area, and Exclusive Use Common Areas.

Board of Directors

Section 3.08. The affairs of the Association shall be managed and its duties and obligations performed by an elected Board of Directors, as provided in the Bylaws, which are hereby incorporated by reference.

Inspection of Books and Records

Section 3.09. The Articles of the Bylaws, governing the duty of the Association to maintain certain books and records and the rights of Owners and Directors to obtain and inspect those books and records, are hereby incorporated by reference.

Resolution of Disputes

Section 3.10. As required by Civil Code §1363.820(a), the Association shall offer a fair, reasonable, and expeditious procedure for resolving any dispute between the Association and a member involving their rights, duties, or liabilities under the Davis-Stirling Common Interest Development Act (Civil Code § 1350 et seq.), the Nonprofit Mutual Benefit Corporation Law (Corporations Code §7110 et seq.), or the Association's governing documents. This dispute resolution procedure is supplementary to the alternative dispute resolution procedure prescribed by Civil Code §1369.510 et seq. as a prerequisite to commencing civil action. The dispute resolution procedure shall consist of the following:

- (a) Either party may initiate the procedure by making a written request to the other party to meet and confer in an effort to resolve the dispute. If the request is by the Association, the member may refuse to participate. However, if the request is by a member, the Association may not refuse to participate.
- (b) Within 5 days of the written request, the Board of Directors shall designate a member of the Board to meet and confer with the other party.

- (c) Within 10 days of the Board member's designation, the parties shall meet at a mutually convenient time and place, explain their positions to each other, and confer in good faith in an effort to resolve the dispute.
- (d) If the parties reach agreement on a resolution of the dispute, that resolution shall be memorialized in writing and signed by the parties with the Board designee signing on behalf of the Association.
- (e) An agreement reached by the parties is binding on them and may be judicially enforced provided the agreement is consistent with the authority granted by the Board of Directors to its designee, and further provided the agreement is not in conflict with law or the Association's governing documents.
- (f) A member of the Association may not be charged a fee to participate in the dispute resolution procedure.

ARTICLE IV. ASSESSMENTS AND COLLECTION PROCEDURES

Covenant to Pay

Section 4.01. The Declarant covenants and agrees, for each Unit owned by it in the Project, and each Owner by acceptance of the deed to the Owner's Unit is deemed to covenant and agree to pay to the Association the regular and special assessment, levied pursuant to the provisions of this Declaration. A regular or special assessment and any late charges, reasonable costs of collection, and interest, as assessed in accordance with the provisions of this Article,

shall be a debt of the Owner of the Unit at the time the assessment or other sums are levied. The Owner may not waive or otherwise escape liability for these assessments by nonuse of the Common Area or abandonment of the Owner's Unit. Assessments shall be a lien upon the Units and failure to pay regular or special assessments in a timely manner may result in legal action or foreclosure pursuant to this Declaration. The Association may use any legal remedy, subject to the procedures outlined in this Declaration, to insure payment of assessments and enforcement of the obligations of Unit Owners.

Exemptions from Assessments

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

(a) Any Owner (including Declarant) of a lot in the Project that does not include a structural improvement for human occupancy shall be exempted from that portion of any assessment which is for the purpose of defraying expenses and reserves directly attributable to the existence and the use of those structural improvements. This exemption shall include, but is not limited to, the following:

- (1)
 - Roof replacement;
 - Exterior maintenance;
- (2).
 - Walkway and carport lighting;
 - Refuse disposal;
 - Cable television; and
 - Domestic water supplied to living units.

Any such exemption shall be in effect only until the occurrence of the earliest of the following events: (i) the recordation of a notice of completion of the structural improvement; (ii) the occupation or use of the structural improvement; or (iii) completion of all elements of the residential structures that the Association is obliged to maintain.

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

Purpose of Assessments

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

Assessment Period

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

Regular Assessment

Section 4.05. Within 60 days prior to the beginning of each fiscal year of the Association, the Board shall estimate the net charges to be paid during that year, including a reasonable provision for contingencies and replacements, with adjustments made for any expected income and surplus from the prior year's fund. The estimated cash requirement shall be assessed to each Owner according to the ratio of the number of Units owned by that owner to the total number of Units in the Project subject to assessment. Regular assessments for fractions of any month shall be prorated. Each Owner is obligated to pay assessments to the Board in equal monthly installments on or before the first day of each month unless the Board adopts an alternative method for payment. Declarant shall pay its full prorated share of the regular assessments on any unsold Townhouses subject to regular assessments.

Special Assessments

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

Limitations on Assessments

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

(a) For any fiscal year, the Board may impose a regular assessment per Unit that is as much as 20 percent greater than the regular assessment for the preceding fiscal year, provided (1) the Board has distributed the pro forma operating budget described in Section 3.07(d) for the current fiscal year or (2) the increase is approved by Owners constituting a majority of the votes at a meeting or in an election of the Association conducted in accordance with Corporations Code §§ 7510-7527 and 7613.

(b) The Board may impose, for any fiscal year, a regular assessment per Unit that is more than 20 percent greater than the regular assessment for the preceding fiscal year, or may levy special assessments that in the aggregate exceed 5 percent of the budgeted gross expenses of the Association for that fiscal year, provided the increase or levy is approved by Owners constituting a majority of the Owners of the Association and casting a majority of the votes at a meeting or election of the Association conducted in accordance with Corporations Code §§ 7510-7527 and 7613.

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

- (1) Required by a court order.
- (2) Necessary to repair or maintain the Project or any part of it for which the Association is responsible when a threat to personal safety in the Project is discovered.
- (3) Necessary to repair or maintain the Project or any part of it for which the Association is responsible that could not have been reasonably foreseen by

the Board in preparing and distributing the pro forma operating budget pursuant to § 3.07(d).

- (4) Incurred in making the first payment of the earthquake insurance surcharge pursuant to Insurance Code § 5003.

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

(d) The Board shall notify the Owners in writing of any increase in the amount of a regular or special assessment. The Board shall provide this notice by first-class mail not less than 30 or more than 60 days prior to the due date of the increased assessment.

Late Charges

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

(a) Reasonable costs incurred in collecting the delinquent assessment, including reasonable attorneys' fees.

(b) A late charge not exceeding 10 percent of the delinquent assessment or \$10, whichever is greater.

(c) Interest on the above sums, at an annual percentage rate of 10 percent, commencing 30 days after the assessment becomes due.

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

Enforcement of Assessments and Late Charges

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

mail of the following:

- (1) A general description of the Association's collection and lien enforcement procedures.
- (2) The method of calculation of the amount due.
- (3) A statement that the Owner has the right to inspect the Association records.
- (4) A statement informing the Owner that the Owner's Unit may be subject to foreclosure and sale without court action.
- (5) An itemized statement of the charges owed by the Owner, including items on the statement that indicate the amount of any delinquent assessments, the fees and reasonable costs of collection, reasonable attorney's fees, and any late charges and interest.
- (6) A statement that the Owner will not be liable to pay the charges, interest and costs of collection, if it is determined the assessment was paid on time.

- (7) The Owner's right to request a meeting with the Board if the Owner disputes the debt.

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

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

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

A debt for a delinquent regular or special assessment and any late charges, reasonable fees and costs of collection, reasonable attorney's fees, and interest shall become a lien on the Unit when a notice of delinquent assessment is duly recorded and mailed as provided in Section 1367.1 of the California Civil Code.

Except as provided below regarding debts arising from delinquent assessments when the debt arose on or after January 1, 2013, and the delinquent amount is less than \$1,800, any such lien may be enforced in any manner permitted by law, including judicial foreclosure or nonjudicial foreclosure. Any nonjudicial foreclosure shall be conducted by the trustee named in the notice of delinquent assessment or by a trustee substituted pursuant to § 2934a of the California Civil Code, in accordance with the provisions of §§ 2924, 2924b, and 2924c of the California Civil Code.

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

In accordance with § 1367.4 of the California Civil Code, a lien securing a debt arising from a delinquent regular or special assessment when the debt arose on or after January 1, 2014, and the delinquent amount is less than \$1,800, excluding accelerated assessments, late charges, fees and costs of collection, attorney's fees, and interest, shall not be enforced by judicial or nonjudicial foreclosure unless and until either (1) the debt equals or exceeds \$1,800, excluding accelerated assessments, late charges, fees and costs of collection, attorney's fees, and interest, or (2) the debt secured by the lien is more than 12 months delinquent.

Statement Regarding Assessments

Section 4.10. The Association shall provide any Owner, on written request, with a statement specifying (1) the amounts of the Association's current regular and special assessments

and fees, and (2) the amounts of any delinquent assessments and related late charges, interest, and costs levied against the Owner's Unit, as provided in Section 4.08 of this Declaration.

ARTICLE V. USE RESTRICTIONS AND COVENANTS

General Restrictions on Use

Section 5.01. In exercising the right to occupy or use a Unit or the Common Area and its improvements, the Owner and the Owner's family, guests, employees, tenants, and invitees shall not do any of the following:

(a) Attempt to further subdivide a Unit without obtaining the prior approval of the Association.

(b) Occupy or use a Unit, or permit all or any part of a Unit to be occupied or used, for any purpose other than as a private residence. Nothing in this Declaration shall prevent an Owner from leasing or renting out his or her Unit, provided that it is not for transient or hotel purposes, is for a period of at least 60 days, and is subject to the Governing Instruments.

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

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

Area that would result in the cancellation of insurance on any Unit or Exclusive Use Common Area or on any part of the Common Area or that would violate any law.

(e) Store gasoline, kerosene, cleaning solvents, or other flammable liquids in the Common Area or in any Unit; provided, however, that reasonable amounts of these liquids may be placed in metal containers and stored in the storage spaces.

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

(g) Raise, breed, or keep animals, livestock, or poultry of any kind in a Unit or in the Common Area, except dogs, cats, or other household pets, which may be kept in Units, subject to the Rules and Regulations (if any).

(h) Engage in any noxious or offensive activity in any part of the Project.

(i) Alter or modify the exterior or any improvements located in a Unit without first obtaining the written consent of the Architectural Control Committee.

(j) Install a solar energy system in a Unit owned by another without first obtaining the written consent of the Architectural Control Committee.

(k) After, construct, or remove anything on or from the Common Area, except on the written consent of the Board.

(1) Park any automobile or other motor vehicle in the Common Area or in any Exclusive Use Common Area except in a space designated for the Owner by the Board or the Governing Instruments.

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

Damage Liability

Section 5.02. Each Owner shall be liable to the Association for all damage to the Common Area or other Association property that is sustained by reason of the negligence or willful misconduct of that Owner or his or her family, guests, employees, tenants, and invitees, to the extent that the damage is not covered by the casualty insurance obtained and maintained by the Association pursuant to Section 7.01 of this Declaration.

Exemption

Section 5.03. Declarant shall be exempt from the restrictions of Section 5.01 to the extent necessary to complete any construction work, sale activities, of additions to or affecting the Project. This exemption includes, but is not limited to, maintaining Units as models, placing advertising signs on the Property, and generally using Project lots and the Common Area to carry on construction activity.

Equitable Servitudes

Section 5.04. The covenant and restrictions set forth in this Declaration shall be enforceable equitable servitudes and shall inure to the benefit of and bind all Owners. These servitudes may be enforced by any Owner or by the Association or by both.

ARTICLE VI. ARCHITECTURAL AND DESIGN CONTROL

Architectural and Design Approval

Section 6.01. Additions to or remodeling of a structure which extends beyond the original footprint of the Project is prohibited. No building, addition, wall, fence or alteration, including exterior painting, shall be commenced, constructed, maintained, or permitted to remain on any lot or Unit, or on the Common Area, until complete plans and specifications of the proposed work have been submitted to and approved by the Architectural Control Committee. The Committee shall review the plans and specifications to determine whether they are compatible with the standards of design, construction, and quality of the Project and, if they are not, shall require the changes by made before approval.

Architectural Control Committee

Section 6.02. The Architectural Control Committee shall consist of three members, folined as follows:

(a) The Declarant shall appoint all of the original members and all replacements until the first anniversary of the issuance of the original final public report for the Project. Further, Declarant may reserve the power to appoint a majority of the Committee until 90 percent of all Units have been sold or until the fifth anniversary date of the original issuance of the final public report for the Project, whichever occurs first. After one year from the date of the issuance of the final public report for the Project, the Board shall have the right to appoint one member to the Committee, until 90 percent of the Units have been sold or until the fifth anniversary date of the

original issuance of the final public report for the Project, whichever occurs first. Thereafter, the Board shall have the right to appoint all of the members of the Committee.

(b) The term of the initial appointees shall be one year. Thereafter, members shall serve two-year terms unless it becomes necessary to remove members appointed by Declarant in order to comply with Section 6.02(a), in which case the terms of all members shall end at that time, and the Board shall appoint a new Committee. Notwithstanding the above, all members of the Committee shall serve at the will of the party that appointed them, and may be removed by that party at any time with or without cause.

(c) The Committee shall meet as often as it deems necessary to properly carry out the obligations imposed on it, unless otherwise directed by the Board.

The Board of Directors

Section 6.03. All decisions of the Architectural Control Committee are subject to review by the Board of Directors and may be appealed to the Board. The Committee shall notify the Board of all violations of this Article and of any noncompliance with its rulings, or with the plans and specifications submitted to and approved by it. Thereafter, the Board shall take any actions it deems necessary, in accordance with the provisions of this Declaration.

ARTICLE VII. INSURANCE

Fire and Casualty Insurance

Section 7.01. The Association shall obtain and maintain a policy or policies of fire and casualty insurance with an extended coverage endorsement for the full insurable replacement value of all buildings and improvements in the Project and of all the Common Area. The amount

of coverage shall be determined by the Board. This insurance shall be maintained for the benefit of the Association, the Owners, and their Mortgagees, as their interests may appear as named insured, subject, however, to any loss payment requirements set forth in this Declaration.

General Liability and Individual Liability Insurance

Section 7.02. The Association shall obtain and maintain one or more policies of insurance that must include coverage for general liability of the Association, and may provide coverage for the individual liability of Officers and Directors of the Association for negligent acts or omissions in that capacity. The limits and coverage shall be reviewed at least annually by the Board and increased in its discretion.

Other Association Insurance

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

Trustee for Policies

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

Individual Insurance

Section 7.05. Each Owner may separately insure the interior of his or her Unit and personal property. Each Owner may obtain and maintain personal liability and property damage liability insurance for his or her Unit, provided that the insurance contains a waiver of subrogation rights by the carrier as to the other Owners, the Association, Declarant, and the institutional First Mortgagees of the Owner's Unit.

Insurance Premiums

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

ARTICLE VIII. DAMAGE OR DESTRUCTION

Duty to Restore and Replace

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

Proceeds Justifying Automatic Restoration and Repair

Section 8.02, If the proceeds of any insurance maintained pursuant to Article VII of this Declaration for reconstruction or repair of the Property are equal to at least 85 percent of the estimated cost of restoration and repair, the Board shall use the insurance proceeds for that purpose, shall levy a special assessment to provide the necessary additional funds, and shall have the improvements promptly rebuilt, unless the Owners by the vote or written consent of not less than 75 percent of the total voting power of each class of Owners object to the restoration or repair work within 60 days of the damage or destruction.

Approval by Owners of Special Assessment for Certain Restorations and Repairs

Section 8.03. If the proceeds of any insurance maintained pursuant to Article VII of this Declaration for reconstruction or repair of the Property are less than 85 percent of the estimated cost of restoration and repair, any restoration and repair work must be authorized by the vote or written consent of Owners representing at least 75 percent of the total voting power of each class of Owners and beneficiaries of at least 75 percent of the First Mortgages on Units in the Project.

This authorization must be given within 60 days of the damage or destruction, and must authorize the Board to levy a special assessment to provide the necessary funds over and above the amount of any insurance proceeds available for the work.

Ordering Reconstruction or Repair

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

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

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

available insurance proceeds by more than \$500. Failure to reject all bids shall authorize the Board to accept the un-rejected bid it considers most favorable. Failure to call the special meeting or to repair the casualty damage within 12 months from the date the damage occurred shall be deemed for all purposes to be a decision not to rebuild.

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

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

Election Not to Rebuild

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

be selected by the Association and who shall be a member of, and apply the standards of, a nationally recognized appraiser organization.

All insurance proceeds available for restoration or repair shall be distributed to the Owners equally.

Minor Restoration and Repair Work

Section 8.06. The Association shall order restoration or repair work without complying with the other provisions of this Article whenever the estimated cost of the work does not exceed \$2500. If insurance proceeds are unavailable or insufficient, the Association shall levy a special assessment for the cost of the work. The Assessment shall be levied in the manner described in Section 4.05 of this Declaration.

ARTICLE IX. EMINENT DOMAIN

Definition of Taking

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

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

Total Sale or Taking

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

Partial Sale or Taking

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

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

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

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

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

ARTICLE X. RIGHTS OF MORTGAGEES

Warranty

Section 10.1. Declarant hereby warrants that Mortgagees of Units in the Project shall be entitled to the rights and guaranties set forth in this Article. No amendment of this Article shall affect the rights of the holder of any First Mortgage recorded prior to the recordation of the amendment who does not join in the execution of the amendment.

Subordination

Section 10.2. Notwithstanding any other provision of this Declaration, liens created under Section 4.09 of this Declaration on any Unit shall be subject and subordinate to, and shall not affect the rights of the holder of, the indebtedness secured by any recorded First Mortgage on such an interest made in good faith and for value, provided that any transfer of a Unit as the result of a foreclosure or exercise of a power of sale shall not relieve the new Owner from Liability for any assessments that become due after the transfer. Such a transfer shall extinguish the lien of assessments that were due and payable before the transfer of the Unit.

Inapplicability of Right of First Refusal

Section 10.3. Should any of the Association's Governing Instruments provide for a "right of first refusal," this right shall not impair the rights of a First Mortgagee to:

- (a) Foreclose or take title to a Unit pursuant to the remedies provided in the Mortgage;
- (b) Accept a deed (or assignment) in lieu of foreclosure in the event of default by a Mortgagor; or

- (c) Interfere with a subsequent sale or lease of a Unit so acquired by the Mortgagee.

Notice of Default

Section 10.04. A First Mortgagee, on request, will be entitled to written notification from the Association of any default in the performance by the Mortgagor of any obligation under the Association's Governing Instruments that is not cured within 60 days.

Unpaid Assessments

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

Mortgagee Approval of Material Amendments

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

- (a) Voting;
- (b) Rights to use the Common Area;
- (c) Reserves and responsibility for maintenance, repair, and replacement of the Common Area;
- (d) Boundaries of any Unit;
- (e) Owners' interests in the Common Area;
- (f) Conversion of Units into Common Area or Common Area into Units;
- (g) Leasing of Units;

(h) Establishment of self-management by the Association, when professional management has been previously required by any First Mortgagee or any insurer or governmental guarantor of a First Mortgage;

(i) Annexation, addition, or withdrawal of real property to or from the Project;

(j) Assessments, assessment liens, or the subordination of these liens;

(k) Casualty and liability insurance or fidelity bonds; or

(l) Any provisions expressly benefiting First Mortgagees or insurers or governmental guarantor of first mortgages.

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

Mortgagee Approval of Other Actions

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

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

(b) Change the pro rata interest or obligations of any individual Unit for either of the following purposes, unless the change is due to an annexation pursuant to Article XI of this Declaration:

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

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

(c) Partition or subdivide any Unit;

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

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

Liens

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

Priority

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

Reserve Fund

Section 10.10. Association assessments shall be large enough to provide for an adequate reserve fund for maintenance, repairs, and replacement of those common elements that must be replaced on a periodic basis. The reserve fund shall be funded by the regular assessments rather than by special assessments.

Management

Section 10.11. Any agreement for professional management of the Project shall not exceed three years and shall provide that either party may terminate the agreement, with or without cause and without the imposition of a termination fee, on 90 days' written notice. The approval of holders of at least 75 percent of First Mortgages shall be obtained before the Association terminates a professional management agreement.

Right to Inspect Books and Records

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

Payments by Mortgagees

Section 10.13. First Mortgagees may, jointly or severally, pay taxes or other charges that are in default and that may or have become a charge against the Common Area, and may pay any overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for the Common Area, and First Mortgagees making these payments shall be entitled to immediate reimbursement from the Association.

Right to Furnish Mortgage Information

Section 10.14. Each Owner hereby authorizes the First Mortgagee of a First Mortgage on the Owner's Townhouse to furnish information to the Board concerning the status of the First Mortgage and the loan that it secures.

ARTICLE XI. ANNEXATION OF ADDITIONAL PROPERTY

Additions by Declarant

Section 11.01. Declarant shall have the right to add all or any portion of the real property described in Exhibit A to the Project, pursuant to a plan of phased development submitted to the California Real Estate Commissioner, at any time before the third anniversary of the original issuance of the most recently issued final subdivision public report for the most recent phase of the Project. This election shall be made by the recordation of a supplemental declaration ("Supplemental Declaration"). The Supplemental Declaration shall describe the real property to be annexed, and shall state that the property described in it is being annexed to the Project pursuant to Article XI of this Declaration. The Supplemental Declaration may also set forth any additional covenants, conditions, restrictions, reservations, and easements that Declarant deems appropriate for that phase of development.

Other Additions

Section 11.02. In addition to real property annexed by the Declarant, real property may be annexed to the Project and brought within the general plan and scheme of this Declaration by the approval by vote or written consent of at least 67 percent of the total voting power of the Association.

Rights and Obligations of Owners of Annexed Property

Section 11.03. On the recordation of the Supplemental Declaration, the real property described in it shall be part of the Project and subject to all provisions of this Declaration in the same manner as if it were originally covered by this Declaration. Thereafter, the rights, powers, and responsibilities of Owners of Townhouses within the annexed property shall be the same as if the annexed property were originally covered by this Declaration; provided, however, that their voting rights shall not commence until the date of commencement of the regular assessments for their Townhouses. The commencement of assessments on the annexed real property shall be governed by Section 4.07 of this Declaration.

Reciprocal Easements

Section 11.04, Declarant hereby reserves, for the benefit of and appurtenant to the Townhouses located in any phase of development annexed to the first phase of this Project and their respective Owners, reciprocal easements to use the Common Area (other than any buildings or Exclusive Use Common Areas) in the first phase pursuant to and in the manner set forth in this Declaration. Declarant hereby grants, for the benefit of and appurtenant to the Townhouses in the first phase of this Project and their Owners, a nonexclusive easement to use the Common Area (other than any buildings or Exclusive Use Common Areas) in each phase of development annexed to the first phase, pursuant to and in the manner set forth in this Declaration. These reciprocal easements shall be effective as to any annexed real property on the first close of escrow for the sale of a Townhouse in the annexed property.

ARTICLE XII. AMENDMENTS

Amendment or Revocation Before Close of First Sale

Section 12.01. At any time before the close of the first sale of a Townhouse to a purchaser other than Declarant, Declarant and any Mortgagee of record may, by executing an appropriate instrument, amend or revoke this Declaration. The executed instrument shall be acknowledged and recorded in the Office of the Recorder of Santa Cruz County.

Amendments by Owners After Close of First Sale

Section 12.02. At any time after the close of the first sale of a Townhouse to a purchaser other than Declarant, this Declaration may be amended by the vote or written consent of Owners representing not less than 60 percent of the voting power of each class of Owners of the Association. If only one class of membership exists at the time an amendment is proposed, then it must be approved by not less than 60 percent of the voting power of the Association, which shall include at least a majority of the votes residing in Owners other than Declarant. Notwithstanding any contrary provision in this Section, the percentage of the voting power necessary to amend a specific clause or provision of this Declaration shall not be less than the percentage of affirmative votes prescribed for action to be taken under that clause or provision.

An amendment becomes effective after (1) the approval of the required percentage of Owners has been given, (2) that fact has been certified in a writing executed and acknowledged by an officer designated by the Association for that purpose or, if no such designation is made, by the President of the Association, and (3) that writing has been recorded in Santa Cruz County.

Amendments Pursuant to Court Order

Section 12.03. If this Declaration requires a proposed amendment to be approved by the affirmative vote of a specified percentage (exceeding 50%) of the votes in the Association or of Owners having a specified percentage (exceeding 50%) of the votes in more than one class (a "super majority"), and more than 50 percent but less than the required supermajority of the votes approve the amendment, the Association or any Owner may petition the Superior Court of the County of Santa Cruz, subject to the requirements, limitations, and exceptions set forth in Civil Code Section 1356, for an order reducing the percentage of the affirmative votes necessary for the amendment or approving the amendment. If such an order is issued, the amendment shall be acknowledged by any person designated by the Association for that purpose or, if no such designation is made, by the President of the Association and that person shall have the amendment and the court order recorded in Santa Cruz County. On recordation, the amended provision or provisions of this Declaration shall have the same force and effect as if the amendment were adopted in compliance with every requirement imposed by this Declaration, and the other governing documents. Within a reasonable time after recordation, the Association shall mail a copy of the amendment and a statement regarding the amendment to each Owner.

Deletion of Construction or Marketing Provisions

Section 12.04. Notwithstanding any other provision of this Declaration, the Board may, under the circumstances describe in this Section, adopt an amendment deleting from this

Declaration any provision that was unequivocally designed and intended, or that by its nature could only have been designed or intended, to facilitate Declarant in completing the construction or marketing of the Project. To be subject to this amendment procedure, the provision must provide for access by Declarant over or across the Common Area for the purposes of (1) completion of construction of the Project and (2) the erection, construction, or maintenance of structures or other facilities designed to facilitate the completion of construction or marketing of Units. Such an amendment may be adopted only after Declarant has completed construction of the Project, has terminated construction activities and has terminated his or its marketing activities for the sale or other authorized disposition of the Units. At least 30 days prior to taking action to adopt such an amendment, the Board must mail to all Owners, by first-class mail, the following: a copy of the proposed amendment; and a notice of the time, date and place of the meeting at which the Board will consider adoption of the amendment. All deliberations of the Board on the proposed amendment must be conducted at that meeting. The meeting must be open to all Owners, and the Owners must be given an opportunity at the meeting to comment on the proposed amendment. The Board may not adopt the amendment unless (1) a quorum is present at the meeting, (2) the meeting is conducted in accordance with provisions of Civil Code Section 1355.5 of the Nonprofit Mutual Benefit Corporation Law, and (3) Owners casting a majority of the votes at the meeting approve the amendment. For these purposes, "quorum" means more than 50 percent of the Owners who own no more than two Units in the Project.

Prior Approval of Commissioner

Section 12.05. When required under Business and Professions Code Section 11018.7, the prior written consent of the Real Estate Commissioner shall be obtained prior to submitting a proposed amendment to this Declaration to the vote of the Owners.

ARTICLE XIII. GENERAL PROVISIONS

Term

Section 13.01 The provisions of this Declaration shall continue in effect for a period of 10 years from the date of execution. Thereafter, it shall be automatically extended for successive period of 10 years, until the membership of the Association decides to terminate it.

Non-waiver of Remedies

Section 13.02. Each remedy provided for in this Declaration is separate, distinct and nonexclusive. Failure to exercise a particular remedy shall not be construed as a waiver of the remedy.

Attorneys' Fees

Section 13.03. In any action to enforce this Declaration, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs.

Severability

Section 13.04. The provisions of the Declaration shall be deemed independent and severable, and the invalidity or partial invalidity or un-enforceability of any one provision shall not affect the validity or enforceability of any other provision.

Binding

Section 13.05. This Declaration, and any amendment to it and any valid action or directive made pursuant to the Declaration, shall be binding on the Declarant and the Owners and their heirs, grantees, tenants, successors, and assigns.

Interpretation

Section 13.06. The provisions of this Declaration shall be liberally construed and interpreted to effectuate its purpose of creating a uniform plan of the development and operation of a townhouse project. Failure to enforce any provision of this Declaration shall not constitute a waiver of the right to enforce that provision or any other provision of this Declaration.

Limitation of Liability

Section 13.07. The liability of any Owner for performance of any of the provisions of this Declaration shall terminate on sale, transfer, assignment, or other divestment of the Owner's entire interest in his or her Unit with respect to obligations arising from and after the date of the divestment.

Fair Housing

Section 13.08. Neither Declarant nor any Owner shall, either directly or indirectly, forbid the conveyance, encumbrance, renting, leasing or occupancy of the Owner's Unit to any person on the basis of race, color, sex, religion, ancestry, national origin, disability, medical condition, marital status, or sexual orientation.

"Specific Restrictions"

- a. No additions to or remodeling of a structure which extends beyond original foot print.
- b. Satisfactory provisions to create obligations and a method to amortize and pay (together with lien rights) the maintenance and repair of exterior fences and walls driveways and sidewalks, include the street trees.
- c. Requirement that garages interiors not be converted to or used of any purpose which interferes with parking of the number of motor vehicles for the garages were designed, and no temporary storage shall be allowed which would interfere with the parking of said vehicles.
- d. Architectural review, which shall include the regulation of exterior paint colors. (CDD-P CAT)

Section 13.09. As used in this Declaration, the singular shall include the plural, unless the context requires the contrary. The headings are not a part of the Declaration, and shall not affect the interpretation of any provision.

Executed on June 30, 2020 at Watsonville, Santa Cruz County, California.

DECLARANT

Shawki Deyn Properties, LLC
A California Limited Liability Company

By MF

Raeid Farhat