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**FIRST RESTATED DECLARATION OF COVENANTS, CONDITIONS, AND
RESTRICTIONS
OF
AVALON AT EAGLES CROSSING HOMEOWNERS ASSOCIATION
CITY OF OCEANSIDE, COUNTY OF SAN DIEGO
STATE OF CALIFORNIA**

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

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**FIRST RESTATED DECLARATION OF COVENANTS, CONDITIONS, AND
RESTRICTIONS
OF
AVALON AT EAGLES CROSSING HOMEOWNERS ASSOCIATION**

The Declaration of Covenants, Conditions, and Restrictions for Avalon at Eagles Crossing Homeowner Association, recorded in the official records of San Diego County, California, on May 2, 1990, as Instrument No. 909355-51 (hereinafter the "Original Declaration") and any other amendments not specifically set forth herein but recorded prior to the date of the recording of this instrument, is hereby superseded, amended and restated in its entirety to read as follows:

RECITALS

- A. The Original Declaration established Avalon at Eagles Crossing Homeowners Association (hereinafter "Association") to oversee, manage, maintain and operate the real property (hereinafter the "Project") subject to the Original Declaration, plus all annexations to the Project. The Project is subject to this Declaration is more particularly described in the attached Exhibit A and incorporated herein by reference.
- B. The Project was originally conveyed, subject to certain easements, protective covenants, conditions, restrictions, reservations, liens, and charges as set forth in the Original Declaration referred to above, all of which are for the purpose of enhancing and protecting the value, desirability, and attractiveness of the real property and improvements comprising the Project and all of which shall run with the real property comprising the Project and be binding on all parties having or acquiring any right, title, or interest in such real property, or any part thereof, and their heirs, successors, and assigns and shall inure to the benefit of each Owner thereof.
- C. It was further intended that the Project consist of a "Condominium Project," as defined in the California Civil Code and the Condominiums sold and conveyed to the Owners, are subject to the protective covenants, conditions, restrictions, limitations, reservations, grants of easements, rights, rights-of-way, liens, charges, and equitable servitudes as set forth in this Declaration and the other Governing Documents of the Project.
- D. The Association now desires to amend and restate the Original Declaration and replace it in its entirety with this First Restated Declaration, and that upon recordation of the same, the Project shall be subject to the covenants, conditions,

restrictions, rights, reservations, easements, equitable servitudes, liens and charges contained herein.

ARTICLE I DEFINITIONS

Section 1.1. “Architectural Committee” or “Committee” means the committee created in accordance with Article V.

Section 1.2. “Articles” means the Articles of Incorporation of the Association, which are filed in the Office of the California Secretary of State, as such Articles may be amended from time to time.

Section 1.3. “Assessment” means any Regular, Special, Special Individual, or Emergency Assessment made or assessed by the Association against an Owner and his or her Condominium in accordance with the provisions of Article IV.

Section 1.4. “Association” means Avalon at Eagles Crossing Homeowners Association, a California nonprofit mutual benefit corporation, and its successors and assigns. The Association is an “association” as defined in Civil Code §4080.

Section 1.5. “Association Rules” means the rules, regulations, and policies adopted by the Board of Directors, under Section 3.7, as the same may be in effect from time to time. Without limiting the foregoing, the Association Rules shall also include any Architectural Rules adopted under Section 5.5 and any rules relating to Association disciplinary procedures adopted under Section 13.6(d).

Section 1.6. “Board of Directors” or “Board” means the Board of Directors of the Association.

Section 1.7. “Bylaws” means the Bylaws of the Association, as such Bylaws may be amended from time to time.

Section 1.8. “City” means the incorporated municipal City of Oceanside, in the County of San Diego, State of California, and its various departments, divisions, employees, and representatives.

Section 1.9. “Common Area” means all real property owned by the Association for the common use and enjoyment of the Owners.

Section 1.10. “Common Expense” means any use of Association funds authorized by Article IV and includes, without limitation:

- a) All expenses or charges incurred by or on behalf of the Association for the management, maintenance, administration, insurance, operation, repairs, additions, alterations, or reconstruction of the Common Area and Common Facilities that the Association is obligated to maintain or repair;
- b) All expenses or charges reasonably incurred to procure insurance for the protection of the Association and its Board of Directors;
- c) Any amounts reasonably necessary for reserves for maintenance, repair, and replacement of the Common Areas and Common Facilities that the Association is obligated to maintain or replace and for nonpayment of any Assessments; and
- d) The use of such funds to defray the costs and expenses incurred by the Association in the performance of its functions or in the proper discharge of the responsibilities of the Board of Directors as provided in this Declaration, the Bylaws, and the other Governing Documents.

Section 1.11. "Common Facilities" means the swimming pool, spa, pool storage and pump area, pool furniture, recreation room, Clubhouse, meter rooms, garages, private roads, trees, hedges, plantings, lawns, shrubs, landscaping, fences, utilities, berms, pipes, lines, lighting fixtures, buildings, structures, and other facilities constructed or installed, or to be constructed or installed, or currently located within the Common Area and owned by the Association.

Section 1.12. "Condominium" means and refers to an estate in real property described in California Civil Code §1351(f).

Section 1.13. "Condominium Building" means and refers to a separate residential building containing one or more Units.

Section 1.14. "Condominium Plan" means and refers to a description or survey map of a condominium project as described in California Civil Code §4120 and §4185.

Section 1.15. "County" means the County of San Diego, State of California, and its various departments, divisions, employees, and representatives.

Section 1.16. "Declaration" means this instrument, as it may be amended from time to time. The "Original Declaration" means and refers to the document referenced in the Preamble to this Declaration together with all amendments and annexations thereto adopted before adoption of this Declaration.

Section 1.17. "Eligible Mortgage Holder" means and refers to a holder of a first Mortgage on a Condominium who in a written document delivered to the Association,

has requested that the Association notify such first Mortgagee of any proposed action that, by the terms of the Governing Documents of the Association, requires the consent of a specified percentage of such first Mortgages.

Section 1.18. “Exclusive Use Common Area” shall mean those portions of the Common Area the exclusive use of which, subject to the rights of the Association, has been granted to the Owner or Owners of particular Units such as decks and patios. Internal and external telephone wiring designed to service a single Unit, but located outside the boundaries of such Unit, will be Exclusive Use Common Area allocated exclusively for the use and enjoyment of the Owner of the Unit served.

Section 1.19. “Governing Documents” is a collective term that means and refers to this Declaration and to the Articles, the Bylaws, and the Rules & Regulations.

Section 1.20. “Improvement” means the types of construction or improvement projects undertaken by Owners that must first be reviewed and approved by the Association’s Board of Directors or duly appointed Architectural Committee under Article V.

Section 1.21. “Member” means every person or entity who holds a membership in the Association and whose rights as a Member are not suspended under Section 13.6.

Section 1.22. “Mortgage” means any security device encumbering all or any portion of the Development, including any deed of trust. “Mortgagee” shall refer to a beneficiary under a deed of trust as well as to a mortgagee in the conventional sense.

Section 1.23. “Owner” means any person, firm, corporation, or other entity that owns a fee simple interest in any Condominium. If a Condominium is transferred or conveyed to a trust, the Owner is the trustee or the co-trustees of such trust.

Section 1.24. “Owner of Record” includes an Owner and means any person, firm, corporation, or other entity in which title to a Condominium is vested as shown by the Official Records of the Office of the County Recorder. If a Condominium is transferred or conveyed to a trust, the Owner is the trustee or the co-trustee of such trust.

Section 1.25. “Project” or “Property” means all parcels of real property (Common Area, Exclusive Use Common Area and Condominiums) described in Exhibit A, attached to this Declaration, together with all buildings, structures, utilities, Common Facilities, and other Improvements located thereon and all appurtenances thereto.

Section 1.26. “Record” (and “Recording” and “Recorded” and “Recordation”) means, with respect to any document, the recordation or filing of such document in the Office of the San Diego County Recorder.

Section 1.27. "Regular Assessment" means an Assessment levied against an Owner and his or her Unit in accordance with Section 4.2.

Section 1.28. "Reimbursement Assessment" means an Assessment levied against an Owner and his or her Unit in accordance with Section 4.2.

Section 1.29. "Reserves" means those Common Expenses for which Association funds are set aside under Article IV of this Declaration for funding the periodic painting, maintenance, repair, and eventual replacement of the major components of the Property that the Association is obligated to maintain, repair, and replace under this Declaration that would not reasonably be expected to recur on an annual or less frequent basis.

Section 1.31. "Residential Use" means occupancy and use of a Unit for dwelling purposes in conformity with this Declaration and the requirements imposed by applicable zoning or other applicable laws or governmental regulations limiting the number of persons who may occupy residential dwellings.

Section 1.32. "Rules & Regulations" means the rules, regulations and policies adopted by the Board of Directors of the Association.

Section 1.33. "Special Assessment" means an Assessment levied against an Owner and his or her Unit in accordance with Section 4.3.

Section 1.34. "Unit" means the separate interest in space as defined by the California Civil Code comprised of elements of a Condominium not owned in common with the Owners of other Condominiums the boundaries of which are identified on the Condominium Plan describing such Unit. Each Unit shall be identified on the Condominium Plan with a separate number. In addition, any shutters, awnings, window boxes, door steps, stoops, exterior door frames and hardware incident thereto, garage doors, garage door opening systems, hinges, springs and other hardware incident to the garage doors, air conditioning equipment, screen, windows and window glass, forced air units or other fixtures designed to serve a single Unit shall be deemed to be a part of the Unit even if located outside the boundaries of such Unit.

ARTICLE II

PROPERTY RIGHTS AND OBLIGATIONS OF OWNERS

Section 2.1. Declaration Regarding Common Plan for the Development.

- a) **Property Subject to This Declaration.** In subjecting the real property comprising the Property to the Original Declaration, as amended and restated

herein, the Declarant intended that such property should and will be held, conveyed, divided, encumbered, hypothecated, leased, rented, used, occupied, and improved only on compliance with and subject to the provisions of this Declaration, which is hereby declared to:

- i. Be for the benefit and protection of the Property and to enhance the desirability, value, and attractiveness of the property and improvements comprising the Property;
 - ii. Be for the benefit of the Owners;
 - iii. Run with the land and be binding on all parties having or acquiring any right, title, or interest in the Property or any portion thereof;
 - iv. Inure to the benefit of every portion of the Property and any interest therein; and
 - v. Inure to the benefit of and be binding on each Owner or any successor in interest to an Owner who should subsequently obtain or hold an interest in any portion of the real property comprising the Property.
- b) **Binding Effect on Successors in Interest.** Each conveyance, transfer, sale, assignment, lease, or sublease made by any Owner of a Unit in the Property shall be deemed to incorporate by reference all of the provisions of this Declaration. All present and future Owners, tenants, and occupants within the Development shall be subject to, and shall comply with, each and every provision of the Governing Documents, as the same shall be amended from time to time unless a particular provision of the Governing Documents is specifically restricted to one or more classes of persons (e.g., Owners, tenants, invitees). The acceptance of a deed to any Condominium, the execution of a lease, sublease, or contract of sale with respect to any Condominium, or the entering into occupancy of any Condominium shall make the provisions of this Declaration binding on such persons, and they shall thereafter be obligated to observe and comply with all Governing Documents.

Section 2.2. Elements of Condominium Ownership – Ownership of each Condominium within the Property shall include a Unit, an undivided fractional interest in the Common Area as a tenant in common, which fraction shall have a numerator of one (1) and a denominator equal to the total number of Units within the Condominium Plan.

There shall be no judicial partition of the Common Area or any part thereof, whether by deed, gift, devise, or operation of law, and each Owner, for his or her own benefit and for the benefit of all other Owners, specifically waives and abandons all rights, interest, and causes of action for a judicial partition of any ownership interest in the Common Area and further covenants that no action for judicial partition shall be instituted, prosecuted, or reduced to judgment. The rights of all Owners in the Common Area shall be further subject to the requirements and restrictions set forth in Section 2.3.

Section 2.3. Owners' Nonexclusive Easements of Enjoyment - Every Owner shall have a nonexclusive right and easement of enjoyment in and to the Common Areas within the Project, including ingress and egress to and from his or her Unit, which shall be appurtenant to and shall pass with the title to every Condominium, subject to the following provisions:

- a) The right of the Association to assign, rent, license, lease and to otherwise designate and control the use of any unassigned parking and storage spaces and to limit the number of guests of Members who may use any recreational Common Facilities.
- b) The right of the Association to adopt Association Rules, as provided in Section 3.7, regulating the use and enjoyment of the real property and improvements comprising the Project for the benefit and well-being of the Owners in common and, in the event of the breach of such rules or any provision of any Governing Document by any Owner or tenant, to initiate disciplinary action against the violating Owner or tenant in accordance with Section 13.6. Such action may include the levying of fines and/or the temporary suspension of the voting rights and/or the right to use the Common Facilities
- c) The right of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Common Area and Common Facilities.
- d) The right of the Association to charge deposit fees and other administrative costs for use of the Common Facilities situated upon the Common Area.

Section 2.4. Delegation of Use.

- a) **Delegation of Use and Leasing of Residences.** Any Owner may delegate his or her rights to use and enjoy the Common Area and Common Facilities to his or her family members, tenants, lessees, or contract purchasers who reside in the

Unit, provided, however, that any rental or lease may only be to a single family for Residential Use and for a term not less than 1 year. The restrictions on multiple-family occupancy imposed by this subparagraph are intended to protect, enhance, and maintain the single-family residential atmosphere that exists within the Project and to avoid an overburdening of Common Areas and Common Facilities.

- b) **Retained Rights of Owner-Lessors.** During any period when a Unit has been rented or leased, the Owner-Lessor, his or her family, guests, and invitees shall not be entitled to use and enjoy any recreational Common Facilities within the Property. In other respects, nonresident Owners who are leasing their Units shall have full rights to access the Condominium to perform the Owner's responsibilities as a lessor. The restriction on recreational facility usage by Owner-Lessors shall not apply to any Owner-Lessor who is contemporaneously residing in another Unit within the Property. Any rental or lease of a Unit shall be subject to the provisions of the Governing Documents, all of which shall be deemed incorporated by reference in the lease or rental agreement. Each Owner-Lessor shall provide any tenant or lessee with a current copy of all Governing Documents and shall be responsible for compliance by the tenant or lessee with all of the provisions of the Governing Documents during the tenant's or lessee's occupancy and use of the Unit.
- c) **Requirements That Must Be Observed in All Residential Leases.** The following specific limitations shall apply to all leases or tenancies of a Unit:
- i. Unit may not be leased or rented for a period of less than 1 year;
 - ii. The rental shall apply to not less than an entire Unit, including its appurtenant rights (except voting rights in the Association that may not be transferred to a tenant or lessee); and
 - iii. Any rental shall be evidenced by a written lease or rental agreement that shall provide that the tenancy is subject to the terms of the Governing Documents and that any failure of the tenant to comply with the terms of any Governing Document relating to residential leases, property use restrictions, or the use and enjoyment of any portion of the Common Area and Common Facilities shall constitute a default under the lease or rental agreement and shall entitle the Owner to terminate the tenancy on 30 days written notice. The Owner-Lessor's right to terminate a lease or rental agreement because of the tenant's violation of the Governing

Documents shall in no way restrict the right of the Association, the Declarant, or any Owner to enforce the Governing Documents in accordance with Article XIII, when the Owner's tenant is violating the Governing Documents.

- d) **Discipline of Lessees.** Subject to subparagraph (f), if any tenant or lessee fails to honor the provisions of any Governing Document, the Association shall be entitled to take such corrective action as it deems necessary or appropriate under the circumstances to preserve the quiet enjoyment of other Owners and residents of the Project. Without limitation, the Association's actions in response to a tenant's violation of the Governing Documents may include the imposition of fines and penalties against the Owner-Lessor of the Residence.

- e) **Due Process Requirements for Disciplinary Action.** Except for circumstances in which immediate corrective action is necessary to prevent damage or destruction to any portion of the Project or to preserve the rights of quiet enjoyment of other Owners, the Association shall have no right to initiate disciplinary action against an Owner-Lessor (or the Owner's lessee or tenant) because of the misconduct of the Owner's lessee or tenant unless and until the following conditions have been satisfied:
 - i. The Owner has received written notice from the Board, the Association's property manager, or an authorized committee of the Board detailing the nature of the lessee's or tenant's alleged infraction or misconduct and advising the Owner of his or her right to a hearing on the matter if the Owner believes that remedial or disciplinary action is unwarranted or unnecessary;
 - ii. The Owner has been given a reasonable opportunity to take corrective action on a voluntary basis or to appear at a hearing, if one is requested by the Owner; and
 - iii. The Owner has failed to prevent or correct the lessee's or tenant's objectionable actions or misconduct. Any hearing requested under this subparagraph shall be conducted in accordance with Section 13.6.

Section 2.5. Obligations of Owners. Owners of Condominiums within the Project shall be subject to the following obligations:

- a) **Owner's Duty to Notify Association of Tenants and Contract Purchasers.** Each Owner shall notify the secretary of the Association or the Association's property manager, if any, of the names of any contract purchaser or tenant residing in the Owner's Unit. Each Owner, contract purchaser, or tenant shall also notify the secretary of the Association of the names of all persons to whom such Owner, contract purchaser, or tenant has delegated any rights to use and enjoy the Common Area of the Property and the relationship that each such person bears to the Owner, contract purchaser, or tenant.
- b) **Contract Purchasers.** A contract seller of a Condominium (i.e., an Owner who contracts to sell his or her Unit under an Agreement that transfers title to the buyer only on payment in full) must delegate his or her voting rights as a Member and his or her right to use and enjoy the Common Area and Common Facilities to any contract purchaser in possession of the property subject to the contract of sale. Notwithstanding the foregoing, the contract seller shall remain liable for any default in the payment of Assessments by the contract purchaser until title to the property sold has been transferred to the purchaser.
- c) **Notification to Prospective Purchasers.**
- i. As soon as practicable before transfer of title or the execution of a real property sales contract with respect to any Unit, the Owner thereof must give the prospective purchaser all of the following:
 1. A copy of the Governing Documents.
 2. A copy of the most recent documents distributed by the Association under the California Civil Code.
 3. A true statement in writing from an authorized representative of the Association (delinquency statement) as to (1) the amount of the Association's current regular and special assessments and fees and (2) the amount of any assessments levied on the Owner's Unit that remain unpaid as of the date of the delinquency statement and any monetary fines or penalties levied on the Owner's Unit and unpaid as of the date of the delinquency statement. The delinquency statement shall also include true information on late charges, interest, and costs of collection that, as of the date of the delinquency statement, are or may become a lien against the Owner's Unit.

4. A copy or a summary of any notice previously sent to the Owner that sets forth any alleged violations of the Governing Documents that remain unresolved at the time of the request.
 5. A statement disclosing any change in the Association's current Regular and Special Assessments and fees that have been approved by the Board but have not become due and payable as of the date the information is provided.
 6. If requested by the prospective purchaser, a copy of the minutes of Board meetings, excluding meetings held in executive session, conducted over the previous 12 months that were approved by the Board.
- ii. The documents required to be made available under subparagraph (c)(i) may be maintained in electronic form and may be posted on the Association's website. If the Association maintains the documents in electronic form, requesting parties shall have the option of receiving the documents by electronic transmission. Delivery of the documents required by subparagraph (c)(i) shall not be withheld for any reason nor subject to any condition, except the payment of the fee authorized under subparagraph (iv).
 - iii. The Association may collect a reasonable fee based on the Association's actual cost for the procurement, preparation, reproduction, and delivery of the documents requested under subparagraph (c)(i).
 - iv. The Association may contract with any person or entity to facilitate compliance with this section on behalf of the Association.
- d) **Payment of Assessments and Compliance with Rules.** Each Owner shall pay, when due, each Regular and Special Assessments levied against the Owner and his or her Unit and shall observe, comply with, and abide by any and all rules and regulations set forth in, or promulgated by the Association under, any Governing Document for the purpose of protecting the interests of all owners or protecting the Common Area and Common Facilities.

- e) **Discharge of Assessment Liens.** Each Owner shall promptly discharge any Assessment lien that may hereafter become a charge against his or her Condominium.
- f) **Joint Ownership of Lots.** In the event of joint ownership of any Condominium, the obligations and liabilities of the multiple Owners under the Governing Documents shall be joint and several. Without limiting the foregoing, this subparagraph (f) shall apply to all obligations, duties, and responsibilities of owners as set forth in this Declaration, including, without limitation, the payment of all Assessments.
- g) **Termination of Obligations.** On the conveyance, sale, assignment, or other transfer of a Unit to a new Owner, the Transferor-Owner shall not be liable for any Assessments levied with respect to such Unit that become due after the date of Recordation of the deed evidencing the transfer, and on such Recordation, all Association membership rights possessed by the Transferor by virtue of the ownership of the Unit shall automatically cease.

ARTICLE III

HOMEOWNERS ASSOCIATION

Section 3.1. Association Membership. Avalon at Eagles Crossing Homeowners Association, a California nonprofit mutual benefit corporation, has been formed to own, manage, and maintain the Common Areas and Common Facilities of the Development and to perform the other duties and obligations set forth in this Declaration and the other Governing Documents. Every Owner of a Condominium in the Project shall be a Member of the Association, and the membership shall be appurtenant to, and may not be separated from, ownership of the Condominium or Condominiums. Sole or joint ownership of a Condominium shall be the sole qualification for membership in the Association. Each Owner shall remain a Member until his or her ownership in all Condominiums in the Property ceases, at which time his or her membership in the Association shall automatically cease. Persons or entities who hold an interest in a Condominium merely as security for performance of an obligation are not Members until such time as the security holder comes into title to the Condominium through foreclosure or receipt of a deed in lieu thereof.

When a Condominium is owned by more than one person, the Board shall have the right, under Section 3.7(a)(vii), to adopt a rule designating the minimum percentage

ownership of a Condominium to qualify an Owner as a Member for purposes of using any Common Facility or for determining eligibility to serve as a director.

Section 3.2. One Class of Membership. The Association shall have one class of membership, and the rights, duties, obligations, and privileges of the Members shall be as set forth in the Governing Documents.

Section 3.3. Voting Rights of Members. Each Member shall be entitled to one vote for each Unit owned by that Member. When more than one person holds an interest in any Condominium, all such persons shall be Members, although in no event shall more than one vote be cast with respect to any Unit. Voting rights may be temporarily suspended under those circumstances described in Section 13.6.

Section 3.4. Assessments. The Association shall have the power to establish, fix, and levy Assessments against the Owners of Units within the Project and to enforce payment of such Assessments in accordance with Article IV. Any Assessments levied by the Association against its Members shall be levied in accordance with and under the provisions of this Declaration.

Section 3.5. Transfer of Memberships. Membership in the Association shall not be transferred, encumbered, pledged, or alienated in any way, except on the sale of the Condominium to which it is appurtenant, and then only to the purchaser. In the case of a sale, the membership appurtenant to the transferred Condominium shall pass automatically to the purchaser on the Recordation of a deed evidencing the transfer of title. In the case of an encumbrance of such Condominium, a Mortgagee does not have membership rights until he or she becomes an Owner by foreclosure or deed in lieu thereof. Tenants who are delegated rights of use under Section 2.4 do not thereby become Members, although the tenant and his or her family and guests shall at all times be subject to the provisions of all Governing Documents.

Section 3.6. Powers and Authority of the Association.

- a) **Powers, Generally.** The Association shall have the responsibility of owning, managing, and maintaining the Common Areas and Common Facilities and discharging the other duties and responsibilities imposed on the Association by the Governing Documents. In the discharge of such responsibilities and duties, the Association shall have all of the powers of a nonprofit mutual benefit corporation organized under the laws of the State of California in the ownership and management of its properties and the discharge of its responsibilities hereunder for the benefit of its Members, subject only to such limitations on the

exercise of such powers as are expressly set forth in the Governing Documents. With the exception of those matters requiring approval of the Members under the Governing Documents or California law, the affairs of the Association shall be conducted and all corporate powers shall be exercised by the Board of Directors and such officers and agents as the Board may elect, hire, or appoint. The Association and its Board of Directors shall have the power to do any and all lawful things that may be authorized, required, or permitted to be done under and by virtue of the Governing Documents and to do and perform any and all acts that may be necessary or proper for, or incidental to, the exercise of any of the express powers of the Association for the peace, health, comfort, safety, or general welfare of the Owners.

b) Association's Limited Right of Entry.

i. **Right of Entry, Generally.** Without limiting the foregoing description of the Association's powers, but in addition thereto, the Association and its agents shall have the right and power to enter any Unit to perform the Association's obligations under this Declaration, including:

1. Exterior maintenance or obligations with respect to individual Residences;
2. Obligations to enforce the architectural and land use restrictions of Articles V and VII;
3. Any obligations with respect to construction, maintenance, and repair of adjacent Common Facilities; or
4. Any necessary repairs that an Owner has failed to perform that, if left undone, will pose a threat to, or cause an unreasonable interference with, any portion of the Project or the Owners in common.

ii. **Limitations on Exercise of Right.** The Association's right of entry under this subparagraph (b) shall be subject to the following limitations:

1. The right of entry may be exercised immediately and without prior notice to the Owner or resident in case of an emergency originating in or threatening the Unit when entry is required onto any adjoining Units or Common Area. The Association's work may

be performed under such circumstances whether or not the Owner or resident is present.

2. In all nonemergency situations involving routine repair and/or maintenance activities, the Association, or its agents, shall furnish the Owner or resident with at least 24 hours prior written notice of its intent to enter the Unit, specifying the purpose and scheduled time of such entry, and shall make every reasonable effort to perform its work and schedule its entry in a manner that respects the privacy of the person(s) residing on the Unit.
3. In all nonemergency situations involving access by the Association for purposes of enforcing the Governing Documents against an Owner in default, the Association's entry shall be subject to observance of the notice and hearing requirements imposed by Section 13.6.

Section 3.7. Association Rules.

- a) **Rule-Making Power.** The Board may, from time to time and subject to the provisions of this Declaration, propose, enact, and amend rules and regulations of general application to the Owners (Rules & Regulations). The Rules & Regulations may concern, but need not be limited to:
 - i. Matters pertaining to the maintenance, repair, management, and use of the Common Area and Common Facilities by Owners, their tenants, guests, and invitees, or any other person(s) who have rights of use and enjoyment of such Common Area and Common Facilities.
 - ii. Architectural control and the rules of the Architectural Committee under Section 5.5.
 - iii. The conduct of disciplinary proceedings in accordance with Section 13.6.
 - iv. Regulation of parking, pet ownership, signs, and other matters subject to regulation and restriction under Article VIII.
 - v. Collection and disposal of refuse.

- vi. Minimum standards for the maintenance of landscaping or other Improvements on any Unit or in Exclusive Use Common Areas in accordance with Article VIII.
- vii. Minimum percentage ownership of a Unit necessary to qualify an Owner as a Member, as more particularly described in Section 3.1.
- viii. Collection of delinquent Assessments.
- ix. Any other subject or matter within the jurisdiction of the Association as provided in the Governing Documents.

Notwithstanding the foregoing grant of authority, the Association Rules shall not be inconsistent with or materially alter any provision of the other Governing Documents or the rights, preferences, and privileges of Members thereunder. In the event of any material conflict between any matter contained in the Rules & Regulations and any provision of the other Governing Documents, the conflicting provisions contained in the other Governing Documents shall prevail. All Rules & Regulations shall be adopted, amended, and repealed (as the case may be) in good faith and in substantial compliance with this Declaration and California law.

b) **Distribution of Rules.** A copy of the Rule & Regulations, as they may from time to time be adopted, amended, or repealed, shall be mailed or otherwise delivered to each Owner (i) within 15 days after a new Rule is adopted or an existing Rule is amended (in which case only the new Rule or amendment need be distributed) or (ii) within 10 days after receipt of a written request from an Owner for a copy of the Rules. The Rules & Regulations may be maintained in electronic form, and Owners who request a copy of the Rules may receive the Rules in that format at their election. Rule changes may also be distributed by inclusion in a periodical that is circulated primarily to Association Members or in a mailing of Association invoices or newsletters to the Members.

c) **Adoption and Amendment of Rules.**

- i. **Requirement of Prior Notice to Members of Certain Operating Rules or Amendments Thereto.** An "Operating Rule" is defined as an Association Rule or regulation that applies generally to the management and operation of the Project or to the conduct of the business and affairs of the Association. A "Rule Change" is defined as any adoption, amendment, or repeal of an Operating Rule by the Board of Directors.

The Board shall provide the Members with written notice at least 30 days before the Board takes action to implement one of the types of Operating Rules (or Rule Changes involving such Operating Rules). The notice must include the text of the proposed Rule Change and a description of the purpose and effect of the proposed Rule Change. This requirement of prior notice to the Members applies only to Operating Rules that relate to one or more of the following subjects:

- A. Use of the Common Areas of the Development;
- B. Use of any Unit in the Development (including Architectural Rules that govern the improvement or alteration of Condominium Improvements);
- C. Member discipline, including any schedule of monetary penalties for violation of the Governing Documents and any procedure for the imposition of penalties;
- D. Any standards for delinquent Assessment payment plans;
- E. Any procedures adopted by the Association for resolution of disputes;
- F. Any procedures for reviewing and approving or disapproving a proposed physical change to an Owner's Condominium or the Common Area; and
- G. Any procedures for the conduct of elections.

Civil Code §4355(b) specifically excludes from the requirement of prior notice to Members the following actions of the Board, regardless of whether those actions may be construed as being Rules & Regulations or "Operating Rules," as defined in the Civil Code: (1) decisions regarding maintenance of the Common Areas or Common Facilities; (2) a decision on a specific matter that is not intended to apply to all Members generally; (3) establishing the amount of an Assessment; (4) adoption of a Rule Change that is required by law (if the Board of Directors has no discretion regarding the substantive effect of the Rule Change); and (5) issuance of a document that merely repeats existing law or the Governing Documents.

With respect solely to Operating Rules and/or Rule Changes listed in subparagraphs (A) through (G), Civil Code §4365 gives Members owning 5 percent or more of the Units in the Development the right to demand that a special meeting of the Members be called to reverse a proposed Rule Change, as long as the request for the special meeting is delivered to the Association within 30 days after the Members are given notice of the Rule Change. If a proper and timely demand for a special meeting to vote to rescind an Operating Rule or Rule Change is tendered to the Association, the Board shall establish the date, time, and location of the meeting and provide notice thereof to the Members in accordance with California law and Section 5.4 of the Bylaws.

- ii. **Minimum Content for Election Rules.** California law requires associations to adopt rules regarding the conduct of elections that do all of the following:
 - A. Ensure that any candidate or Member advocating a point of view is provided access to Association media, newsletters, or Internet websites during a campaign, as long as the access is reasonably related to that election. Equal access shall be provided to all candidates and Members advocating a point of view (whether or not endorsed by the Board). The Association may not edit or redact any content from these campaign communications, but it may include a statement specifying that the candidate or Member, and not the Association, is responsible for that content.
 - B. Ensure access to the Common Area meeting space, if any exists, during a campaign, at no cost, to all candidates, including those who are not incumbents, and to all Members advocating a point of view (whether or not endorsed by the Board), so long as use of the space is for a purpose that is reasonably related to the election.
 - C. Specify the qualifications for candidates for election to the Board of Directors and any other elected position and the procedures for the nomination of candidates. A nomination or election procedure shall not be deemed reasonable if it disallows any Member of the Association from nominating himself or herself for election to the Board.
 - D. Specify the qualifications for voting; the Voting Power of each membership; the authenticity, validity, and effect of proxies;

and the voting period for elections, including the times at which polls will open and close.

E. Specify a method of selecting one or three inspectors of election by the Board of Directors.

F. Allow the inspector(s) to appoint and oversee additional persons to verify signatures and to count and tabulate votes as the inspector(s) deem appropriate, provided that the persons are independent third parties.

iii. **Adoption of Other Association Rules.** Except as provided in subparagraph (c)(i), with respect to certain Rule Changes that are subject to the prior notice and challenge provisions of Civil Code §§4340-4370, any other Association Rules may be adopted or amended from time to time by majority vote of the Board, provided, however, that the Board shall not adopt any Association Rule or amendment thereto until at least 30 days after the proposed rule amendment has been distributed in writing to each Member, along with a description of the purpose and effect of the proposed Association Rule or amendment thereto. The notice describing the proposed rule or amendment shall also set forth the date, time, and location of the Board meeting at which action on the proposal is scheduled to be taken. Any duly adopted rule or amendment to the Association Rules shall become effective immediately following the date of adoption thereof by the Board or at such later date as the Board may deem appropriate. Any duly adopted rule or rule amendment shall be distributed to the Owners by mail or personal delivery.

iv. **Prohibition on Adoption of Certain Rules.** In accordance with the California Civil Code, any rule or regulation of an association that arbitrarily or unreasonably restricts an Owner's ability to market his or her Condominium is void. Without limiting the foregoing, in no event shall the Association be entitled to impose an Assessment or fee in connection with the marketing of an Owner's Condominium in an amount that exceeds the Association's actual and direct costs.

Section 3.8. Breach of Rules or Restrictions. Any breach of the Rules & Regulations, of the Architectural Guidelines, or of any other Governing Document provision shall give rise to the rights and remedies set forth in Article XIII.

Section 3.9. Limitation on Liability of Association's Directors and Officers.

- a) **Claims Regarding Breach of Duty.** No director or officer of the Association (collectively and individually referred to as the Released Party) shall be personally liable to any of the Members or to any other person for any error or omission in the discharge of his or her duties and responsibilities or for his or her failure to provide any service required under the Governing Documents, provided that such Released Party has, on the basis of such information as he or she possessed, acted in good faith, in a manner that such person believes to be in the best interests of the Association, and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.

Without limiting the generality of the foregoing, this standard of care and limitation of liability shall extend to such matters as the establishment of the Association's annual financial budget, the funding of Association capital replacement and reserve accounts, repair and maintenance of Common Areas and Common Facilities, and enforcement of the Governing Documents.

- b) **Other Claims Involving Tortious Acts and Property Damage.** No person who suffers bodily injury (including, without limitation, emotional distress or wrongful death) as a result of the tortious act or omission of a volunteer Member of the Board or volunteer officer of the Association shall recover damages from such Board Member or officer if all of the following conditions are satisfied:
- i. The Board Member or officer owns no more than two Condominiums;
 - ii. The act or omission was performed within the scope of the volunteer Board Member's or officer's Association duties;
 - iii. The act or omission was performed in good faith;
 - iv. The act or omission was not willful, wanton, or grossly negligent; and
 - v. The Association maintained, and had in effect at the time the act or omission occurred and at the time a claim is made, general liability insurance and directors' and officers' liability insurance for negligent acts in their capacities as such, with coverage of at least \$500,000.

The payment of actual expenses incurred by a Board member or officer in the execution of such person's Association duties shall not affect such person's status as a volunteer Board member or officer for the purposes of this section. The provisions of this subparagraph (b) are intended to reflect the protections accorded to volunteer directors and officers of community associations under Civil Code §5800 and should not be construed to expand or limit the fiduciary duties owed by a Board member or officer. If Civil Code §5800 is amended or superseded by another, similar provision of the California statutes, this subparagraph (b) shall be deemed amended, without the need for further Member approval, to correspond to the amended or successor Civil Code provision.

ARTICLE IV

ASSESSMENTS

Section 4.1. Assessments Generally.

- a) **Covenant to Pay Assessments.** Each Owner of one or more Condominiums, by acceptance of a deed or other conveyance therefor (whether or not it shall be so expressed in such deed or conveyance), covenants and agrees to pay to the Association (i) Regular Assessments; (ii) Special Assessments and (iii) Emergency Assessments duly levied by the Association in accordance with this Article IV.

- b) **Extent of Owner's Personal Obligation for Assessments.** All Assessments, together with late charges, interest, and reasonable costs (including reasonable attorney fees) for the collection thereof, shall be a debt and a personal obligation of the person who is the Owner of the Condominium at the time the Assessment is levied. Each Owner who acquires title to a Condominium (whether by conventional conveyance, judicial sale, trustee sale, or otherwise) shall be personally liable only for Assessments attributable to the Unit that become due and payable after the date that the person acquires title. Accordingly, when a person acquires title to a Condominium, the new Owner shall not be personally liable for delinquent Assessments of prior Owners of the same Condominium, unless the new Owner expressly assumes the personal liability of a prior Owner. However, if the acquired Unit is conveyed subject to a valid lien for delinquent Assessments (and related costs of collection (i.e., the lien is not removed from record before close of escrow in the sale of the Condominium)), the Association may continue to exercise its foreclosure remedies against the Condominium,

regardless of the change of ownership, and/or the Association may pursue its collection remedies against the prior Owner, individually.

- c) **Creation of Assessment Lien.** All Assessments, together with late charges, interest, and reasonable costs (including reasonable attorney fees) for the collection thereof, shall be a charge on the Condominium of a delinquent Owner and may become a lien on the Condominium against which such Assessment is made when a Notice of Delinquent Assessment is Recorded in the chain of title to the delinquent Owner's Unit in accordance with the California Civil Code. Recordation of that Notice creates a lien on the Owner's Unit in favor of the Association. Any lien for unpaid Assessments created under the provisions of this Article may be subject to foreclosure.
- d) **No Avoidance of Assessment Obligations.** No Owner may exempt himself or herself from personal liability for Assessments duly levied by the Association, nor release the Unit from the liens and charges hereof, by waiver of the use and enjoyment of the Common Areas or any facilities thereon or by abandonment or nonuse of his or her Unit or any other portion of the Development.
- e) **Limitation on Amount of Assessments.** The Association shall not impose or collect an Assessment or fee that exceeds the amount necessary to defray the costs for which the Assessment or fee is levied.

Section 4.2. Regular Assessments.

- a) **Preparation of Annual Budget; Establishment of Regular Assessments.** Not less than 30 days nor more than 90 days before the beginning of the Association's fiscal year, the Board shall estimate the total amount required to fund the Association's anticipated Common Expenses for the next succeeding fiscal year (including additions to any reserve fund established to defray the costs of future repairs, replacement, or additions to the Common Facilities) by preparing and distributing to all Members a budget satisfying the requirements of Section 11.5 of the Bylaws.
- b) **Establishment of Regular Assessment by Board; Membership Approval Requirements.** The total annual expenses estimated in the Association's budget (less projected income from sources other than Assessments) shall become the aggregate Regular Assessment for the next succeeding fiscal year, provided, however, that except as provided in Section 4.4 (relating to Emergency Assessments), the Board of Directors may not impose a Regular Assessment

that is more than 20 percent greater than the Regular Assessment for the Association's immediately preceding fiscal year without the Members' prior approval.

- c) **Payments.** Unless otherwise stated in the Association's policy with respect to collection of Assessment, Assessments shall be considered delinquent if not received by the fifteenth (15th) day of the month in which they are due. Assessments shall be paid in such manner and on such dates as may be fixed by the Board; unless otherwise provided, the Regular Assessments shall be paid in monthly installments due on the first day of each calendar month.

Section 4.3. Special Assessments.

- a) **Purposes for Which Special Assessments May Be Levied.** Subject to the membership approval requirements set forth in subparagraph (b), the Board of Directors shall have the authority to levy Special Assessments against the Owners and their Condominiums for the following purposes:
- i. **Regular Assessment Insufficient in Amount.** If, at any time, the Regular Assessment for any fiscal year is insufficient in amount due to extraordinary expenses not contemplated in the budget prepared for that fiscal year, then, except as prohibited by Section 4.3(a), the Board of Directors shall levy and collect a Special Assessment, applicable to the remainder of such year only, for the purpose of defraying, in whole or in part, any deficit that the Association may incur in the performance of its duties and the discharge of its obligations hereunder.
 - ii. **Capital Improvements.** The Board may also levy Special Assessments for additional capital improvements within the Common Areas (i.e., improvements not in existence on the date of this Declaration that are unrelated to repairs for damage to, or destruction of, the existing Common Facilities) or to defray the costs of any other extraordinary, nonrecurring actions or undertakings that the Board, in its discretion, determines to be to the advantage and in the best interests of the Members as a whole. The Special Assessment power conferred hereunder is not intended to diminish the Board's obligation to plan and budget for normal maintenance and replacement repair of the Common Areas or the existing Common Facilities through Regular Assessments (including the funding of reasonable capital repair and replacement reserves) and to maintain

adequate insurance on the Common Area and existing Common Facilities in accordance with Article VII.

- iii. **Requirements for Special Assessments Levied to Fund Multiyear Projects.** Typically, Special Assessments shall be imposed only to fund a specific capital improvement project during a particular fiscal year. However, if the Board determines that a Special Assessment should be levied to fund a portion of a capital project that will, or is likely to, entail work and/or funding in more than 1 fiscal year, this fact and a detailed disclosure of the intended scope and estimated costs of the project shall also be included in the Association's annual budget disclosures for the year in which the Special Assessment is imposed or, if the Special Assessment requires Member approval, in the solicitation materials distributed to the Members to vote on the proposal.
- iv. **Major Capital Repair and Reconstruction Projects.** As more particularly provided in Section 11.3, the Board shall be entitled to levy a Special Assessment to fund uninsured major repairs or reconstruction of Common Areas, subject to the membership approval requirements of Section 11.3.

- b) **Special Assessments Requiring Membership Approval.** The following Special Assessments require prior membership approval: (i) any Special Assessments that, in the aggregate, exceed 5 percent of the Association's budgeted gross expenses for the fiscal year in which the Special Assessment(s) is/are levied and (ii) any Special Assessments imposed under subparagraph (a)(i) of this Section when the Board has failed to distribute a budget to the Members within the time specified in Section 4.2(a). The foregoing Member approval requirements shall not apply, however, to any Special Assessment imposed to address any emergency situation.
- c) **Payment of Special Assessments.** The Board of Directors of the Association shall provide notice to each Owner of the imposition of a Special Assessment not less than 30 nor more than 60 days before the Special Assessment becomes due.

Special Assessments for purposes described in subparagraph (a)(i) of this Section shall be due as a separate debt of the Owner and a lien against his or her Condominium and shall be payable to the Association in the same manner as the payment of Regular Assessments during the remainder of the then-current fiscal year. Special Assessments for purposes described in subparagraph (a)(ii)

shall be due as a separate debt of the Owner and a lien against his or her Unit and shall be payable in full to the Association within 30 days after the mailing of such notice or within such extended period as the Board shall determine to be appropriate under the circumstances giving rise to the Special Assessment. Special Assessments levied under subparagraph (a)(iii) shall be payable in such reasonable installments as shall be established at the time the Special Assessment is levied. Special Assessments levied under subparagraph (a)(iv) and Section 11.3 shall be due as a separate debt of each Owner and a lien against the Owners' Units at such time as required by the repair or reconstruction project, but in no event sooner than 60 days after receipt of the Association's notice of levy of the Assessment.

Section 4.4. Assessments to Address Emergency Situations.

- a) **Authority of Board to Impose Emergency Assessments.** The requirement of a membership vote to approve both (i) Regular Assessment increases in excess of 20 percent of the previous year's Regular Assessment and (ii) Special Assessments that, in the aggregate, exceed 5 percent of the Association's budgeted gross expenses for the fiscal year in which the Special Assessment(s) is/are levied shall not apply to Assessments necessary to address emergency situations (Emergency Assessments). For purposes of this section, an emergency situation includes, and is limited to, any of the following:
- i. An extraordinary expense required by an order of a court.
 - ii. An extraordinary expense necessary to repair or maintain the Common Areas or Common Facilities when a threat to personal safety is discovered.
 - iii. An extraordinary expense necessary to repair or maintain the Common Areas or Common Facilities that could not have been reasonably foreseen by the Board in preparing and distributing the budget, provided, however, that before the imposition or collection of an Assessment under this subparagraph (iii), the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process. The Board's resolution shall be distributed to the Members together with the notice of Assessment.

- b) **Payment of Emergency Assessments.** An Emergency Assessment shall be due as a separate debt of the Owner and shall be payable in full to the Association within 30 days after the mailing of the notice of the Emergency Assessment or within such extended period as the Board shall determine to be appropriate under the circumstances giving rise to the Emergency Assessment.

Section 4.5. Purpose and Reasonableness of Assessments. Each Assessment made in accordance with the provisions of this Declaration is hereby declared and agreed to be for use exclusively (a) to promote the recreation, health, safety, and welfare of individuals residing within the Development; (b) to promote the enjoyment and use of the Development by the Owners and their tenants, guests, and invitees; and (c) to provide for the repair, maintenance, replacement and protection of the Common Areas and Common Facilities and those portions of the Condominiums that the Association is obligated to maintain. Each and every Assessment levied hereunder is further declared and agreed to be a reasonable Assessment and to constitute a separate, distinct, and personal obligation of the Owner of the Unit against which the Assessment is imposed that shall be binding on the Owner's heirs, successors, and assigns, provided, however, that the personal obligation of each Owner for delinquent Assessments shall not pass to the Owner's successors in title unless expressly assumed by them.

Section 4.6. Notice and Procedure for Member Approval Under Sections 4.2 and 4.3. If Member approval is required in connection with any increase or imposition of Assessments under Sections 4.2 and 4.3, the affirmative vote required to approve the increase shall be a Majority of a Quorum of the Members. The quorum required for such membership action shall be a majority of the Members. Any vote on an increase in the Regular Assessment or on the imposition of a Special Assessment that requires approval of the Members must be conducted by use of a secret ballot, and that balloting process shall be conducted using the same procedures for the casting of ballots in the election of directors under Section 7.5 of the Bylaws.

Section 4.7. Maintenance of Assessment Funds.

- a) **Establishment and Maintenance of Association Bank Accounts.** All sums received or collected by the Association from Assessments, together with any interest or late charges thereon, shall be promptly deposited in one or more insured checking, savings, or money market accounts in a bank or other financial institution selected by the Board of Directors. In addition, the Board shall be entitled to make prudent investment of reserve funds in FDIC-insured certificates of deposit, money market funds, or similar investments consistent with the

investment standards normally observed by trustees. The Board and such officers or agents of the Association as the Board shall designate shall have exclusive control of said account(s) and investments and shall be responsible to the Owners for the maintenance at all times of accurate records thereof. The withdrawal of funds from Association accounts shall be subject to the minimum signature requirements imposed by California Law.

b) Reserve Funds.

- i. Required Study of Reserve Account Requirements.** As more particularly provided in Section 11.6 of the Bylaws, at least once every 3 years, as part of a study of the Association's reserve account requirements, the Board shall cause to be conducted a reasonably competent and diligent visual inspection of the accessible areas of the major components of the Development that the Association is obligated to repair, replace, restore, or maintain. This 3-year rolling study must also be reviewed annually by the Board and adjusted as appropriate. As used herein, the phrase "major components of the Development" includes those elements of the Development that the Association is obligated to maintain, repair, and eventually replace that have a remaining useful life of less than 30 years. The study of the Association's reserve account requirements shall include all of the following:

 - A. An identification of the probable remaining useful life of the major components;
 - B. An estimate of the cost of repair, replacement, restoration, or maintenance of the major components during and at the end of their useful life;
 - C. An estimate of the total annual contribution necessary to defray the cost of repairing, replacing, restoring, or maintaining the major components both during and at the end of their useful life (taking into account reserve funds on hand); and
 - D. A reserve funding plan that will disclose to the Members how the Association plans to fund the contribution identified in subparagraph (C) to meet the Association's obligations for the repair and replacement of all major components of the Development, not including major components that the

Association's Board has determined will not be replaced or repaired. If the plan includes a change in the amount of the Regular Assessment or imposition of a Special Assessment to provide adequate funding of reserve requirements, the funding plan shall disclose the schedule of the date and amount of that Assessment.

- ii. **Adoption of the Reserve Funding Plan.** The reserve funding plan that is required under subparagraph (i)(D) shall be adopted by the Board at an open meeting before the membership of the Association, and if the plan includes an increase in Assessments to properly fund the reserve accounts, approval of that increase shall be done as a separate action of the Board, with member approval for the action if required. The Association shall provide its Members with a summary of the reserve funding plan adopted by the Board. This summary shall include notice to the Members that the full reserve study plan is available on request. On receipt of a request from a Member, the Association shall provide that Member with a copy of the complete reserve plan.
- iii. **Permitted Temporary Transfers of Reserve Funds.** Notwithstanding the restrictions on the use of reserve funds set forth in subparagraph (b), the Board may authorize the temporary transfer of money from a reserve fund to the Association's general operating fund to meet short-term cash flow requirements or other expenses if the Board has provided notice of the intent to consider the transfer in a notice of meeting. The notice shall include the reasons why the transfer is needed, some of the options for repayment, and whether a Special Assessment may be considered. If the Board authorizes the transfer, the Board shall issue a written finding, recorded in the Board's minutes, explaining the reasons why the transfer is needed and describing when and how the monies will be repaid to the reserve fund.

The transferred funds shall be restored to the reserve fund within 1 year of the date of the initial transfer, except that the Board may, after giving the same notice required for considering a transfer, and on making a finding supported by documentation that a temporary delay would be in the best interests of the Association, temporarily delay the restoration.

- c) **Limitations on Association's Authority to Assign or Pledge Assessment Obligations.** The Association may not voluntarily assign or pledge to a third

party its right to collect payments or Assessments or to enforce or foreclose a lien, except when the assignment or pledge is made to a financial institution or lender chartered or licensed under federal or state law, when acting within the scope of that charter or license, as security for a loan obtained by the Association. However, the restrictions imposed by this subparagraph (e) shall not restrict the right or ability of the Association to assign any unpaid obligations of a former Member to a third party for purposes of collection.

Section 4.8. Collection of Assessments; Enforcement of Liens. Installments of Regular Assessments shall be delinquent if not paid within 15 days of the due date as established by the Board. Special Assessments and Emergency Assessments shall be delinquent if not paid within the times prescribed in Sections 4.3(c) and 4.4(b), respectively. When an Assessment becomes delinquent, the amount thereof may, at the Board's election, bear interest at the maximum rate allowed by law commencing 30 days after the due date until the same is paid. In addition to the accrual of interest, the Board of Directors is authorized and empowered to promulgate a schedule of reasonable late charges for any delinquent Assessments. Once an assessment becomes delinquent, the Association may elect one or both of the following remedies:

- a) **Enforcement of Owner's Personal Obligation to Pay Assessments.** The Association may bring a legal action directly against the Owner for breach of the Owner's personal obligation to pay the Assessment, and in such action the Association shall be entitled to recover the delinquent Assessment or Assessments, accompanying late charges, interest, costs, and reasonable attorney fees. Commencement of a legal action shall not constitute a waiver of any lien rights as described in subparagraph (b).
- b) **Imposition and Enforcement of Assessment Lien; Limitations.** The Association may impose a lien against the Owner's Unit for the amount of the delinquent Assessment or Assessments, plus any reasonable costs of collection (including reasonable attorney fees), late charges, and interest by taking the following steps:
 - i. **Issuance of Delinquency Notice; Contents.** At least 30 days before Recording a lien on the Owner's Condominium to collect a delinquent Assessment, the Association shall notify the Owner in writing by certified mail (the "Delinquency Notice"), providing the following information:
 - A. A general description of the Association's collection and lien enforcement procedures and the method of calculating the amount;

- B. A statement that the Owner of the Condominium has the right to inspect the Association records;
 - C. The following statement in 14-point boldface type if printed or in capital letters if typed: "IMPORTANT NOTICE: IF YOUR LOT IS PLACED IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR ASSESSMENTS, IT MAY BE SOLD WITHOUT COURT ACTION."
 - D. An itemized statement of the charges owed by the Owner, including items that indicate the amount of any delinquent Assessments, the fees and reasonable costs of collection, reasonable attorney fees, any late charges, and interest, if any.
 - E. A statement that the Owner shall not be liable to pay the charges, interest, and costs of collection if it is subsequently shown that the Assessment was paid on time to the Association.
 - F. The right of the notified Owner to request a meeting with the Board.
 - G. The right to dispute the assessment debt by submitting to the Association a written request for dispute resolution under the Association's "meet and confer" program.
 - H. The right of the noticed Member to request alternative dispute resolution with a neutral third party before the Association may initiate foreclosure against the Owner's Unit, except that binding arbitration shall not be available if the Association intends to initiate a judicial foreclosure (as opposed to nonjudicial foreclosure).
- ii. **Application of Payments.** Any payments made by a delinquent Owner toward the delinquent Assessments that are in arrears shall first be applied to the Assessments that are owed at the time the payment is made; only after the Assessments owed are paid in full shall the payments be applied to the fees and the costs of collection, attorney fees, late charges, or interest.

- iii. **Pre-Lien Offer to Meet and Confer With Owner or to Participate in ADR.** Before Recording a lien for delinquent assessments, the Association must offer the Owner and, if so requested by the Owner, participate in dispute resolution under the Association's "meet and confer" program or alternative dispute resolution with a neutral third party. The decision to pursue dispute resolution or a particular type of alternative dispute resolution shall be the choice of the Owner, except that binding arbitration shall not be available if the Association intends to initiate a judicial foreclosure (as opposed to nonjudicial foreclosure).
- iv. **Right of Owner to Propose Payment Plans.** An Owner may also submit a written request to meet with the Board to discuss a payment plan for the delinquent assessment. This request must also be made within 15 days of the postmark of the Delinquency Notice. The Association shall provide the Owner with the standards for payment plans, if such standards have been adopted. So long as a timely request for a meeting has been tendered, the Board shall meet with the Owner in executive session within 45 days of the postmark of the request for a meeting, unless there is no regularly scheduled Board meeting within that period, in which case the Board may designate a committee of one or more Members to meet with the Owner. Payment plans may incorporate any assessments that accrue during the payment plan period. Payment plans shall not impede an Association's ability to Record a lien on the Owner's Unit to secure payment of delinquent assessments. Additional late fees shall not accrue during the payment plan period if the Owner is in compliance with the terms of the payment plan. If the Owner defaults on any payment plan, the Association may resume its efforts to collect the delinquent assessments from the time before entering into the payment plan.
- v. **Association Assessment Lien Rights.** The amount of the Assessment, plus any costs of collection, late charges, and interest assessed, shall be a lien on the Owner's Unit from and after the time the Association causes to be Recorded in the Office of the County Recorder a Notice of Delinquent Assessment. The Notice of Delinquent Assessment shall state the amount of the Assessment and other sums imposed, a legal description of the Owner's Unit against which the Assessment and other sums are levied, and the name of the Owner of Record of the Owner's Unit against which the lien is imposed. The decision to Record a lien for delinquent assessments shall be made only by the Board of Directors of the Association and may not be delegated to an agent of the Association.

The Board shall approve the decision by a majority vote of the Board in an open meeting, and the vote shall be recorded in the minutes of the meeting.

For the lien to be imposed by nonjudicial foreclosure as provided in subparagraph (vii), the Notice of Delinquent Assessment shall state the name and address of the trustee authorized by the Association to enforce the lien by sale. The Notice of Delinquent Assessment shall be signed by any officer of the Association or by the person designated by the Association for that purpose or, if no one is designated, by the president of the Association. A copy of the Recorded Notice of Delinquent Assessment shall be mailed by certified mail to every person whose name is shown as an Owner of the Unit in the Association's records, and the notice shall be mailed no later than 10 calendar days after its Recordation. On receipt of a written request by an Owner identifying a secondary address for purposes of collection notices, the Association shall send additional copies of any notices, including Notices of Delinquent Assessments and Notices of Default, required by Civil Code §§5600-5740 to the secondary address that is specified.

- vi. **Priority of Assessment Liens.** A lien created under this Section, shall be prior to all other liens Recorded against the Owner's Unit after the Notice of Delinquent Assessment, except as described in Section 4.12.
- vii. **Enforcement of Assessment Liens.** Subject to the limitations of this Section 4.10(b), after the expiration of 30 days following the Recordation of a Notice of Delinquent Assessment, the Association's lien may be enforced in any manner permitted by law, including sale by the court, sale by the trustee designated in the Notice of Delinquent Assessment, or sale by a trustee. Any sale by the trustee shall be conducted in accordance with the California Civil Code applicable to the exercise of powers of sale in mortgages and deeds of trusts.

The following specific limitations shall apply to the Association's authority to pursue foreclosure remedies as a means of collecting delinquent Assessments:

- A. The decision to initiate foreclosure of a lien for delinquent assessments that has been validly Recorded shall be made only by the Board of Directors of the Association and may not be delegated

to an agent of the Association. The Board shall approve the decision by a majority vote of the Board in an executive session and shall record the vote in the minutes of the next meeting of the Board that is open to attendance by the Members. The Board shall maintain the confidentiality of the Owner(s) of the Condominium to which the delinquent Assessment pertains by identifying the matter in the minutes by the parcel number of the property rather than the name of the Owner(s). A Board vote to approve foreclosure of a lien shall take place at least 30 days before any public sale of the Condominium in question.

- B. Before initiating a foreclosure for delinquent assessments, the Association shall offer the Owner and, if so requested by the Owner, participate in dispute resolution under the Association's "meet and confer" program or alternate dispute resolution with a neutral third party. The decision to pursue dispute resolution or a particular type of alternative dispute resolution shall be the choice of the Owner, except that binding arbitration shall not be available if the Association intends to initiate judicial foreclosure (as opposed to nonjudicial foreclosure).
- C. If the Board votes to commence foreclosure proceedings to collect delinquent assessments under this Section, the Board shall provide notice of that decision by personal service to an Owner of the Unit who occupies the Residence on the Unit or to the Owner's legal representative. If the Owner does not occupy the Residence and Condominium that are the subject of the foreclosure proceeding, the Board shall provide written notice to the Owner by first-class mail, postage prepaid, at the most current address for the Owner that is shown on the books of the Association. In the absence of written notification by the Owner to the Association, the address of the Owner's Condominium may be treated as the Owner's mailing address.
- D. Debts for Assessments, Regular or Special, may not be collected through judicial or nonjudicial foreclosure until the delinquent assessment amount, exclusive of any accelerated assessments, late charges, fees, costs of collection, attorney fees, and interest equals or exceeds \$1800.00 or the Assessments are more than 12 months delinquent. Delinquent Assessments in a smaller amount

may not be collected through foreclosure but may be collected by any of the following other means: (1) a civil action in small claims court; (2) a lien on the Owner's Condominium (subject to the restrictions on foreclosure of that lien); or (3) any other manner provided by law, other than foreclosure. If the Association elects to Record a lien for delinquent Assessments, before Recording the lien the Association must offer the Owner and, if so requested by the Owner, participate in dispute. The limitations on the use of foreclosure remedies set forth in this subparagraph (D) do not apply to assessment collection actions against the Declarant in its capacity as an Owner when the Declarant's Assessment obligations are delinquent.

- viii. **Foreclosed Owner's Right of Redemption.** A nonjudicial foreclosure by the Association of an Owner's interest in his or her Unit to collect a debt for delinquent Assessments shall be subject to a right of redemption. The redemption period within which the Condominium may be redeemed from a foreclosure sale under this subparagraph (viii) ends 90 days after the sale. In addition, a notice of sale in connection with the Association's foreclosure of a Condominium in the Association shall include a statement that the property is being sold subject to the right of redemption.

Section 4.9. Transfer of Condominium by Sale or Foreclosure. The following rules shall govern the right of the Association to enforce its Assessment collection remedies following the sale or foreclosure of a Condominium:

- a) Except as provided in subparagraph (b), the sale or transfer of any Condominium shall not affect any Assessment lien that has been duly Recorded against the Condominium before the sale or transfer, and the Association can continue to foreclose its lien in spite of the change in ownership.
- b) The Association's Assessment lien shall be extinguished as to all delinquent sums, late charges, interest, and costs of collection incurred before the sale or transfer of a Condominium under a foreclosure or exercise of a power of sale by the holder of a prior encumbrance (but not under a deed in lieu of foreclosure). A "prior encumbrance" means any first Mortgage or other Mortgage or lien Recorded against the Condominium at any time before Recordation of the Association's Assessment lien.

- c) No sale or transfer of a Condominium as the result of foreclosure, exercise of a power of sale, or otherwise shall relieve the new Owner of such Condominium (whether it be the former beneficiary of the first Mortgage or other prior encumbrance or a third party acquiring an interest in the Condominium) from liability for any Assessments that thereafter become due with respect to the Lot or from the lien thereof.
- d) Any Assessments, late charges, interest, and associated costs of collection that are lost as a result of a sale or transfer of a Condominium covered by subparagraph (b) shall be deemed to be a Common Expense collectible from the Owners of all of the Condominiums, including the person who acquires the Condominium and his or her successors and assigns.
- e) No sale or transfer of a Condominium as the result of foreclosure, exercise of a power of sale, or otherwise shall affect the Association's right to maintain an action against the foreclosed previous Owner personally to collect the delinquent Assessments, late charges, interest, and associated costs of collection incurred before and/or in connection with the sale or transfer.

Section 4.10. Priorities. When a Notice of Delinquent Assessment has been Recorded, such notice shall constitute a lien on the Condominium prior and superior to all other liens except:

- a) All taxes, bonds, assessments, and other levies that by law would be superior thereto; and
- b) The lien or charge of any first Mortgage of record (meaning any Recorded Mortgage with first priority over other Mortgages) made in good faith and for value, provided, however, that such subordination shall apply only to the Assessments that have become due and payable before the transfer of such property under the exercise of a power of sale or a judicial foreclosure involving a default under such first Mortgage or other prior encumbrance.

Section 4.11. Assignment of Rents. Each Owner hereby presently assigns to the Association, absolutely and regardless of possession of the property, all rents and other monies now due or hereafter to become due under any lease or agreement or otherwise for the use or occupancy of any or all parts of any Unit owned by the Owner, now existing or hereafter made for the purpose of collecting all Assessments due the Association under this Declaration that are in default. The Association hereby confers on each Owner the authority to collect and retain the rents and other monies derived

from any such lease or agreement as they become due and payable, provided, however, that the Association, at its sole discretion, may revoke such authority at any time on written notice to the Owner of a default in the payment of any Assessment due hereunder. On revocation of such authority, the Association may, under court order or by court-appointed receiver, collect and retain such monies, whether past due and unpaid or current.

Section 4.12. Waiver of Exemptions. Each Owner, to the extent permitted by law, waives, to the extent of any liens created under this Article, the benefit of any homestead or exemption law of California in effect at the time any Assessment or installment thereof becomes delinquent or any lien is imposed.

ARTICLE V

ARCHITECTURAL CONTROL

Section 5.1. Architectural Committee Approval of Improvements.

- a) **Approval Generally.** Before commencing construction or installation of any Improvement, as defined in Section 1.20, within the Association, the Owner planning such Improvement must submit to the Architectural Committee a written request for approval. The Owner's request shall include structural plans and specifications satisfying the minimum requirements. No work on the Improvement shall be undertaken unless the Committee's approval of the proposal is first obtained. The Architectural Committee shall base its decision to approve, disapprove, or conditionally approve the proposed Improvement on the criteria described in Section 5.6.

- b) **Modifications to Approved Plans Must Also Be Approved.** Once a proposed work of Improvement has been duly approved by the Architectural Committee, no material modifications shall be made in the approved plans and specifications therefor and no subsequent alteration, relocation, addition, or modification shall be made to the work of Improvement, as approved, without a separate submittal to, and review and approval by, the Committee. If the proposed modification will have, or is likely to have, a material effect on other aspects or components of the work, the Committee, in its discretion, may order the Owner and his or her contractors and agents to cease working not only on the modified component of the Improvement but also on any other affected component.

If the Association, its Architectural Committee, or the agents or employees of either learn that a work of Improvement, or any modification thereof, is proceeding without proper approval, the Association shall be entitled to exercise the enforcement remedies specified in Section 5.11, including, without limitation, ordering an immediate cessation and abatement of all aspects of the work of Improvement until such time as proper Architectural Committee review and approval is obtained.

Section 5.2. Committee Membership. The Architectural Committee shall be composed of not less than three and no more than five Members of the Association appointed by the Board of Directors. Committee members shall serve for 1-year terms, subject to the Board's power to remove any Committee member and to appoint his or her successor. Neither the members of the Architectural Committee nor its designated representatives shall be entitled to any compensation for services performed under this Declaration.

Section 5.3. Duties of the Committee. It shall be the duty of the Architectural Committee to consider and act on the proposals and plans for Improvement submitted to it under this Declaration, to adopt Architectural Rules under Section 5.5, to perform other duties delegated to it by the Board of Directors, and to carry out all other duties imposed on it by this Declaration.

Section 5.4. Meetings. The Architectural Committee shall meet from time to time as necessary to properly perform its duties hereunder. The vote or written consent of a majority of the Committee members shall constitute the action of the Committee, and the Committee shall keep and maintain a written record of all actions taken.

The applicant shall be entitled to appear at any meeting of the Architectural Committee at which his or her proposal has been scheduled for review and consideration. The applicant shall be entitled to be heard on the matter and may be accompanied by his or her architect, engineer, and/or contractor. Other Owners whose Condominium may be affected by the proposed Improvement shall also be entitled to attend the meeting.

Reasonable notice of the time, place, and proposed agenda for Architectural Committee meetings shall be communicated before the date of the meeting to any applicant whose application is scheduled to be heard.

If the proposed Improvement will be visible from any neighboring Unit or involves any entry into, or modification of, the roof or any Party Wall, the Owners of the effected Unit(s) shall be notified promptly by the Committee of the applicant's submittal and shall

thereafter be given notice of any Committee meeting at which the application is scheduled to be heard.

Section 5.5. Architectural Rules. The Architectural Committee may, from time to time and with approval of the Board of Directors, adopt, amend, and repeal rules and regulations to be known as “Architectural Rules.” The Architectural Rules shall interpret and implement the provisions hereof by setting forth (a) the standards and procedures for Architectural Committee review, including the required content of Improvement plans and specifications; (b) guidelines for architectural design or placement of any work of Improvement or color schemes, exterior finishes, and materials and similar features recommended or required for use in connection with particular Improvement projects within the Development; and (c) the criteria and procedures for requesting variances from any property use restrictions that would otherwise apply to the proposed Improvement under Section 5.12. Notwithstanding the foregoing, no Architectural Rule shall be in derogation of the minimum standards required by this Declaration. In the event of any conflict between the Architectural Rules and this Declaration, the provisions of the Declaration shall prevail. Architectural Rules that relate to procedural requirements for the review and approval of Improvement projects are “Operating Rules” subject to Section 3.7(c).

Among other things, the Architectural Rules shall provide a fair, reasonable, and expeditious procedure for making decisions on submitted Improvement plans and projects. The procedures shall include prompt deadlines for various actions and a maximum time for response to an application consistent with Section 5.7.

Section 5.6. Basis for Approval of Improvements. When a proposed Improvement is submitted to the Architectural Committee for review, the Committee shall grant the requested approval only if the Committee, in its sole discretion exercised in good faith, makes the following findings regarding the proposed project:

- a) The Owner’s plans and specifications conform to this Declaration and to the Architectural Rules in effect at the time such plans are submitted to the Committee;
- b) The Improvement will be in harmony with the external design of other structures and landscaping within the Association;
- c) The Improvement, as a result of its appearance, location, or anticipated use, will not interfere with the reasonable enjoyment of any other Owner of his or her Condominium; and

- d) The proposed Improvement(s), if approved, will otherwise be consistent with the architectural and aesthetic standards prevailing within the Development and with the overall plan and scheme of development within the Development.

The decision of the Committee shall be in writing, shall be made in good faith, and shall not be arbitrary, unreasonable, or capricious. The Committee will present its proposed decision to the Board for final approval. Although it is recognized that the Architectural Committee's determination will, of necessity, be subjective to some degree, the members of the Committee shall consider such factors as the quality of workmanship and materials proposed for the Improvement project; the harmony of its exterior design, finished materials, and color with that of other existing structures; the proposed location of the Improvement in relation to the existing topography, finished grade elevations, roads, Common Areas, and other existing structures; and the impact, if any, that the Improvement will have or may have on the structural integrity of the Condominium or adjacent Condominiums. Decisions shall be consistent with any governing provision of law, including, without limitation, the Fair Employment and Housing Act.

The Architectural Committee's approval of any plans, drawings, or specifications for any work of Improvement done or proposed or for any other matter requiring the approval of the Committee under this Declaration, or any waiver thereof, shall not be deemed to constitute a waiver of any right to withhold approval of any similar plan, drawing, specification, or matter subsequently submitted for approval by the same or some other Owner. In reviewing a particular submittal, the Committee may take into consideration different locations for Improvements, the size of the structure, proximity to other Residences or Common Facilities, and other factors. Accordingly, the Committee shall be entitled to determine that a proposed Improvement or component thereof is unacceptable when proposed for a particular Condominium, even if the same or a similar Improvement or component has previously been approved for use at another location if factors such as drainage; topography; noise; visibility from roads, Common Areas, or other Units; or prior adverse experience with the product, the design, or with similar Improvements mitigate against erection of the Improvement or use of a particular component thereof for the Unit involved in the Owner's submittal.

In approving a request for construction of an Improvement, the Architectural Committee may condition approval on the adoption of modifications in the

Owner's plans and specifications or observance of restrictions as to location, noise abatement, or similar mitigating conditions applicable to the Improvement.

Section 5.7. Time Limits for Approval or Rejection; Right of Appeal to the Board.

- a) **Approval or Disapproval by the Committee.** Within 30 days after submission of plans and specifications satisfying the requirements of the Architectural Rules, the Architectural Committee shall return one set of such plans to the applicant, with written notice of either approval or disapproval. If the proposed Improvement is disapproved, the written decision of the Committee shall include both an explanation of why the proposed change was disapproved and a description of the procedure for reconsideration of the Committee's decision by the Board. If written suggestions of changes required for approval of the project accompany the returned set of plans, the applicant may implement such changes to the plans and within 30 days resubmit plans incorporating such changes for approval to the Committee, which shall not unreasonably withhold its approval as long as the Owner has complied in all material respects with the requested changes. If no written notice of approval or disapproval is received by the applicant within 30 days after the Owner's plans and specifications (or revisions thereto) are submitted to the Committee, the plans shall be deemed to have been approved as submitted.

- b) **Appeals to the Board.** If the Board establishes an Architectural Committee, any decision by the Committee other than to approve the Owner-applicant's proposal as presented shall be subject to appeal to the Board and shall be placed on the agenda for confirmation, modification, or denial at the next scheduled regular Board meeting, and the 30-day period set forth in this Section for Association action shall be extended to include the days from the committee's action to the meeting at which the appeal is heard. The Architectural Rules shall include fair and expeditious procedures for the hearing of appeals under this subparagraph (b).

Section 5.8. Proceeding With Work. On receipt of approval of an Improvement project from the Architectural Committee, the Owner shall, as soon as practicable, satisfy all conditions thereof and diligently proceed with the commencement of construction as approved. In all cases, work on an Improvement project shall commence within 6 months from the date of such approval. If the Owner fails to comply with this paragraph, any approval given under this Article shall be deemed revoked, unless the Architectural Committee, on written request of the Owner before the expiration of the initial 6-month _ period, extends the time for commencement or completion. No such extension shall be

granted except on a finding by the Architectural Committee that there has been no change in the circumstances on which the original approval was granted and that the Owner has a bona fide intention and ability to complete the Improvement project within the time specified in the extension request.

Section 5.9. Failure to Complete Work. Unless the Owner has been granted an extension of time to complete the project by the Architectural Committee, the construction, reconstruction, refinishing, or alteration of any such Improvement must be complete within 6 months after construction has commenced, except and for so long as such completion is rendered impossible or would result in great hardship to the Owner because of strikes, fires, national emergencies, natural calamities, or other supervening forces beyond the control of the Owner or the Owner's agents. The Committee shall be entitled to grant longer times for completion of a particular Improvement project as part of the project approval process.

If the Owner fails to comply with this section, the Architectural Committee shall notify the Board of such failure, and the Board shall proceed, in accordance with the provisions of Section 5.10(c)-(d), as though the failure to complete the Improvement was a noncompliance with approved plans.

Section 5.10. Inspection of Work by Architectural Committee. Inspection of the work relating to any approved Improvement and correction of defects therein shall proceed as follows:

- a) During the course of construction, representatives of the Architectural Committee shall have the right to inspect the jobsite to confirm that the Improvement project is proceeding in accordance with the approved plans and specifications.
- b) On the completion of any work of Improvement for which Architectural Committee approval is required under this Article, the Owner shall give the Architectural Committee a written notice of completion.
- c) Within 30 days thereafter, the Architectural Committee, or its duly authorized representative, may inspect the Improvement to determine whether it was constructed, reconstructed, altered, or refinished in substantial compliance with the approved plans. If the Architectural Committee finds that the Improvement was not erected, constructed, or installed in substantial compliance with the Owner's approved plans, then within the 30-day inspection period the Committee shall give the Owner a written notice of noncompliance detailing those aspects of the Improvement project that must be modified, completed, or corrected. If the

violation or nonconforming work is not corrected, the Association and its Architectural Committee shall have the enforcement rights and remedies set forth in Section 5.11.

- d) If for any reason the Architectural Committee fails to notify the Owner in writing of any noncompliance within 30 days after receipt of the Owner's notice of completion, the Improvement shall be deemed to have been constructed in accordance with the approved plans for the project, unless it can be demonstrated that the Owner knew of the noncompliance and intentionally misled the Committee with respect to it.

Section 5.11. Enforcement of Architectural Review and Approval Requirements.

- a) **Authority to Red Tag Projects.** In addition to other enforcement remedies set forth in this Declaration, the Architectural Committee shall have the authority to order an abatement (red tag) of any construction, alteration, or other matter for which approval is required, to the extent that the work has not been approved by the Committee or the work does not conform to the plans and specifications submitted to and approved by the Committee. If an Improvement project is red tagged, the Owner and his or her contractor shall cease all construction activity until such time as the issue giving rise to the red tag order is resolved. The red tag notice shall clearly state the reasons why the abatement has been ordered.
- b) **Effect of Failure to Comply With This Article V.** If the Owner fails to remedy any noticed noncompliance within 30 days from the date of receipt of the Association's notice of noncompliance, or if the Owner believes that the project has been red tagged or has received a notice of noncompliance without justification, the Committee shall notify the Board in writing of such failure. The Board shall then set a date on which a hearing before the Board shall be held regarding the alleged noncompliance.
- c) **Approval Not Deemed a Waiver.** The approval by the Architectural Committee of any plans, drawings or specifications for any work of Improvement done or proposed or for any other matter requiring the approval of the Architectural Committee under this Declaration, or any waiver thereof, shall not be deemed to constitute a waiver of any right to withhold approval of any similar plan, drawing, specification, or matter subsequently submitted for approval by the same or some other Owner. Different locations for Improvements, the size of the structure, proximity to other Residences or Common Facilities, and other factors

may be taken into consideration by the Committee in reviewing a particular submittal.

- d) **Lack of Complaint Not Deemed Approval; Attorney Fees.** No work for which approval is required shall be deemed to be approved simply because it has been completed without a complaint, notice of violation, or commencement of a suit to enjoin such work. If any legal proceeding is initiated to enforce any of the provisions hereof, the prevailing party shall be entitled to recover reasonable attorney fees in addition to the costs of such proceeding.

Section 5.12. Variances. The Board of Directors, in its sole discretion, shall be entitled to allow reasonable variances in any procedures specified in this Article V or in any minimum improvement standards imposed by Article VI to overcome practical difficulties, avoid unnecessary expense, or prevent unnecessary hardship to applicants, provided all of the following conditions are met:

- a) If the requested variance will necessitate deviation from, or modification of, a property use restriction that would otherwise be applicable under this Declaration, the Board must conduct a hearing on the proposed variance after giving prior written notice to all Owners of effected Condominiums. The notice shall also be posted in the Association's principal office within the Development. The notice shall be posted and mailed to the interested Owners at least 15 days before the date when the Board/Architectural Committee is scheduled to act on the requested variance. No decision shall be made with respect to the proposed variance until the 15-day comment period has elapsed.
- b) The Board/Architectural Committee must make a good faith written determination that the variance is consistent with one or more of the following criteria:
 - i. The requested variance will not constitute a material deviation from any restriction contained herein;
 - ii. The variance relates to a land use restriction or minimum construction standard otherwise applicable hereunder that is unnecessary or burdensome under the circumstances; or
 - iii. The variance, if granted, will not result in a material detriment or create an unreasonable nuisance with respect to any other Condominium or Common Area within the Development.

Section 5.13. Limitation on Liability. Neither the Association, its Architectural Committee, nor any member thereof shall be liable to any Owner for any damage, loss, or prejudice suffered or claimed on account of any mistakes in judgment, negligence, or nonfeasance arising out of (a) the approval or disapproval of any plans, drawings, and specifications, whether or not defective; or (b) the construction or performance of any Improvement project, whether or not under approved plans, drawings, or specifications; whether or not the facts therein are correct, provided, however, that such member has acted in good faith on the basis of such information as he or she possessed at the time the act or omission occurred.

Section 5.14. Compliance With Governmental Regulations. Review and approval by the Architectural Committee of any proposals, plans, or other submittals pertaining to Improvements shall in no way be deemed to constitute satisfaction of, or compliance with, any building permit process or any other governmental requirements, the responsibility for which shall lie solely with the Owner who desires to construct, install, or modify the Improvement.

ARTICLE VI

MINIMUM IMPROVEMENT STANDARDS

Unless a variance is requested from, and granted by, the Architectural Committee in accordance with Section 5.12, Improvements constructed for any Unit in the Development shall conform to the following minimum improvement standards:

Section 6.1. Building Plans. All building and Improvement plans must be submitted to, and approved by, the Architectural Committee before being submitted to any governmental agency to obtain a building permit.

Section 6.2. Compliance With Approved Plans and Applicable Improvement Requirements. Once approved by the Architectural Committee, the Improvement project must be constructed and completed in accordance with the approved plans and specifications and any applicable minimum construction standards imposed by this Article VI or the Architectural Rules (unless the Committee has approved a specific variance from those standards).

Section 6.3. Licensed Contractor. Residential structures and any other significant structural Improvement project, as reasonably determined by the Committee, shall be constructed by a contractor licensed under the laws of the State of California and, if

considered necessary or appropriate by the Committee, shall be designed by a licensed architect.

Section 6.4. Site and Drainage Review. General site considerations including site layout, open space and topography, orientation and locations of buildings, vehicular access, circulation and parking, setbacks, height, walls, fences, and similar elements shall be designed to provide a desirable environment and to avoid alteration of established drainage courses.

Section 6.5. Hours of Permitted Construction Activity. Any owner may engage in a home improvement project/repair on any weekday between the hours of 8:00 am and 6:00 pm and on Saturdays between the hours of 10:00 am and 6:00 pm provided such project is for the benefit of said residential property and as permitted by the City of Oceanside Noise Ordinance. No home improvement project/repairs may take place on Sundays or holidays.

Section 6.6. Antennas, Aerials, and Satellite Dishes. To ensure adequate aesthetic controls and to maintain the general attractive appearance of the Development, no Owner, resident, or lessee shall place or maintain any objects, such as masts, towers, poles, or radio or television antennas, on the exterior of any building within the Development unless architectural review and approval is first obtained in accordance with Article V, provided, however, that:

- a) The Association shall have the right, without obligation, to erect, place, or install and maintain any such apparatus for the benefit of all or a portion of the Development;
- b) In accordance with federal law, antennas or satellite dishes with a diameter or diagonal measurement not greater than 36 inches that are designed to receive direct broadcast satellite services, video programming services via multipoint distribution services, or television broadcast signals (collectively, Permitted Devices) may be erected, placed, or installed, provided that:
 - i. Any such Permitted Device is placed in the least conspicuous location on the Residence at which an acceptable quality signal can be received and is either not visible from neighboring property or is screened from view from streets and any neighboring Lot or Common Area.
 - ii. Reasonable restrictions that do not significantly increase the cost of installing a Permitted Device or significantly decrease its efficiency or

performance (including, without limitation, screening material, location, or complimentary-color painting of the Permitted Device) may be imposed as part of the Architectural Rules.

Furthermore, no activity shall be conducted on any Unit that causes an unreasonable broadcast interference with television or radio reception for any neighboring Unit.

ARTICLE VII

ASSOCIATION AND OWNER MAINTENANCE RESPONSIBILITIES

Section 7.1. Common Area Maintenance. The Association shall be solely responsible for all maintenance, repair, upkeep, and replacement of all portions of the Common Area other than those Exclusive Use Common Areas described in Section, e.g., 7.3. No person other than the Association or its duly authorized agents shall construct, reconstruct, refinish, alter, or maintain any Improvement on, create any excavation or fill, or change the natural or existing drainage of any portion of the Common Area. In addition, no person shall remove any tree, shrub, or other vegetation from, or plant any tree, shrub, or other vegetation on, the Common Area without express approval of the Association.

Without limiting the foregoing, the Association shall be responsible for:

- a) The reconstruction, replacement, or refinishing of any Common Facility or other Improvements within the Common Area as necessary in accordance with the original design, finish, or standard of construction of such Improvement.
- b) The construction, reconstruction, replacement, refinishing of any road, driveway, trail, or surface on any portion of Common Area designated on a Subdivision Map as a private road or parking area.
- c) The replacement of trees or other vegetation and the planting of trees, shrubs, and ground cover on any portion of Common Area.
- d) The placement and maintenance of such signs as the Association may deem necessary for the identification of the development and of roads, the regulation of traffic, including parking, and the regulation and use of Common Area and Common Facilities.

- e) The Association's Common Area maintenance and repair responsibilities shall not extend to or include any Exclusive Use Common Areas.

Section 7.2. Association Maintenance Responsibility With Respect to Condominiums. The Association shall provide exterior maintenance that is subject to Assessment hereunder, as follows:

- a) Paint, stain, repair, replace, and care for the exterior building surfaces of all Residences including roofs, gutters, fences, downspouts, and exterior walls, provided, however, that the Association shall not be responsible for the repair and replacement of exterior doors, screen doors, garage doors, or exterior lighting fixtures (whose electricity is tied to any specific Unit and not to Common Area power) and other hardware and glass surfaces;
- b) Manage, operate, control, maintain, repair, restore, replace and make necessary improvements to private walkways, private streets, fences and walls within the Common Area and Common Area amenities;
- c) Replace and care for trees, shrubs, grass, walks, and other landscaping Improvements except for plantings and Improvements located within enclosed patio areas; and
- d) Maintain the underground sewer, water, and electrical lines, whether located within the boundaries of the Owner's Condominium or under the Common Area, provided, however, that the Association shall not be responsible for the risers and connecting lines between such service lines and the individual Residences.

Section 7.3. Owner Maintenance Responsibilities.

- a) Except as specifically provided in Section 7.2, each Owner shall be responsible for the maintenance and repair of his or her Residence and Unit, including without limitation the glass surfaces, glass doors, windows, screens and screen doors, other exterior doors, window fixtures, any hardware, Improvements within patio areas, concrete surfaces within the patio areas, the interior of his or her Residence, and the plumbing, electrical, heating and air conditioning systems servicing his or her Residence.
- b) In addition to the foregoing, each Owner shall be responsible for the repair and maintenance of all Exclusive Use Common Areas appurtenant to his or her Unit.

Section 7.4. Association's Recovery of Costs of Certain Repairs and Maintenance.

- a) **Association Maintenance Necessitated by Owner Negligence.** If the need for maintenance or repair that would otherwise be the Association's responsibility hereunder is caused through the willful or negligent acts of an Owner, his or her family, guests, tenants, or invitees and is not covered or paid for by insurance policies maintained by the Association or the responsible Owner, the cost of such maintenance or repairs shall be subject to recovery by the Association through the imposition of a Special Individual Assessment against the offending Owner.
- b) **Owner Defaults in Maintenance Responsibilities.** If an Owner fails to perform maintenance or repair functions on the Owner's Unit for which he or she is responsible, the Association may give written notice to the offending Owner with a request to correct the failure within 15 days after receipt thereof. If the Owner refuses or fails to perform any necessary repair or maintenance, the Association may exercise its rights under Section 3.6(b) to enter the Owner's Unit and perform the repair or maintenance, as long as the Owner has been given notice and the opportunity for a hearing in accordance with Section 13.6(e).

Section 7.5. Cooperative Maintenance Obligations. To the extent necessary or desirable to accomplish the Association's maintenance and repair obligations hereunder, individual Owners shall cooperate with the Association and its agents and maintenance personnel in the prosecution of its work.

Section 7.6. Maintenance of Party Walls.

- a) **General Rules of Law to Apply.** Each wall that is built as a part of the original construction of the Residences and placed on the dividing line between the Units shall constitute a Party Wall, and to the extent not inconsistent with the provisions of this Article, the general rules of law regarding Party Walls and liability for property damage caused by negligence or willful acts or omissions shall apply thereto.
- b) **Sharing of Repair and Maintenance.** The cost of reasonable repair and maintenance of a Party Wall shall be shared by the Owners who make use of the wall in equal proportion to such use.
- c) **Destruction by Fire or Other Casualty.** If a Party Wall is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of same, any Owner who has used

the wall may restore it, and if the other Owner thereafter makes use of the wall, he or she shall contribute to the cost of restoration in equal proportion without prejudice to the right of any such Owner to call for a larger contribution from the other Owner under any rule of law regarding liability for negligent or willful acts or omissions.

- d) **Weatherproofing.** Notwithstanding any other provisions of this Article, to the extent that such damage is not covered and paid by the insurance provided for herein, an Owner who negligently or willfully causes the Party Wall to be exposed to the elements shall bear the entire cost of furnishing the necessary protection against such elements.
- e) **Right to Contribution Runs With Land.** The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.
- f) **Arbitration.** In the event of any dispute between Owners concerning a Party Wall, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and resolution of the dispute shall be decided by a majority of all the arbitrators. Should any party refuse to appoint an arbitrator within 10 days after written request therefor, the Board of Directors shall select an arbitrator for the refusing party. The arbitrators shall render a decision within 30 days after appointment.

Section 7.7. Maintenance Matrix. A listing of the items within the Association, the routine maintenance, repair and replacement duty for which the Owners and Association are responsible is contained in the "Maintenance Matrix" attached as Exhibit B to this Declaration. If an item is not specifically addressed in the Maintenance Matrix, the principles in the Section above will be used to determine maintenance responsibility.

ARTICLE VIII

USE OF DEVELOPMENT AND RESTRICTIONS

In addition to the restrictions established by law or Association Rules promulgated by the Board of Directors (consistent with this Declaration), the following restrictions are hereby imposed for the use of Condominiums, Common Areas, and other parcels within the Association.

Section 8.1. Single-Family Residential Use. The use of the individual Condominiums in the Association is hereby restricted to Single-Family Residential Use. In no event shall a Residence be occupied by more individuals than permitted by applicable zoning laws or governmental regulations.

Section 8.2. Units. Each Unit shall be conveyed as a separately designated and legally described fee simple estate subject to this Declaration.

Section 8.3. Interior Improvements. No Owner shall undertake any activity or work with respect to the Owner's Residence that will impair the structural soundness or integrity of any adjoining Residence or impair any easement or hereditament or do any act or allow any condition to exist in or around the Owner's Residence that will adversely affect any other Residences or their occupants. Any interior Improvements involving the structural components of the Residence other than nonload-bearing interior walls shall require prior architectural approval in accordance with Article V.

Section 8.4. Common Areas. The Common Areas shall be preserved as open space and used for recreational purposes and other purposes incidental and ancillary to the use of Condominiums. Such use shall be limited to the private use for aesthetic and recreational purposes by the Members, their tenants, families, and guests, subject to the provisions of the Governing Documents. No Improvement, excavation, or work that in any way alters any Common Area or Common Facility from its natural or existing state shall be made or done except by the Association, and then only in strict compliance with the provisions of this Declaration.

Section 8.5. Prohibition of Noxious Activities. No illegal, noxious, or offensive activities shall be carried out or conducted on any Condominium or Common Area, nor shall anything be done within the Association that is or could become an unreasonable annoyance or nuisance to neighboring property Owners. Without limiting the foregoing, no Owner shall permit noise, including but not limited to barking dogs, the operation of excessively noisy air conditioners, stereo amplifier systems, television systems, motor vehicles, or power tools, to emanate from an Owner's Unit or from activities within the Common Area that would unreasonably disturb any other Owner's or tenant's enjoyment of his or her Unit or the Common Area.

Section 8.6. Temporary Structures. No structure of a temporary character, trailer, mobile home, camper, tent, shack, garage, or other outbuilding shall be used at any time as a Residence, either temporarily or permanently.

Section 8.7. Household Pets. The following restrictions regarding the care and maintenance of pets within the Development shall be observed by each Owner and resident:

- a) Not more than two (2) common household pets are allowed (excluding fish).
- b) Dogs shall only be allowed on the Common Area when they are leashed and otherwise under the supervision and restraint of their Owners.
- c) No household pet shall be left chained or otherwise tethered in front of a Condominium or in the Common Area. Pet owners shall be responsible for the prompt removal and disposal of pet wastes deposited by their pets within the Development.
- d) Each person bringing or keeping a pet shall be solely responsible for the conduct of his or her pet. The Association, its Board, officers, employees, and agents shall have no liability (whether by virtue of this Declaration or otherwise) to any Owners, their family members, guests, invitees, tenants, and contract purchasers for any damage or injury to persons or property caused by any pet.
- e) The Board shall have the right to establish and enforce additional rules and regulations and impose standards for the reasonable control and keeping of household pets in, on, and around the Project to ensure that the same do not interfere with the quiet and peaceful enjoyment of the Development by the other Owners and residents.

Section 8.8. Signs. No advertising signs or billboards shall be displayed in a Condominium or posted within or on any portion of the Common Area except that Owners may post on their Lots any signs required by legal proceedings and a single "For Rent," "For Lease," or "For Sale" sign of reasonable dimensions.

Signs permitted hereunder shall not be nailed to the exterior of any Residence or staked in any lawn or green area in front of any Residence.

Section 8.9. Business Activities. No business or commercial activities of any kind whatsoever shall be conducted in any Residence, garage, or outbuilding or in any portion of any Unit without the prior written approval of the Board, provided, however, that the foregoing restriction shall not apply to the activities, signs, or activities of the Association in the discharge of its responsibilities under the Governing Documents. Furthermore, no restrictions contained in this section shall be construed in such a

manner so as to prohibit any Owner from (a) maintaining his or her personal library in his or her Residence; (b) keeping his or her personal business records or accounts therein; (c) handling his or her personal or professional calls, correspondence, or electronic communications therefrom; (d) leasing or renting his or her Residence in accordance with Section 2.4; or (e) conducting any other activities in the Owner's Unit otherwise compatible with residential use and the provisions of this Declaration that are permitted under applicable zoning laws or regulations without the necessity of first obtaining a special use permit or specific governmental authorization, as long as any such activity does not involve exterior signage or create customer traffic within the Development. The uses described in (a) through (e) are expressly declared to be customarily incidental to the principal residential use and not in violation of this section.

Section 8.10. Trash Disposal. No rubbish, trash, or garbage shall be allowed to accumulate outside of any Unit.

At various locations within the Development, the Association maintains, and shall continue to maintain, trash dumpsters. Residents shall deposit in these dumpsters any garbage that is not retained within a Residence so that it can be taken to a location outside of the Project.

Any extraordinary accumulation of rubbish, trash, garbage, or debris (such as debris generated on vacating the premises or during the construction of modifications and Improvements) shall be removed from the Project to a public dump or trash collection area by the Owner or tenant at his or her expense. The Association shall be entitled to impose reasonable fines and penalties for the collection of garbage and refuse to dispose in a manner inconsistent with this section.

Section 8.11. Storage. Storage of personal property for any Condominium shall be entirely within garages and enclosed storage areas.

Section 8.12. Clotheslines. No exterior clothesline shall be erected or maintained, and there shall be no drying or laundering of clothes in any Unit in a manner that is visible from any neighboring Condominium or the Common Area.

Section 8.13. Burning. There shall be no exterior fires whatsoever.

Section 8.14. Diseases and Pests. No Owner shall permit anything or condition to exist in his or her Unit that shall induce, breed, or harbor infectious plant diseases, rodents, or noxious insects.

Section 8.15. Parking and Vehicle Restrictions. The following parking and vehicle restrictions shall apply within the Development:

- a) All garages shall be maintained in a neat and orderly condition and garage doors shall be maintained in a closed position except as necessary to permit entry and exit of vehicles or to provide ventilation when the resident is in the garage area.
- b) Garages are to be used solely for the parking of standard passenger vehicles and trucks, and shall not be converted to living quarters or workshops. In no event shall the garage area be used in a way that will preclude the parking of the Owner's or occupant's vehicles within the garage.
- c) Designated guest parking areas within the Common Areas are to remain open for use by guests only and are not to be used by Owners or other residents, either permanently or temporarily, for the parking of their passenger vehicles or the storage of boats, trailers, or similar items of personal property.
- d) No motor vehicle shall be constructed, reconstructed, or repaired within the Association, and no dilapidated or inoperable vehicle, including vehicles without wheel(s) or an engine, shall be stored in the Project, provided, however, that the provisions of this section shall not apply to emergency vehicle repairs.
- e) All vehicles within the Project must have current vehicle registration.
- f) Campers, boats, trailers and commercial vehicles are not to be parked within the Project, other than within enclosed garages.
- g) The Board shall have the authority to tow, at the Owner's expense, any vehicle parked or stored in violation of this section. The Board shall post such notices or signs within the Common Area as may be required by law to effectuate this towing provision.
- h) The Board shall have the authority to promulgate further reasonable rules and restrictions of uniform application regarding the parking and/or operation of vehicles within the Development as may be deemed prudent and appropriate.

Section 8.16. Children. Each Owner and resident shall be accountable to the remaining Owners and residents and their families, visitors, guests, and invitees for the conduct and behavior of their children and any children temporarily residing in or visiting the Owner/resident and for any property damage caused by such children.

Section 8.17. Activities Affecting Insurance. Nothing shall be done or kept in any Unit or within the Common Area that will increase the rate of insurance relating thereto on any policy maintained by the Association without the prior written consent of the Association, and no Owner shall permit anything to be done or kept in an Owner's Unit or within the Common Area that would cause any Improvements to be uninsurable against loss by fire or casualty or result in the cancellation of insurance on any Residence or any part of the Common Area.

Section 8.18. Restriction on Further Subdivision and Severability. No Unit shall be further subdivided, nor shall less than all of any such Unit be conveyed by an Owner thereof, nor shall any Owner of a Condominium within the Association be entitled to sever that Condominium from the Common Area portion of the Association.

Section 8.19. Variances. On application by any Owner, the Board shall be authorized and empowered to grant reasonable variances from the property use restrictions set forth in this Article if specific application of the restriction will, in the sole discretion of the Board, either cause an undue hardship to the affected Owner or fail to further or preserve the common plan and scheme of development contemplated by this Declaration. In considering and acting on any request for a variance, the Board shall follow the procedures set forth in Section 5.12 for the granting of architectural variances.

Section 8.20. Enforcement of Property Use Restrictions. The objective of this Declaration shall be to promote and seek voluntary compliance by Owners and tenants with the environmental standards and property use restrictions contained herein. Accordingly, in the event that the Association becomes aware of an architectural or property use infraction that does not necessitate immediate corrective action under Section 13.6, the Owner or tenant responsible for the violation shall receive written notice thereof and shall be given a reasonable opportunity to comply voluntarily with the pertinent Governing Document provision(s). Such notice shall describe the noncomplying condition, request that the Owner or tenant correct the condition within a reasonable time specified in the notice, and advise the Owner or tenant of his or her right to be heard on the matter.

ARTICLE IX

EASEMENTS

Section 9.1. Encroachment Easements. Each Unit is hereby declared to have an easement over adjoining Units and the Common Area for the purpose of

accommodating any encroachment caused by roof overhang and fences or walls that are built in accordance with the original design, plans, and specifications of Declarant and caused by engineering errors, errors in original construction, settlement or shifting of the building, or similar causes. There shall be valid easements for the maintenance of these encroachments for as long as they shall exist, and the rights and obligations of the Owner shall not be altered in any way by the encroachment, settlement, or shifting, provided, however, that in no event shall a valid easement for encroachment be created in favor of an Owner(s) if the encroachment is caused by the willful misconduct of the Owner(s). In the event a structure is partially or totally destroyed and is repaired or rebuilt, the Owners of each adjoining Unit agree that minor encroachments over adjoining Units shall be permitted and that there shall be valid easements for the maintenance of the encroachments for as long as they shall exist.

Section 9.2. Street Easements. Each Owner and the Association shall have and is hereby granted a nonexclusive easement for street, roadway, and vehicular traffic purposes over and along the private streets and paved parking areas within the Association.

Section 9.3. Blanket Utility Easement. There is hereby created a blanket easement on, across, over, and under all of the Development for ingress, egress, and the installation, replacement, repair, and maintenance of all utilities, including but not limited to water, sewers, gas, telephones, drainage, electricity, and the master television antenna or cable television system. By virtue of this easement, it shall be expressly permissible for the providing utility company to erect and maintain the necessary equipment and underground facilities on the Common Area. Notwithstanding the foregoing, no sewer, electrical lines, water lines, or other utilities may be installed or relocated on the Development except as initially designed and approved by the Declarant or thereafter approved by the Board of Directors. The easements provided for in this section shall in no way affect any other Recorded easement on the Development.

Section 9.4. Maintenance Easements. An easement is hereby granted to the Association, its officers, agents, employees, and to any management company or contractor selected by the Association to enter in or to cross over the Common Area and any Unit to perform the Association's duties of maintenance and repair of the Units, Common Area, or Common Facilities, provided, however, that any entry by the Association or its agents shall only be undertaken in strict compliance with Section 3.6(b).

Section 9.5. Other Easements. Each Unit and its Owner, and the Association as to the Common Area, are hereby declared to be subject to all the easements, dedications, and rights-of-way granted or reserved in, on, over, and under the Development and each Unit and Common Area as shown on the Subdivision Map.

ARTICLE X

INSURANCE

Section 10.1. Types of Insurance Coverage. The Association shall purchase, obtain, and maintain, with the premiums therefor being paid out of Common Funds, the following types of insurance, if and to the extent such insurance, with the coverages described, is available at a reasonable premium cost:

- a) **Fire and Casualty Insurance:** A policy of fire and casualty insurance naming as parties insured the Association and any Mortgagee of the Common Area and common Facilities and containing the standard extended coverage and replacement cost endorsements and such other or special endorsements as will afford protection and insure for the full insurable, current replacement cost (excluding foundations and excavation, but without deduction for depreciation), as determined annually by the insurance carrier, all Common Facilities and the personal property of the Association for or against the following:
 - i. Loss or damage by fire or other risks covered by the standard extended coverage endorsement.
 - ii. Loss or damage from theft, vandalism, or malicious mischief.
 - iii. Such other risks, perils, or coverage as the Board of Directors may determine.

Such policy or the endorsement made a part thereof shall, to the extent available, provide that the insurer issuing the policy agrees to abide by the decision of the Association made in accordance with the provisions of Article XI as to whether or not to repair, reconstruct, or restore all or any damaged or destroyed portion of the Common Facilities.

- b) **Public Liability and Property Damage Insurance:** To the extent such insurance is reasonably obtainable, a policy of comprehensive public liability and

property damage insurance naming as parties insured the Association, each member of the Board, any manager, the Owners and occupants of Units, and such other persons as the Board may determine. The policy will insure each named party against any liability incident to the ownership and use of the Common Area and include, if obtainable, a cross-liability or severability of interest endorsement insuring each insured against liability to each other insured. The limits of such insurance shall not be less than \$1 million, covering all claims for death, personal injury, and property damage arising out of a single occurrence. Such insurance shall include coverage against water damage liability, liability for nonowned and hired automobiles, liability for property of others, and any other liability or risk customarily covered with respect to projects similar in construction, location, and use.

- c) **Directors' and Officers' Errors and Omissions Insurance:** To the extent such insurance is reasonably obtainable, individual liability insurance for Association directors and officers, providing coverage for negligent acts or omissions in their official capacities. The minimum coverage of such shall be not less than \$500,000.00.

- d) **Additional Insurance and Bonds:** To the extent such insurance is reasonably obtainable, such additional insurance and bonds as the Association may, from time to time, determine to be necessary or desirable, including, without limiting the generality of this section, demolition insurance, flood insurance, and workers' compensation insurance. The Board shall also purchase and maintain fidelity bonds or insurance in an amount not less than 100 percent of each year's estimated annual operating expenses and that contains an endorsement of any person who may serve without compensation. The Board shall purchase and maintain such insurance on personal property owned by the Association and any other insurance, including directors' and officers' liability insurance, that it deems necessary or desirable.

Section 10.2. Coverage Not Available. In the event any insurance policy, or any endorsement thereof, required by Section 10.1 is for any reason not available, then the Association shall obtain such other or substitute policy or endorsement as may be available that provides, as nearly as possible, the coverage herein described. The Board shall notify the Owners of any material adverse changes in the Association's insurance coverage.

Section 10.3. Copies of Policies. Copies of all insurance policies (or certificates thereof showing the premiums thereon have been paid) shall be retained by the Association and shall be available for inspection by Owners at any reasonable time.

Section 10.4. Trustee. All casualty insurance proceeds payable under Section 10.1(a) may, in the discretion of the Board of Directors, be paid to a trustee to be held and expended for the benefit of the Owners, Mortgagees, and others, as their respective interests shall appear. The trustee shall be a commercial bank in the County that agrees in writing to accept such trust.

Section 10.5. Adjustment of Losses. The Board is appointed attorney-in-fact by each Owner to negotiate and agree on the value and extent of any loss under any policy carried under Section 10.1. The Board is granted full right and authority to compromise and settle any claims or enforce any claim by legal action or otherwise and to execute releases in favor of any insured.

Section 10.6. Waiver of Subrogation. All casualty and liability insurance carried by the Association, or the Owners shall contain provisions whereby the insurer waives rights of subrogation as to the Association, directors, officers, Declarant, Owners, occupants of Lots, their family, guests, agents, and employees.

Section 10.7. Notice of Cancellation. All insurance carried by the Association shall require the insurer to notify any first Mortgagee requesting such notice at least 15 days in advance of the effective date of any reduction or cancellation of the policy.

Section 10.8. Annual Review of Policies. All insurance policies maintained by the Association shall be reviewed at least annually by the Board in order to ascertain whether the coverage contained in the policies is adequate.

Section 10.9. Owners Insurance. Each Owner shall obtain and maintain at his or her sole expense, insurance to protect against any damage to, or loss of the Owner's property, and the cost of repair or replacement of damaged items, including, but not limited to, any Improvements made by the Owner, any personal property, built-in cabinets, decorations, floor and wall coverings, appliances, fixtures or other items therein, or any exterior items for which said Owner is responsible which damage is caused by any Common Area component or any component maintained by the Association or by any failure thereof. The Owner's policy shall be the primary policy for any claims for damages or loss of Owner's property. The Association shall not be liable to any Owner or his or her tenants, invitees, guests or others, for damage to or loss of any such property, or the costs of repair or replacement of any damaged property or

portions of such Owner's Unit, unless such damage is caused by the gross negligence of the Association, its Board, Officers, agents or employees.

Notwithstanding the foregoing, Owners shall be responsible for reimbursement of the Association's deductible in the event damage to the Common Area was caused by the negligence of the Owner, his or her guests, invitees, licensees, etc. Additionally, Owners shall also be responsible to reimburse the Association for its deductible where damage to the Common Area occurred due to the failure of an element or item that was within the Owner's maintenance responsibility, regardless of the Owner's negligence in maintaining that element or item.

Owners failing to obtain or maintain insurance as required by this Section shall be responsible for all damages to the Association caused by the failure to obtain or maintain said insurance. Said damages include, but are not limited to: cancellation of Association's insurance policy, increase in premiums, out of pocket payments, etc.

Section 10.10. Annual Review of Association Insurance and Disclosure to Members. The Board shall review the adequacy of all insurance, including the amount of liability coverage and the amount of property damage coverage, at least once every year. At least once every 3 years, the review shall include a replacement cost appraisal of all insurable Common Area Improvements, without respect to depreciation. The Board shall adjust the policies to provide the amounts and types of coverage and protection that are customarily carried by prudent owners' associations operating in similar common interest developments in the greater San Diego region. The Association shall distribute to its Members annually a summary of the Association's property, general liability, and flood insurance (if any), such distribution to be made within 60 days before the beginning of the Association's fiscal year. To the extent that any of the information required to be disclosed under this paragraph is specified in the insurance policy declaration page, the Association may meet its obligation to disclose that information by making copies of that page and distributing it to all Members.

The Association shall, as soon as reasonably practical, notify the Members if any of the policies described in this paragraph have lapsed or been canceled and are not immediately renewed, restored, or replaced or if there is a significant change in any of those policies, such as a reduction in coverage or limits or an increase in the deductible. If the Association receives any notice of nonrenewal of a policy described in this paragraph, the Association shall immediately notify the Members if replacement coverage will not be in effect by the date the existing coverage will lapse.

Section 10.11. Waiver of Claims Against Association and Others. All insurance obtained by the Association shall be maintained by the Association for the benefit of the

Association, the Owners and the Mortgagees as their interests may appear. As to each of said policies which will not be voided or impaired thereby, the Owners hereby waive and release all claims against the Association, the Board, and agents and employees of each of the foregoing, with respect to any loss covered by such insurance whether or not caused by negligence of or breach of any agreement by said persons, but to the extent of insurance proceeds received in compensation for such loss only.

Section 10.12. Making Claims to the Association's Insurance. Only the Association, acting through its Board of Directors, or designated agent, is authorized to present claims to any of the Association's insurance agents. Owners shall not make claims directly to any of the Association's insurance agents, insurers or policies. In the event the Association incurs any cost or damage by an Owner's violation of this Section, the Association will levy a Reimbursement Assessment against such Owner in the amount equal to all direct and indirect costs and expenses incurred by the Association.

ARTICLE XI

DAMAGE OR DESTRUCTION

Section 11.1. Destruction; Proceeds Equal or Exceed 75 Percent of Reconstruction Costs. If there is a total or partial destruction of any Unit or Common Facility Improvements within the Association and if the available proceeds of the insurance maintained under Article X are sufficient to cover not less than 75 percent of the costs of repair and reconstruction, the Improvements shall be promptly rebuilt unless, within 120 days from the date of destruction, 35 percent of the "eligible Members" (as defined in Section 11.4) determine that such repair and reconstruction shall not take place.

Section 11.2. Destruction; Proceeds Less Than 75 Percent of Reconstruction Costs. If the proceeds of insurance are less than 75 percent of the cost of repair and reconstruction (see Section 11.1), repair and reconstruction may nevertheless take place if, within 120 days from the date of destruction, eligible Members then holding at least 34 percent of the total Voting Power determine that such repair and reconstruction shall take place.

Section 11.3. Rebuilding Procedures. If the eligible Members determine to rebuild under Section 11.1 or 11.2, the Owner of each Unit located within a structure that has been totally or partially destroyed shall be obligated to contribute his or her proportionate share of the cost of reconstruction or restoration of the structure containing his or her Unit, over and above the available insurance proceeds. Owners

shall each contribute his or her proportionate share of the cost of reconstruction or restoration of any portion of the Common Area on the basis of the ratio between the square footage of the floor area of his or her Unit and the total square footage of the floor area of all Condominiums. If any Owner fails or refuses to pay his or her proportionate share, the Board may levy a Special Individual Assessment against the Lot of such Owner, which may be enforced under the lien provisions contained in Section 4.10(b).

If any Owner disputes the amount of his or her proportionate liability under this section, such Owner may contest the amount of his or her liability by submitting to the Board, within 10 days after notice to the Owner of his or her share of the liability, written objections supported by cost estimates or other information that the Owner deems to be material, and he or she may request a hearing before the Board at which the Owner may be represented by counsel. Following such hearing, the Board shall give written notice of its decision to all Owners, including any recommendation that adjustments be made with respect to the liability of any Owners. If such adjustments are recommended, the Board shall schedule and include in the notice a special meeting of Members for the purpose of acting on the Board's recommendation, including making further adjustments if deemed by the Members to be necessary or appropriate. All adjustments shall be affirmed or modified by 51 percent of the total Voting Power of the eligible Members. If no adjustments are recommended by the Board, the decision of the Board shall be final and binding on all Owners, including any Owner filing objections.

Section 11.4. Definition of "Eligible Members" Entitled to Vote. For purposes of any vote under this Article, the Members eligible to vote shall be (a) in the case of any damage to or destruction of Common Facilities, the requisite percentage of the total Voting Power of the Association and (b) in the case of any damage to or destruction of Residences, the requisite percentage of those Members whose Residences are located in the damaged or destroyed structure(s). Any membership vote required hereunder shall be conducted either at a duly convened meeting at which a quorum is present or by written ballot conducted in accordance with Section 4.4 of the Bylaws.

Section 11.5. Rebuilding Contract. If the Members who are eligible to vote on the matter determine to rebuild, the Board shall reconstruct the damaged or destroyed portions of the Development substantially in accordance with the original plan. The Board or its authorized representative shall obtain bids from at least two reputable contractors and shall award the repair and reconstruction work to the lowest qualified bidder. The Board shall have the authority to enter into a written contract with the contractor for such repair and reconstruction, and the insurance proceeds held by the

trustee shall be disbursed to the contractor according to the terms and conditions of the agreement. It shall be the obligation of the Board to take all steps necessary or appropriate to ensure the commencement and completion of authorized repair and reconstruction at the earliest possible date.

Section 11.6. Rebuilding Not Authorized. If the Members who are eligible to vote on the matter determine not to rebuild, then any insurance proceeds available for rebuilding shall be used or distributed as follows:

- a) If, before the expiration of 120 days from the date of destruction, 34 percent of all Owners and institutional first Mortgagees with Mortgages encumbering the affected Lots within the Development consent by vote or in writing, the Board acting on behalf of the Association shall have the right to purchase the Condominiums that were rendered uninhabitable by such damage or destruction at the fair market value thereof immediately before the damage or destruction (as determined by an appraiser). The Board's decision as to whether or not a Condominium is uninhabitable shall be final and binding on all parties. Any payment of the purchase price shall be made jointly to the selling Owner and all Mortgagees of his or her Condominium, and each Owner by accepting a deed to a Condominium agrees to be bound by these provisions and to sell his or her Condominium by grant deed to the Association as provided herein. Concurrently with such purchase, the Board or individuals authorized by the Board, acting as attorney-in-fact of all Owners, shall amend the Subdivision Map and this Declaration to eliminate from the Association the Condominiums so purchased.
- b) Notwithstanding the determination of eligible Members not to rebuild under Section 11.1 or 11.2, any Condominiums that are not rendered uninhabitable shall be repaired and restored to a condition as near as possible to their condition immediately before such damage or destruction. Such repair and restoration shall be paid first from the insurance proceeds remaining after the purchase of Condominiums under subparagraph (a) of this Section, if any, and second from a Special Individual Assessment levied against all remaining Owners in the manner described in Section 11.3.
- c) If the required 34 percent of all Owners and institutional first Mortgagees do not consent to purchase the Condominiums that were rendered uninhabitable, an appraiser shall determine the relative fair market values of all Condominiums in the Association as of a date before any damage or destruction, and the proceeds of insurance shall be apportioned among all Owners and their respective Mortgagees in proportion to such relative values.

Section 11.7. Appraiser. In this Article and in Article XII (on Condemnation), wherever reference is made to a determination of the value or fair market value of one or more Condominiums by an appraiser, this shall mean an appraisal by an independent appraiser selected by the Board, who shall be a member of the Society of Real Estate Appraisers (SREA) or other nationally recognized appraiser organization and who shall apply its or such other organization's standards in determining the value or fair market value of each Condominium. The costs of such appraisals shall be paid from the sale or insurance proceeds, as the case may be.

ARTICLE XII

CONDEMNATION

If all or part of the Common Area shall be taken or condemned by any authority having the power of eminent domain, all compensation and damages for or on account of the taking of the Common Area, exclusive of compensation for consequential damages to certain affected Condominiums, shall be payable to the Association as trustee for all Owners and Mortgagees according to the loss or damages to their respective interests in the Common Area. The Association, acting through its Board of Directors, shall have the right to act on behalf of the Owners with respect to the negotiation, settlement, and litigation of the issues with respect to the taking and compensation affecting the Common Area. Each Owner hereby designates and appoints each Association as his or her attorney-in-fact for such purposes.

ARTICLE XIII

BREACH AND DEFAULT

Section 13.1. Remedy at Law Inadequate. Except for the nonpayment of any Assessment, it is hereby expressly declared and agreed that the remedy at law to recover damages for the breach, default, or violation of any of the covenants, conditions, restrictions, limitations, reservations, grants of easements, rights, rights-of-way, liens, charges, or equitable servitudes contained in this Declaration is inadequate, and the failure of any Owner, tenant, occupant, or user of any Unit, or any portion of the Common Area or Common Facilities, to comply with any provision of the Governing Documents may be enjoined by appropriate legal proceedings instituted by any Owner, the Association, its officers, or the Board of Directors or by their respective successors in interest.

Section 13.2. Nuisance. Without limiting the generality of the foregoing Section 13.1, the result of every act or omission whereby any covenant contained in this Declaration is violated in whole or in part is hereby declared to be a nuisance, and every remedy against nuisance, either public or private, shall be applicable against every such act or omission.

Section 13.3. Attorney Fees. Reasonable attorney fees and costs shall be awarded to the prevailing party in any procedure to enforce the Governing Documents or a party's rights arising under the Governing Documents. Such enforcement procedure includes an action brought in any court having jurisdiction over any alternative dispute resolution procedure implemented under the Governing Documents. In any enforcement procedure, such as mediation, in which there is not an agreement between all of the parties that attorneys will represent them, recoverable costs are limited to attorney fees and costs incurred in providing the notices required under such statute.

Section 13.4. Cumulative Remedies. The respective rights and remedies provided by this Declaration or by law shall be cumulative, and the exercise of any one or more of such rights or remedies shall not preclude or affect the exercise, at the same or at different times, of any other such rights or remedies for the same or any different default or breach or for the same or any different failure of any Owner or others to perform or observe any provision of this Declaration.

Section 13.5. Failure Not a Waiver. The failure of any Owner, the Board of Directors, the Association, or its officers or agents to enforce any of the covenants, conditions, restrictions, limitations, reservations, grants or easements, rights, rights-of-way, liens, charges, or equitable servitudes contained in this Declaration shall not constitute a waiver of the right to enforce the same thereafter, nor shall such failure result in or impose any liability on the Association or the Board or any of its officers or agents.

Section 13.6. Rights and Remedies of the Association.

- a) **Rights Generally.** In the event of a breach or violation of any Association Rule or of any of the restrictions contained in any Governing Document by an Owner, his or her family, or the Owner's guests, employees, invitees, licensees, or tenants, the Board, for and on behalf of all other Owners, may enforce the obligations of each Owner to obey the Association Rules, covenants, or restrictions through the use of such remedies as are deemed appropriate by the Board and available at law or in equity, including but not limited to hiring legal counsel, imposing fines and monetary penalties, pursuing legal action, suspending the Owner's right to use recreational Common Facilities, or

suspending the Owner's voting rights as a Member of the Association, provided, however, that the Association's right to undertake disciplinary action against its Members shall be subject to the conditions set forth in this Section 13.6.

The decision on whether it is appropriate or necessary for the Association to take enforcement or disciplinary action in any particular instance shall be within the sole discretion of the Association's Board or its duly authorized enforcement committee.

- b) **Schedule of Fines.** The Board may implement a schedule of reasonable fines and penalties for particular offenses that are common or recurring in nature and for which a uniform fine schedule is appropriate (such as fines for late payment of Assessments or illegally parked vehicles). Once imposed, a fine or penalty may be collected as a Special Individual Assessment, subject to the limitation on the use of lien and foreclosure remedies stated in Section 4.10(b).
- c) **What Constitutes a Violation.** A violation of the Governing Documents shall be defined as a single act or omission occurring on a single day. If the detrimental effect of a violation continues for additional days, discipline imposed by the Board may include one component for the violation and, according to the Board's discretion, a per diem component for as long as the detrimental effect continues. Similar violations on different days shall justify cumulative imposition of disciplinary measures. The Association shall take reasonable and prompt action to repair or avoid the continuing damaging effects of a violation or nuisance occurring within the Common Area at the cost of the responsible Owner.
- d) **Limitations of Disciplinary Rights.**
 - i. The Association shall have no power to cause a forfeiture or abridgment of an Owner's right to the full use and enjoyment of his or her Unit on the basis of failure by the Owner (or his or her family members, tenants, guests, or invitees) to comply with any provision of the Governing Documents or of any duly enacted Association Rule, except when (A) the loss or forfeiture is the result of (1) the judgment of a court of competent jurisdiction; (2) a decision arising out of arbitration; or (3) a foreclosure or sale under a power of sale for the Owner's failure to pay Assessments levied by the Association; or (B) the loss or forfeiture is (1) limited to a temporary suspension of an Owner's rights as a Member of the Association; or (2) the imposition of monetary penalties for failure to pay Assessments or otherwise comply with any Governing Documents, as

long as the Association's actions satisfy the due process requirements of subparagraph (iii).

- ii. Monetary penalties imposed by the Association (A) for failure of a Member to comply with the Governing Documents; (B) as a means of reimbursing the Association for costs incurred by the Association in repairing damage to the Common Area or Common Facilities allegedly caused by a Member; or (C) in bringing the Member and his or her Unit into compliance with the Governing Documents may not be characterized nor treated as an Assessment that may become a lien against the Member's Unit enforceable by a sale of the Condominium in nonjudicial foreclosure, provided, however, that this limitation on the Association's lien rights shall not apply to charges imposed against an Owner consisting of reasonable late payment penalties to reimburse the Association for the loss of interest and for costs reasonably incurred (including attorney fees) in the Association's efforts to collect delinquent Assessments.
- iii. No disciplinary action, penalty, or temporary suspension of rights shall be imposed under this Article XIII unless the Owner alleged to be in violation is given at least 10 days' prior notice that the Board of Directors will be meeting to consider imposing such discipline. The notice shall include, at a minimum, the date, time, and place of the meeting, the nature of the alleged violations for which the Owner may be disciplined, and a statement that the Owner has a right to attend and address the Board at the hearing. The Board shall meet in executive session if requested by the Owner.
- iv. If disciplinary action is taken, the Board shall notify the accused Owner in writing of the Board's decision within 15 days following conclusion of the hearing.
- v. Disciplinary action shall not be effective against an Owner unless the Board fulfills the requirements of this Section.

Notwithstanding the foregoing, under circumstances involving conduct that constitutes (A) an immediate and unreasonable infringement of, or threat to, the safety or quiet enjoyment of neighboring Owners; (B) a traffic or fire hazard; (C) a threat of material damage to, or destruction of, the Common Area or Common Facilities; or (D) a violation of the Governing Documents that is of such a nature that there is no material question regarding the

identity of the violator or whether a violation has occurred (such as late payment of Assessments or parking violations), the Board of Directors or its duly authorized agents may undertake immediate corrective or disciplinary action and, on the offending Owner's request (which must be received by the Association in writing within 5 days following the Association's disciplinary action) or on its own initiative, conduct a hearing as soon thereafter as reasonably possible.

- e) **Notice and Hearing Procedures.** If the Association acts on its own initiative to schedule a hearing, notice of the date, time, and location of the hearing shall accompany the notice of disciplinary action. If the accused Owner desires a hearing, a written request therefor shall be delivered to the Association no later than 5 days following the date when the fine is levied.

The hearing shall be held no more than 15 days following the date of the disciplinary action or 15 days following receipt of the accused Owner's request for a hearing, whichever is later. Under such circumstances, any fine or other disciplinary action shall be held in abeyance and shall only become effective if affirmed at the hearing.

At the hearing, the accused shall be given the opportunity to be heard, including the right to present evidence and to present or question witnesses. The Board shall notify the accused Owner, in writing, of the Board's decision within 5 business days following conclusion of the hearing. In no event shall the effective date of any disciplinary action commence sooner than 5 days following conclusion of the hearing unless (i) the hearing merely affirms summary disciplinary action initiated under the immediately preceding paragraph or (ii) earlier commencement is necessary to preserve the quiet enjoyment of other residents or to prevent further damage to or destruction of the Lots or any portion thereof.

- f) **Notices.** Any notice required by this Article XIII shall, at a minimum, set forth the date and time for the hearing, a brief description of the action or inaction constituting the alleged violation of the Governing Documents, and a reference to the specific Governing Document provision alleged to have been violated. The notice shall be in writing and may be given by any method reasonably calculated to give actual notice, provided, however, that if notice is given by mail it shall be sent by first-class or certified mail sent to the last address of the Member shown on the records of the Association.

- g) **Rules Regarding Disciplinary Proceedings.** The Board, or an appropriate committee appointed by the Board to conduct and administer disciplinary hearings and related proceedings, shall be entitled to adopt rules that further elaborate and refine the procedures for conducting disciplinary proceedings. Such rules, when approved and adopted by the Board, shall become a part of the Association Rules.

Section 13.7. Court Actions. Court actions to enforce the Governing Documents may be initiated on behalf of the Association only by resolution of the Board. Before filing any court action seeking declaratory or injunctive relief to interpret or enforce the Governing Documents (including either such action coupled with a claim for monetary damages not in excess of \$5000), the Association shall first comply with the provisions of California Law relating to alternative dispute resolution. The Association's own notice and hearing procedures may be drafted to satisfy these statutory requirements.

Section 13.8. Assessment Collection Actions. The notice and hearing procedures set forth in Section 13.6 shall not apply to any actions by the Association or its duly authorized agents to collect delinquent assessments. Assessment collections shall be subject to the notice and procedural requirements imposed by Section 4.10 and any other notice, hearing, and/or dispute resolution requirements or procedures as may be specifically applicable by law to community association assessment collection efforts.

ARTICLE XIV

PROTECTION OF MORTGAGEES

Section 14.1. Assessment Lien Subordinated. Any lien created or claimed under the provisions of Section 4.10(b) shall be subject and subordinate to the lien of any first Mortgage given in good faith and for value. No such Mortgagee who acquires title to any Condominium by judicial foreclosure or by exercise of power of sale contained in the Mortgage shall be obligated to cure any breach of this Declaration by a former Owner of such Condominium or shall be liable for any unpaid Assessments made against the Condominium that accrued before the date the Mortgagee acquired such title. No lien created or claimed under the provisions of Section 4.10(b) shall in any way defeat, invalidate, or impair the rights of any Mortgagee under any such Recorded Mortgage.

Section 14.2. Amendment of This Declaration. No amendment of this Declaration shall affect any of the rights of the holder of any Mortgage described in Section 14.1 that is made in good faith and for value, if such Mortgage is Recorded and notice of the

delivery and Recording thereof is given to the Association before the Recording of such amendment.

Section 14.3. Default by Owner; Mortgagee's Right to Vote. In the event of a default by any Owner under a Mortgage encumbering such Owner's Unit, the Mortgagee under such Mortgage shall, on (a) giving written notice to the defaulting Owner; (b) Recording a Notice of Default; and (c) delivering a copy of such Recorded Notice of Default to the Association, have the right to exercise the vote of the Owner at any regular or special meeting of the Association held only during such period as such default continues.

Section 14.4. Breach; Obligation After Foreclosure. No breach of any provision of this Declaration by the Association or any Owner shall impair or invalidate the lien of any Recorded Mortgage made in good faith and for value and encumbering any Condominium. The Association or its successors and assigns shall be obligated to abide by all of the covenants, conditions, restrictions, limitations, reservations, grants of easements, rights, rights-of-way, liens, charges, and equitable servitudes provided for in this Declaration, as it may be amended from time to time, with respect to any person who acquires title to or any beneficial interest in any Condominium through foreclosure, trustee sale, or otherwise.

Section 14.5. Exchange of Information. The Association shall, at the written request of any Mortgagee, insurer, or guarantor, notify such party of:

- a) Any condemnation or casualty loss that affects either a material portion of the Association or the Unit(s) securing the Mortgage;
- b) Any delinquency of 60 days or more in the payment of Assessments or charges owed by the Owner(s) of the Unit(s) securing the Mortgage;
- c) A lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association; and
- d) Any proposed action of the Association that requires the consent of a specified percentage of Eligible Mortgagees.

To be entitled to receive this information, the Mortgagee, insurer, or guarantor must send a written request to the Association, stating both its name and address and the number or address of the Unit(s) securing the Mortgage. Any Mortgagee of any Unit is hereby authorized to furnish to the Board of Directors, on written request by the Board therefor, the amount of any unpaid balance of

any indebtedness secured by a lien of a Mortgage and the amount and due date of any delinquent payment or payments of such indebtedness.

Section 14.6. Certain Restrictions Affecting the Association. Notwithstanding any other provisions of this Declaration, without the prior written consent of at least 51 percent of the Owners or 51 percent of the first Mortgagees, such percentage to be based on the total of number of Lots so mortgaged, with each such Mortgagee entitled to one vote for each Lot, the Association shall not:

- a) By act or omission, seek to abandon, partition, subdivide, encumber, sell, or transfer the Common Area or any Improvements thereon (except that the granting of any easement for public utilities or for other public purposes consistent with the intended use of the Development shall not be deemed a “transfer” as that term is used in this subparagraph (a));
- b) Change the method specified in Article IV of this Declaration for determining the Assessments or other charges that may be assessed against an Owner or the method of allocating distributions of hazard insurance proceeds or condemnation awards;
- c) By act or omission, change, waive, or abandon the scheme of maintenance and repair of the Development, or the enforcement thereof, as provided for in this Declaration;
- d) Fail to maintain fire and extended coverage insurance on the Common Facilities in the amount and against the risks provided for in Section 10.1; or
- e) Use any insurance proceeds received as a result of the loss or damage to the Common Facilities for any purpose other than the repair, replacement, or reconstruction of such Common Facilities.

Section 14.7. Right of First Mortgagees to Make Certain Payments; Right of Reimbursement. The holders of first Mortgages on the Condominiums shall have the right (but not the obligation), jointly or singly, (a) to pay taxes or other Assessments or charges that are in default and that may or have become a lien or charge against the Common Facilities; (b) to pay overdue premiums on casualty insurance policies for the Common Facilities; and (c) to secure and pay for new casualty insurance coverage on the Common Facilities on the lapse of any such policy, in the amount and against the risks provided for in Section 10.1. Any first Mortgagee making such payment shall be entitled to immediate reimbursement therefor from the Association. On the request of

any first Mortgagee, the Association shall, by separate instrument signed by the president or any vice president and the secretary, evidence its agreement to the provisions of this section as the same affect the Mortgage held by such Mortgagee.

Section 14.8. Right to Examine Books and Records of the Association. All Mortgagees, insurers, and guarantors of any Mortgages on any Condominium shall have the right, on written request to the Association, to:

- a) Examine current copies of the Governing Documents and the Association's books, records, and financial statements during normal business hours;
- b) Require the Association to provide an audited statement for the preceding fiscal year at no expense to the requesting entity when the Development consists of 50 or more Units.
- c) Receive written notice of all membership meetings and designate a representative to attend all such meetings.

Section 14.9. Notices to First Mortgagees. The Association shall furnish to the holder of any first Mortgage on any Unit or on the Common Area, on written request by the first Mortgagee, 30 days' prior written notice of (a) abandonment or termination of the Association; (b) the effective date of any proposed material amendment to the Declaration; (c) the effectuation of any decision by the Association to terminate professional management, if any, and assume self-management of the Development; (d) any condemnation or eminent domain proceeding; and (e) any extensive damage to or destruction of any Improvements located in or on the Common Area.

Section 14.10. Superiority of Mortgage to Condemnation Proceeds. If any Unit, or portion thereof, or the Common Area, or any portion thereof, is made the subject of any condemnation or eminent domain proceeding, the lien of any first Mortgage shall be prior and superior to the claims of the Owners of the Condominiums or Common Area with respect to any distribution of the proceeds of any condemnation award or settlement.

Section 14.11. Superiority of Mortgage to Insurance Proceeds. In the event of any substantial damage to or destruction of the Improvements on any Condominium or on any part of the Common Area, the lien of any first Mortgage shall be prior and superior to the claims of the Owners of the Improvements with respect to any distribution of any insurance proceeds relating to such damage or destruction.

Section 14.12. Approval of Material Amendments or Termination.

a) **Material Amendments; “Eligible Mortgagee.”** In addition to the approvals required by Section 17.1 for any amendment to this Declaration, Eligible Mortgagees who represent at least 51 percent of the votes of Units that are subject to Mortgages held by Eligible Mortgagees must approve any amendment to this Declaration of a material nature. An Eligible Mortgagee is the beneficiary of a first Mortgage who has requested the Association to notify it of any proposed action that requires the consent of a specified percentage of Eligible Mortgagees. A change to any of the following would be considered as material:

- i. Voting rights;
- ii. Assessments, Assessment liens, or the priority of Assessment liens;
- iii. Reserves and responsibility for maintenance, repair, and replacement of the Common Area;
- iv. Convertibility of Units into Common Area and vice versa;
- v. Annexation or de-annexation of property to or from the Development;
- vi. Insurance or fidelity bonds;
- vii. Leasing of Units;
- viii. Imposition of any restrictions on an Owner’s right to sell or transfer his or her Condominium;
- ix. A decision by the Association to establish self-management when professional management had been required previously by the Governing Documents or by an Eligible Mortgagee;
- x. Restoration or repair of the Development (after a hazard damage or partial condemnation) in a manner other than that specified in the Governing Documents;
- xi. Any action to terminate the legal status of the Development after substantial destruction or condemnation occurs; or

xii. Any change to provisions that expressly benefit Mortgagees, insurers, or guarantors.

- b) **Termination.** In addition to the approvals required by Section 17.1, Eligible Mortgagees who represent at least 51 percent of the votes of Units that are subject to Mortgages held by Eligible Mortgagees must approve any proposed termination of the legal status of the project for reasons other than substantial destruction or condemnation of the Association.
- c) **Implied Approval.** Each Eligible Mortgagee that receives notice of a proposed amendment or termination of this Declaration by certified or registered mail with a “return receipt” requested shall be deemed to have approved the amendment or termination if the Eligible Mortgagee fails to submit a response to the notice within 30 days of receiving the notice.

Section 14.13. Declaration to Conform With Mortgage Requirements. It is the intent of this Article that this Declaration, the Articles of Incorporation, the Bylaws, and the Development in general shall now and in the future meet all requirements of any institutional Mortgagee intending to secure its Mortgage by a Unit or necessary to purchase, guarantee, insure, or subsidize any Mortgage of a Unit by the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, or the U.S. Department of Veterans Affairs.

ARTICLE XV

NOTICES

Section 15.1. Mailing Addresses. Any communication or notice of any kind permitted or required herein shall be in writing and may be served, as an alternative to personal service or service by electronic means, by mailing the same as follows:

If to any Owner: To the street address of the Owner’s Unit or to such other address as the Owner may from time to time designate in writing to the Association.

If to the Association: Avalon at Eagles Crossing Homeowners Association, at the principal office of the Association or to such other address as the Association may from time to time designate in writing to the Owners.

Nothing in this Section 15.1 is intended to preclude the use of any other means of delivering notices to Members or Owners (other than by personal service or mail) if

other methods of delivery are authorized by this Declaration, by California law, by written consent of the Member or Owner, or by other provisions of the Davis-Stirling Common Interest Development Act that reference any of those sections.

Section 15.2. Personal Service on Co-Owners and Others. Personal service of a notice or demand to one of the co-Owners of any Unit, to any general partner of a partnership that is the Owner of Record of the Unit, or to any officer or agent for service of process of a corporation that is the Owner of Record of the Unit shall be deemed delivered to all such co-Owners, to such partnership, or to such corporation, as the case may be.

ARTICLE XVI

NO PUBLIC RIGHTS IN THE PROJECT

Nothing contained in this Declaration shall be deemed to be a gift or dedication of all or any portion of the Project to the general public or for any public use or purpose whatsoever.

ARTICLE XVII

AMENDMENT OF DECLARATION

Section 17.1. Amendment of the Declaration Generally. This Declaration may be amended or revoked in any respect on compliance with the following provisions: Any amendment shall be approved by the vote or assent by written ballot of the holders of not less than 33.33% percent of the Voting Power of the Members. Notwithstanding the foregoing, 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.

Section 17.2. Restatements. This Section describes the methods for restating the Declaration after an amendment.

- a) **General.** The Board has the right, by resolution without the necessity of consent by the Owners, to restate this Declaration when it has been properly amended under its requirements for amendment. Such restatement shall be effective on execution of the restatement by any two officers of the Association and its Recordation. On Recordation of the restatement, the restatement shall supersede the prior declaration and its amendments in their entirety, without,

however, affecting the priority of the Declaration in the chain of title to all properties that are subject to the Declaration as established by the Declaration's initial date of Recordation.

- b) **Form of Restatement.** The restatement shall restate the entire text of the original document, with these exceptions: (i) changes incorporating all amendments approved by the Owners; (ii) changes made to rearrange or delete text for consistency with the approved amendments; (iii) changes made to delete material no longer legally effective or legally required, such as the provisions that are for the exclusive benefit of the Declarant; (iv) the addition of a statement that the Board has authorized the restatement under this Section 17.2; (v) changes made to delete any provision declared illegal by constitutional or statutory enactment, by regulation, or by controlling judicial opinion; and (vi) changes needed to distinguish the restatement from the original document, such as Article, Section, or subparagraph numbering changes.

ARTICLE XVIII

GENERAL PROVISIONS

Section 18.1. Construction.

- a) **Provisions Construed Together.** All of the covenants, conditions, and restrictions of this Declaration shall be liberally construed together to promote and effectuate the fundamental concepts of the development of the Development as set forth in the recitals of this Declaration. Failure to enforce any provision hereof shall not constitute a waiver of the right to enforce that provision in a subsequent application or any other provision hereof.
- b) **Provisions Severable.** Notwithstanding the provisions of subparagraph (a), the covenants, conditions, and restrictions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision.
- c) **Singular Includes Plural.** The singular shall include the plural and the plural the singular unless the context requires the contrary, and the masculine, feminine, or neuter shall each include the masculine, feminine, and neuter, as the context requires.

- d) **Captions.** All captions or titles used in this Declaration are intended solely for convenience of reference and shall not affect the interpretation or application of that which is set forth in any of the terms or provisions of the Declaration.
- e) **Exhibits.** All exhibits to which reference is made herein are deemed to be incorporated herein by reference, whether or not actually attached.
- f) **References to State Statutes.** Any references in this Declaration to state statutes shall be to the referenced statute as in effect on the date that this Declaration is Recorded in the Official Records of the County. In the event that any referenced statute is subsequently amended or superseded, all such references shall thereon mean and refer to the referenced statute as so amended, modified, or superseded, as long as the amended statute continues to regulate or pertain to the same subject matter.

Dated:

By: Avalon at Eagles Crossing Homeowners
Association, a California nonprofit mutual
benefit corporation

President

Secretary