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2004 AMENDED AND RESTATED

DECLARATION OF RESTRICTIONS

FOR

LOMAS BERNARDO
A Residential Condominium Neighborhood

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**2004 AMENDED AND RESTATED
DECLARATION OF RESTRICTIONS
FOR
LOMAS BERNARDO**

THIS 2004 AMENDED AND RESTATED DECLARATION OF RESTRICTIONS is made on the day and year hereinafter written, by Lomas Bernardo Homeowners Association, a California nonprofit mutual benefit corporation ("Association"), with reference to the following Recitals.

RECITALS

A. The Association is a corporation whose Members are the Owners of all the Condominium Units within that certain real property in the City of San Diego, County of San Diego, State of California, more particularly described in Exhibit "A" attached hereto and made a part hereof ("*Neighborhood*"). The Neighborhood is within the Community of Bernardo Heights, a master planned community ("*Community*").

B. The Neighborhood was developed as a Condominium Project, as defined in section 1351(f) of the California Civil Code, and consists of seventy nine Condominium Units and related Common Areas. The development and sale of the Condominium Units occurred in three phases, as follows: Phase 1 consisted of forty-eight Condominium Units, Phase 2 consisted of twenty-five Condominium Units and Phase 3 consisted of six Condominium Units.

C. Ownership of a Unit in the Neighborhood is currently subject to the covenants, conditions, restrictions, rights, reservations, easements, equitable servitudes, liens and charges set forth in:

1. The Declaration of Covenants, Conditions and Restrictions of Lomas Bernardo recorded July 6, 1981 as File/Page No. 81-211912;
2. The Declaration of Amendment to Covenants, Conditions and of Restrictions of Lomas Bernardo recorded March 3, 1982 as File/Page No. 82-058466;
3. The Declaration of Annexation (Phase 2) recorded October 17, 1983 as File/Page No. 83-372784; and
4. The Declaration of Annexation (Phase 3) recorded December 13, 1982 as File/Page No. 82-379628;

All of the above documents are recorded in the Official Records of the County Recorder of San Diego County, and are hereinafter referred to together as "*Declaration*," unless the context clearly indicates otherwise.

D. The Association now desires to amend and restate the Declaration and replace it in its entirety with this Restated Declaration. The Association further desires that, upon recordation of this Restated Declaration, the Neighborhood shall be subject to the covenants, conditions, restrictions, rights, reservations, easements, equitable servitudes, liens and charges contained herein, and that this Restated Declaration take the place of and relate back in time to the recording of the original Declaration.

E. The Declaration, in Section 12.3, provides that it may be amended by the affirmative vote or written consent of seventy-five percent of the total voting power of the Association. The undersigned President and Secretary of the Association certify that, to the best of their knowledge, the affirmative vote or written consent of at least the required percentage of Association Members has been obtained.

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

DECLARATION

ARTICLE 1 - DEFINITIONS

1.1 "**Architectural Rules**" means the Rules and Regulations regulating modifications and alterations to the Units and Common Area adopted by the Board pursuant to Section 7.5 herein.

1.2 "**Articles**" means the Articles of Incorporation of Lomas Bernardo Homeowners Association, filed in the Office of the Secretary of State of the State of California on April 20, 1981 as File No. 1023916, and any amendments thereto now existing or hereafter adopted.

1.3 **"Association"** means Lomas Bernardo Homeowners Association, a California nonprofit mutual benefit corporation created for the purpose of managing a common interest development.

1.4 **"Board"** means the Board of Directors of the Association. One or more members of the Board of Directors may be referred to as a "Director" or "Directors."

1.5 **"Bylaws" or "Restated Bylaws"** means the Bylaws of the Association and any duly adopted amendments thereto, which are incorporated herein by reference.

1.6 **"Common Area"** means the entire Neighborhood except all Units as defined in this Restated Declaration and as shown on the Condominium Plan. The Common Area includes bearing walls, concrete slabs, concrete floor planks, columns, unfinished floors, roofs, all decks, all drains, foundations, central heating, central refrigeration, central air conditioning equipment, reservoirs, tanks, pumps and other central services, pipes, ducts, flues, chutes, conduits, wires and other utility installations, except outlets located within the Unit.

1.7 **"Community"** means the Community of Bernardo Heights, of which the Neighborhood is a constituent part, being all of the real property subject to the Community Declaration.

1.8 **"Community Architectural Committee"** means that Community Architectural Committee established pursuant to the Community Declaration.

1.9 **"Community Association"** means the Community Association of Bernardo Heights as defined and established in the Community Declaration.

1.10 **"Community Board"** means the Board of Directors of the Community Association.

1.11 **"Community Bylaws"** means the Bylaws for the Community Association duly adopted by the Community Board.

1.12 **"Community Declaration"** means the Declaration of Covenants, Conditions and Restrictions for Bernardo Heights recorded on September 30, 1980 in the official records of San Diego County, as File No. 80-319018, as the same may be amended.

1.13 **"Community Rules"** means the Rules adopted by the Community Board pursuant to the Community Declaration.

1.14 **"Condominium"** means an estate in real property consisting of a separate interest in a Unit, the boundaries of which are shown and described on the Condominium Plan, a fractional undivided interest as a tenant-in-common in the Common Area of the Phase Lot where the Unit is located, nonexclusive easement over the Common Area of other Phase Lots, a membership in the Association, and the exclusive right to use any

Exclusive Use Common Area appurtenant to the Unit as shown on the Condominium Plan or deed of conveyance.

1.15 **"Condominium Plan"** means those certain condominium plans as follows:

1.15.1 The Condominium Plan for Lomas Bernardo, recorded April 29, 1981 as File/Page No. 81-131643 and re-recorded May 26, 1981 as File/Page No. 81-161891.

1.15.2 The Condominium Plan of Lomas Bernardo Phase 2 recorded September 10, 1981 as File/Page No. 81-289888 and the superceding Plan recorder October 17, 1983 as File/Page No. 83-372783.

1.15.3 The Condominium Plan of Lomas Bernardo Phase 3 recorded as File/Page No. 82-379627.

All of the above documents are of Official Records of the County Recorder of San Diego County. Condominium Plan shall include any amendments to the above documents.

1.16 **"Director" or "Directors"** means one or more members of the Board of Directors.

1.17 **"Eligible Lender"** means a holder, insurer or guarantor of a First Mortgage that provides a written request to the Association stating the name and address of such holder, insurer or guarantor and the Unit number, and requesting notice to which such Eligible Lender is due under the Governing Documents.

1.18 **"Exclusive Use Common Area"** means those portions of the Common Area designated herein for the exclusive use of one or more, but fewer than all, of the Owners and which is appurtenant to a Unit or Units as shown on the Condominium Plan or deed of conveyance and pursuant to the provisions herein. "Exclusive Use Common Areas" and "Restricted Common Areas" shall have the same meaning, and shall consist of patio gardens, balconies, storage spaces, garages and parking spaces as shown and described on the Condominium Plan, and any shutters, awnings, window boxes, doorsteps, stoops, porches, exterior doors, door frames, and hardware incident thereto, screens and windows and other fixtures, and internal and external telephone and cable wiring designed to serve a Unit but located outside the boundaries of the Unit.

1.19 **"Governing Documents"** means this Restated Declaration and any other documents such as the Articles, Bylaws, Condominium Plan, Rules and Regulations, or Architectural Rules which govern the operation of the Association but do not include the Community Bylaws, Community Declaration or other Community documents.

1.20 **"Lender"** means a Person to whom a Mortgage is made and includes the beneficiary of a deed of trust and any guarantor or insurer of a mortgage. "Institutional

Lender" means a mortgagee that is a financial intermediary or depository, such as a bank, savings and loan, or mortgage company, that is chartered under federal or state law and that lends money on the security of real property or invests in such loans, or any insurance company or governmental agency or instrumentality, including the Federal National Mortgage Association (FNMA), the Federal Home Loan Mortgage Corporation (FHLMC), and the Government National Mortgage Association (GNMA). "First Lender" means a mortgagee that has priority over all other mortgages or holders of mortgages encumbering the same Condominium or other portions of the Neighborhood. The term "Beneficiary" shall be synonymous with the term "Lender."

1.21 **"Member"** means every person or entity entitled to membership in the Association as provided in this Restated Declaration.

1.22 **"Mortgage"** means a mortgage or deed of trust encumbering a Condominium or any other portion of the Neighborhood. "First Mortgage" means a mortgage that has priority over all other mortgages encumbering the same Condominium or other portions of the Neighborhood.

1.23 **"Neighborhood"** means the common interest development which is a condominium project as described herein and on the Condominium Plan, including all improvements thereon.

1.24 **"Officers"** means the Officers of the Association appointed by the Board of Directors pursuant to the Bylaws.

1.25 **"Owner"** means any natural person, firm, corporation, partnership, trust or other entity which owns a fee simple interest in any Unit, as evidenced by a deed recorded in the San Diego County Recorder's Office, including the Association, and any contract sellers under recorded contracts of sale. "Owner" shall not include any persons or entities who hold an interest in a Condominium merely as security for performance of an obligation. For purposes of exercising membership rights, including the right to serve as a Director, and incurring membership obligations when an Owner is a corporation, firm, limited liability company or other entity, any director, officer, employee or agent designated in writing by the Owner may exercise the membership rights attributable to the Owner. When an Owner is a trust, the trustee may exercise the membership rights attributable to the trust unless otherwise designated in writing by the trustee.

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

1.27 **"Phase Lot"** means the Phase 1 Lot, the Phase 2 Lot and/or the Phase 3 Lot as shown and described in Exhibit "A" attached hereto and incorporated herein by reference.

1.28 **"Restated Declaration"** means this Amended and Restated Declaration of Restrictions and any amendments thereto.

1.29 **"Rules and Regulations"** means any Rules and Regulations, including the Architectural Rules, for the Association regulating the use of the Units, Exclusive Use Common Areas, Common Areas, the Neighborhood and any facilities located thereon adopted by the Board pursuant to Subsection 3.5.2 and Section 7.5 herein.

1.30 **"Unit"** means that portion of a Condominium that consists of a separate interest. "Unit" does not include the other elements of the Neighborhood. Each Unit shall be a separate freehold estate, as separately shown, numbered, and designated on the Condominium Plan. Each Unit consists of a living area space or spaces bounded by and contained within the interior finished surfaces of the perimeter walls, floors, ceilings, windows, and doors, the boundaries of which are described on the Condominium Plan. The Unit includes the range, oven, garbage disposal unit, dishwasher, heating conduits, range hood, fans, interior partitions, fireplaces, all plumbing fixtures within the Unit, doors, window glass adjacent to or a part of the Unit, floor and wall coverings, the outlets of utility installations located within the boundaries of the Unit, and the paint, paper, wax, tile, enamel or other finishes of the walls, floors, ceilings, windows and doors.

ARTICLE 2 - THE NEIGHBORHOOD

2.1 **Neighborhood Subject to Restated Declaration.** The entire Neighborhood shall be subject to this Restated Declaration.

2.2 **Description of Land and Improvements; Ownership of Common Area.** The Neighborhood shall consist of the Phase 1 Lot, the Phase 2 Lot and the Phase 3 Lot. The Phase 1 Lot Common Area is owned by Owners of Units in the Phase 1 Lot in equal undivided one-forty-eighth interests. The Phase 2 Lot Common Area is owned by Owners of Units in the Phase 2 Lot in equal undivided one-twenty-fifth interests. The Phase 3 Lot Common Area is owned by Owners of Units in the Phase 3 Lot in equal undivided one-sixth interests. The Owners of Units in any Phase Lot shall have a nonexclusive easement over the Common Area of such Phase Lot, and over the Common Area of all other Phase Lots. Such nonexclusive easements shall be subordinate to any separate ownership interests and any exclusive easements in such other Phase Lot.

2.3 **Equitable Servitudes.** The covenants and restrictions set forth in this Restated Declaration shall be enforceable equitable servitudes and shall inure to the benefit of and bind all Owners. These servitudes may be enforced by any Owner or by the Association or by both.

2.4 **Prohibition Against Partition.** There shall be no judicial partition of the Neighborhood or any part of it, nor shall the Association or any person acquiring an interest in the Neighborhood or any part of it seek any judicial partition, except upon showing that such partition is consistent with the requirements of section 1359 of the California Civil Code.

2.5 **Presumption Regarding Boundaries of Units.** In interpreting deeds, this Restated Declaration and the Condominium Plan, the existing physical boundaries of a Unit, including any Unit reconstructed in substantial accordance with the Condominium Plan and the original construction plans for the Neighborhood, shall be conclusively presumed to be its boundaries, rather than the description expressed in the deed, Condominium Plan, or this Restated Declaration. This presumption applies regardless of settling or lateral movement of the building and regardless of minor variances between boundaries shown on the Condominium Plan or described in the deed and those of the building as constructed or reconstructed. In the event a structure is partially or totally destroyed and then repaired or rebuilt, the Owners agree that minor encroachments over adjoining Condominiums or Common Area shall be permitted and that there shall be appropriate rights for the maintenance of said encroachments so long as they shall exist.

2.6 **Prohibition Against Severance of Elements.** Any conveyance, judicial sale, or other voluntary or involuntary transfer of a Unit shall include all interests and appurtenances as shown in the original deed of conveyance. Any conveyance, judicial sale, or other voluntary or involuntary transfer of the Owner's entire estate shall also include the Owner's membership interest in the Association, as provided in Article 3 herein. Any transfer that attempts to sever those component interests shall be void.

2.7 **Patio Gardens, Balconies and Storage Spaces.** Each Unit and Unit Owner shall have an exclusive easement for the use, possession and enjoyment of any patio garden, balcony or storage space directly adjacent to said Unit as designated and delineated on the Condominium Plan. Said exclusive easement shall be subject, however, to the right of the Association to enter in and upon the patio garden, balcony or storage space for the purpose of performing any maintenance and repairs assigned to the Association by this Restated Declaration and enforcing the terms of this Restated Declaration.

2.8 **Garages.** Each Unit and Unit Owner shall have an exclusive easement for the use, possession and enjoyment of the garage adjacent to or under said Unit and bearing a number corresponding to that of the Unit, as shown on the Condominium Plan. This exclusive easement shall be subject, however, to the right of the Association to enter in and upon said garage for the purpose of performing maintenance and repairs assigned to the Association by this Restated Declaration and enforcing the terms of this Restated Declaration.

2.9 **Annexation Pursuant to Approval.** Upon the vote or written assent of not less than sixty-six and two-thirds percent of the Association voting power, any person who desires to add real property to the plan of this Restated Declaration and to subject such property to the jurisdiction of the Association, may file of record a Supplementary Declaration. A certificate of the President and the Secretary of the Association attached to any Supplementary Declaration recorded pursuant to this Section verifying that the required sixty-six and two-thirds percent of the Association voting power has approved the recordation of such Supplementary Declaration shall be deemed conclusive proof thereof.

2.10 **Mergers or Consolidations.** Upon a merger or consolidation of the Association with another association which merger or consolidation must be approved by sixty-six and two-thirds percent of the Association voting power, the Association's properties, rights and obligations may, by operation of law, be transferred to the surviving or consolidated association, or, alternatively, the properties, rights and obligations of another association may, by operation of law, be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants, conditions and restrictions established by this Restated Declaration within the Neighborhood, together with the covenants and restrictions established upon any other property as one plan.

ARTICLE 3 - ASSOCIATION

3.1 **Organization of the Association.** The Association is incorporated as a nonprofit corporation organized under the California Nonprofit Mutual Benefit Corporation Law. The Association is created for the purpose of managing the Neighborhood and is charged with the duties and granted the powers prescribed by law and set forth in the Governing Documents.

3.2 **Board of Directors.** The affairs of the Association shall be managed and its duties and obligations performed by an elected Board of Directors, as provided in Article 3 of the Bylaws.

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

3.4 **Membership Class; Voting Rights.** 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. On matters presented to the membership for a vote, each Unit shall be assigned one vote, subject to the provisions of the Bylaws.

3.5 **General Powers and Authority.** The Association shall have all the powers of a nonprofit corporation organized under the California Nonprofit Mutual Benefit Corporation Law, subject to any limitations set forth in the Governing Documents. It may perform all acts that may be necessary for or incidental to the performance of the obligations and duties imposed upon it. Its powers shall include, but are not limited to:

- 3.5.1 The power to establish, fix, levy, collect, and enforce the payment of assessments against the Owners in accordance with the procedures set forth in Article 4 herein.
- 3.5.2 The power to adopt reasonable Rules and Regulations governing the use of the Units, the Common Area, any common facilities and Association owned property, and the conduct at Board and Members' meetings, in accordance with the following:
- (a) The Rules and Regulations may include, but are not limited to:
 - (i) Reasonable restrictions on use of the Common Area, Units and Exclusive Use Common Areas by the Owners and their families, guests, employees, tenants and invitees.
 - (ii) Reasonable restrictions on the conduct of Owners and their families, guests, employees, tenants and invitees as to activities on the Common Area, Units and Exclusive Use Common Areas.
 - (iii) In accordance with Section 3.14 of the Bylaws, the establishment of reasonable hearing procedures and a schedule of monetary penalties and fines which may be imposed for violations of any provisions of the Governing Documents.
 - (b) The Board must comply with Civil Code section 1357.130 when adopting any Rules and Regulations.
 - (c) A copy of the current Rules and Regulations, if any, and all modifications, revisions and updates shall be given to each Owner.
 - (d) If any provision of the Rules and Regulations conflicts with any provision of this Restated Declaration, the Articles, or the Bylaws, the Restated Declaration, Articles, or Bylaws shall control to the extent of the inconsistency.
- 3.5.3 The right to institute, defend, settle, or intervene in litigation, arbitration, mediation, or administrative proceedings in its own name as the real party in interest and without joining with it the Owners, in matters pertaining to:
- (a) Enforcement of the Governing Documents.

- (b) Damage to the Common Area.
- (c) Damage to any Units that the Association is obligated to maintain or repair.
- (d) Damage to the Units that arises out of, or is integrally related to, damage to the Common Area or Units that the Association is obligated to maintain or repair.
- (e) Enforcement of payment of assessments in accordance with the provisions of Section 4.14 herein.
- (f) Any other matter in which the Association is a party, including, but not limited to, contract disputes.

- 3.5.4 Subject to the limitations set forth in Section 3.14 of the Bylaws, the right to discipline a Member for violation of any of the provisions of the Governing Documents by (a) suspending the Member's membership rights, including the Member's voting rights, right to run as a candidate for election to the Board of Directors, and the rights and privileges to use the Common Area recreational facilities, (b) imposing monetary fines, and (c) recording a notice of noncompliance in the Office of the County Recorder of San Diego County encumbering the Unit of the Owner.
- 3.5.5 The power to establish in cooperation with a local governmental authority, a special tax assessment district for the performance of all or a portion of the maintenance or other functions now within the responsibility of the Association.
- 3.5.6 The right for its agents and employees to enter any Unit when necessary in connection with any maintenance, landscaping, or construction work for which the Association is or may be responsible or to reduce the likelihood of or prevent damage to the Common Areas or another Unit. This entry shall be made only upon reasonable notice to the Owner (except in the case of an emergency) and with as little inconvenience to the Owner as is practicable. Any entry by the Association to investigate a reported or suspected water intrusion shall be deemed an emergency.
- 3.5.7 The right for its agents and employees to enter any Unit when necessary in connection with any inspection, maintenance, or repair of the fire alarm and any fire sprinkler system. This entry shall be made only upon reasonable notice to the Owner (except in the case of an emergency) and with as little inconvenience to the Owner as is practicable.

- 3.5.8 The power to grant permits, licenses and easements over, under and through the Common Area for roads, utilities, cable television, sewer facilities and other purposes in accordance with Section 5.2.4 herein (a) to serve the Common Area or the Condominiums, (b) where necessary or convenient to satisfy or achieve appropriate governmental purposes or requests, or (c) to provide additional income for the Association.
- 3.5.9 Notwithstanding any nonexclusive easement rights to the Common Area granted herein or by any deed or other conveyance, the right to allow one or more Owners to exclusively use portions of the Common Area, provided that such portions of the Common Area are nominal in area and adjacent to the Owner's Unit, and, provided further, that such use does not unreasonably interfere with any other Owner's use or enjoyment of the Neighborhood unless that Owner consents to the use.
- 3.5.10 The power to remove any vehicle within the Neighborhood parked in violation of this Restated Declaration or the Rules and Regulations in accordance with the provisions of California Vehicle Code section 22658.2 and any amendments thereto.
- 3.5.11 The power, without the approval of the membership, to bid and acquire any Unit at a foreclosure sale.
- 3.5.12 The power to separately meter and charge Owners for use of utilities by such means as may be determined in the sole discretion of the Board.

3.6 ***Duties of the Association.*** In addition to the duties of the Association, its agents and employees set forth elsewhere in the Governing Documents, the Association shall be responsible for the following:

- 3.6.1 The Association, acting through the Board, shall operate, maintain, repair, and replace those components assigned to the Association by Section 6.2 and Exhibit "B," or contract for the performance of that work, subject to the provisions of the Governing Documents.
- 3.6.2 The Association shall use the operating fund described in Article 4 herein to, among other things, acquire and pay for goods and services for the Neighborhood, including, but not limited to:
- (a) Water, sewer, refuse, electrical, telephone, gas, and other necessary utility service for the Common Area and, to the extent not separately metered and charged, for the Units. If any utility service to a Unit is separately metered by either

the utility provider or the Association and the Association is liable for payment to the utility provider, the costs thereof may be assessed against Owners as a utility assessment as otherwise provided herein.

- (b) The insurance policies described herein.
- (c) The services of any personnel that the Board determines are necessary or proper for the operation of the Common Area and the Association.
- (d) Legal and accounting services necessary or proper in the operation of the Common Area and the Association or the enforcement of the Governing Documents.

ARTICLE 4 - ASSESSMENTS AND COLLECTION PROCEDURES

4.1 **Covenant to Pay.** Each Owner by acceptance of the deed to the Owner's Condominium is deemed to covenant and agree to pay to the Association all assessments described in this Article, and all other charges duly levied by the Association pursuant to the provisions of this Restated Declaration. An assessment and any late charges, reasonable costs of collection, and interest, as assessed in accordance with the provisions of this Article, shall also be a personal debt of each Owner of the Condominium at the time the assessment or other sums are levied. Co-owners of a Unit shall be jointly and severally liable for all charges levied by the Association on that Unit. No Owner may waive or otherwise escape liability for these assessments by non-use of the Common Area or abandonment of the Owner's Condominium.

4.2 **Purpose of Assessments.** Except as provided herein, the Association shall levy assessments sufficient to perform its obligations. The assessments levied by the Association shall be used exclusively to promote the recreation and welfare of the Owners, and for the operation, replacement, improvement, and maintenance of the Neighborhood, and to discharge any other obligations of the Association under this Restated Declaration. All assessment payments shall be put into general operating and reserve funds to be used for the foregoing purposes.

4.3 **Regular Assessments.** Concurrently with preparation of the financial documents and budget as required in Section 3.13 of the Bylaws, the Board shall estimate the net charges to be paid during that next fiscal year, including a reasonable provision for contingencies, replacements and reserves, with adjustments made for any expected income and surplus from the prior year's fund. The resulting amount shall constitute the regular assessments for the budgeted year. Regular assessments shall be divided equally among all Units and allocated among, assessed against and charged to each Owner according to the ratio of the number of Units owned by the assessed Owner to the total number of Units subject to assessment. Each Unit shall bear an equal share of the total

assessment. Failure of the Board to estimate the net charges within the time period stated herein shall not void any assessment imposed by the Board. Regular assessments for fractions of any month shall be prorated. Each Owner is obligated to pay assessments to the Association in equal monthly installments on or before the first day of each month unless the Board adopts an alternative method for payment.

4.4 **Special Assessments.** If the Board determines that the amount to be collected from regular assessments will be inadequate to defray the common expenses for the year due to the cost of any construction, unexpected repairs or replacements of capital improvements upon the Common Area, or any other reason, it shall make a special assessment for the additional amount needed, subject to any limitations imposed by law or the Governing Documents. Special assessments shall be levied and collected in the same manner as regular assessments. The Board may levy a special assessment in one lump sum or in installments over a period of time the Board determines appropriate.

4.5 **Limitations on Regular and Special Assessments.** Except in emergency situations, the Board may not, without the approval of Members constituting a quorum of the Owners and casting a majority of the votes at a meeting or election of the Association conducted in accordance with Corporations Code sections 7510 - 7527 and 7613, impose a regular assessment per Unit that is more than twenty percent greater than the regular assessment for the preceding fiscal year, or levy special assessments that in the aggregate exceed five percent of the budgeted gross expenses of the Association for that fiscal year. For purposes of this Section only, a "quorum" means more than fifty percent of the Owners of the Association. These limitations shall not apply to assessment increases that are necessary for emergency situations. An emergency situation is an extraordinary expense that is:

- 4.5.1 Required by a court order.
- 4.5.2 Necessary to repair or maintain the Neighborhood or any part of it for which the Association is responsible when a threat to personal safety in the Neighborhood is discovered.
- 4.5.3 Necessary to repair or maintain the Neighborhood or any part of it for which the Association is responsible that could not have been reasonably foreseen by the Board in preparing and distributing the pro forma operating budget. Before the Board may impose or collect an assessment in this emergency situation, it shall pass a resolution containing written findings as to the necessity of the extraordinary expense and why the expense was not or could not have been reasonably foreseen in the budgeting process, and shall distribute the resolution to the Owners with the notice of assessment.

4.6 **Owner Notice of Regular and Special Assessments.** The Association shall provide notice by first-class mail to the Owners of any increase in the regular assessments or the imposition of a special assessment not less than thirty nor more than sixty days prior to the increase in the regular assessment or special assessment becoming due.

4.7 **Individual Assessments.** Subject to the limitations of the Governing Documents and in addition to regular and special assessments, the Board may levy individual assessments against Owners and Condominiums whenever the Association (a) performs any service or accomplishes any item of repair or maintenance which is the duty of any Owner to accomplish, but which has not been accomplished by such Owner, or (b) incurs any costs which by law or as required by the Governing Documents must be reimbursed by an Owner. Such individual assessment shall include the cost thereof, together with any financing costs and administrative costs incurred by the Association. Prior to levying an individual assessment, the Board shall provide the Owner with notice and an opportunity for a hearing in accordance with the Bylaws. The notice and opportunity for a hearing regarding the levy of an individual assessment may be combined with the notice and opportunity for a hearing regarding any underlying violation. Duly levied individual assessments shall be subject to the provisions in the Governing Documents regarding costs, late charges and interest for delinquent payment, and may become a lien on the Condominium, in the same manner as regular and special assessments.

4.8 **Utility Assessments.** In addition to any other assessment levied against a Condominium, the Association may impose a utilities assessment for any utilities that are not separately metered and charged to the Condominiums by the utility company. If any such utility assessment is imposed by the Association, each Owner shall be obligated to pay to the Association, or its agent, a utilities assessment comprised of the costs for those utilities used by each Condominium as determined by the Board in its discretion. The amount of the utilities assessment levied by the Association against a Condominium shall be based upon each Condominium Owner's and/or tenant's actual use of the utility and may vary from month to month based upon such actual usage. The rate charged to each Condominium shall be based upon the utility company's rate for multifamily, residential dwellings or an equivalent designation established by the utility company. The utility assessment may include a nominal fee charged by a person or firm to read any sub-meter and administer the utility assessment.

Anything in this Restated Declaration to the contrary notwithstanding, the utilities assessment shall be separate from, and not considered a part of either regular or special assessments, and shall not be subject to the limitations on the increases or decreases thereof contained in this Restated Declaration or in section 1366 of the California Civil Code or any successor statute or law. Duly levied utility assessments shall be subject to Section 4.11 herein regarding costs, late charges and interest for delinquent payment, and may become a lien on the Condominium, in the same manner as regular and special assessments.

4.9 **Monetary Penalty Assessments.** The Board of Directors may levy, subject to the limitations of the Governing Documents, monetary penalties or fines against an Owner and his or her Condominium. In the event the Board of Directors imposes a monetary penalty or fine, that fine shall be subject to costs, late charges and interest as described in Section 4.11 for delinquent payment, and may become a lien on the Condominium, collectible by the Association through judicial foreclosure as allowed by Section 4.14 herein. In no event may the Association collect a monetary penalty or fine through nonjudicial foreclosure.

4.10 **Units Not Subject To Assessment.** Assessments which would normally become due on Units, but which Units are owned by the Association, shall be deemed to be common expenses collectible from all of the remaining Units in the same proportion that each Unit bears to the others less the number of Units owned by the Association.

4.11 **Costs, Late Charges and Interest.** Late charges may be levied by the Association against an Owner for the delinquent payment of assessments, including monetary penalty assessments. An assessment, including any installment payment, is delinquent fifteen days after its due date. If an assessment is delinquent, the Association may recover all of the following from the Owner:

- 4.11.1 Reasonable costs incurred in collecting the delinquent assessment, including actual attorneys' fees.
- 4.11.2 A late charge not exceeding ten percent of the delinquent assessment or ten dollars, whichever is greater, or the maximum amount allowed by law.
- 4.11.3 Interest on the foregoing sums, at an annual percentage rate of twelve percent commencing thirty days after the assessment becomes due.

No late charge may be imposed more than once for the delinquency of the same payment. However, the imposition of a late charge on any delinquent payment shall not eliminate or supersede charges imposed on prior delinquent payments. The amounts delinquent, including the entire unpaid balance and any related costs described herein, may be collected by the Association as provided in Section 4.14 hereinbelow.

4.12 **Priority of Payments.** The Board, in its sole discretion, may enact policies, not in violation of applicable law, including Civil Code sections 1367 and 1367.1, regarding how payments received from Owners will be applied to any outstanding balances due the Association from that Owner.

4.13 **No Offsets.** All assessments shall be payable in the amounts specified by the Association, and no offsets against such amount shall be permitted for any reasons, including, without limitation, a claim that the Association is not properly exercising its duties of maintenance, operation or enforcement.

4.14 **Enforcement of Assessments and Late Charges.** A delinquent assessment, and any related late charges, reasonable costs of collection (including actual attorneys' fees), and interest assessed in accordance with Section 4.11 herein, shall become a lien upon the Condominium when a Notice of Assessment Lien is duly recorded as provided in section 1367 or section 1367.1 of the California Civil Code or applicable statute. Unless otherwise provided by statute, the Notice of Assessment Lien shall describe the amount of the delinquent assessment or installment, the related charges authorized by this Restated Declaration, the legal description of the Unit, the name of the purported Owner, and, if the lien is to be enforced by power of sale under nonjudicial foreclosure proceedings, the name and address of the trustee authorized by the Association to enforce the lien by sale. The Notice may be signed by any Officer or Director of the Association, or any employee or agent of the Association authorized to do so by the Board. The Notice shall be mailed in the manner set forth in Civil Code section 2924b, to all record owners of the Unit no later than ten calendar days after recordation.

Unless otherwise allowed by statute, the Notice of Assessment Lien may not be recorded until after the Association has mailed, via certified mail, a written demand for payment to the delinquent Owner. The written demand shall comply with the requirements of Civil Code sections 1367 and 1367.1 or any other applicable statute.

If not paid in full within thirty days after recordation of the Notice of Assessment Lien, any lien described herein may be enforced in any manner permitted by law, including judicial foreclosure or nonjudicial foreclosure. Any nonjudicial foreclosure shall be conducted by the trustee named in the Notice or by a trustee substituted pursuant to section 2924(a) of the California Civil Code, in accordance with the provisions of sections 2924, 2924(b), and 2924(c) of the California Civil Code.

If all sums specified in the Notice of Assessment Lien are paid before the completion of any judicial or nonjudicial foreclosure, the Association shall (i) record a notice of satisfaction and release of lien, and (ii) upon receipt of a written request by the Owner, shall also record a notice of rescission of any recorded notice of default and demand for sale.

The Notice of Assessment Lien is not required to be amended by the Association or Trustee to reflect any partial payments made on the account of the delinquent Owner after its recordation, and any such partial payments received shall not be construed to invalidate the Notice of Assessment Lien. The Notice of Assessment Lien may be foreclosed upon as set forth herein even though the delinquent Owner has made one or more partial payments.

Notwithstanding any other provision herein, a monetary penalty or fine may not become a lien on a Unit enforceable by the sale of the Unit through nonjudicial foreclosure. Any Notice of Assessment Lien recorded to enforce a monetary penalty or fine must specifically state that such lien may not be enforceable by sale of the Unit through nonjudicial foreclosure.

4.15 **Priority of Assessment Lien.** As set forth hereinbelow, the assessment lien referred to in Section 4.14 shall be superior to all other liens, except (i) all taxes, bonds and governmental assessments which, by law, would be superior thereto, and (ii) the lien or charge of any First Mortgage of record. Notwithstanding any other provision to the contrary, the following provisions shall govern the priority and obligation for payment of the assessment lien:

- 4.15.1 Only the judicial or nonjudicial foreclosure of the First Mortgage shall operate to transfer title free of the assessment lien or obligation for any assessment lien, and then only as to payments which became due prior to the date of sale, and excluding those assessment liens recorded prior to the recording of the First Mortgage.
- 4.15.2 Neither the transfer of a Condominium pursuant to a foreclosure of any Mortgage, nor an election by the Association to proceed against any new Owner for payment, shall serve to cancel the personal obligation of the prior Owner for payment of the delinquent assessments and charges which accrued during such Owner's period of ownership.
- 4.15.3 No sale or transfer of any Condominium shall relieve such Condominium or its new Owner from liability for any future assessments which accrue during such Owner's period of ownership.

4.16 **Statement of Delinquent Assessment.** The Association shall provide any Owner, upon written request, with a statement specifying the amounts of any delinquent assessments and related late charges, interest, and costs levied against the Owner's Condominium.

4.17 **Community Assessments:**

- 4.17.1 Each Owner of any Unit by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, does and is deemed to covenant and agree to pay to the Community Association, the assessments provided for in the Community Declaration ("Community Assessments"). Such Community Assessments shall be established and collected as provided in the Community Declaration. The Community Assessments allocable to the Neighborhood shall be allocated equally to each Unit in the Neighborhood. The Community Assessments, together with interest, costs and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such Community Assessment is made. Each such Community Assessment, together with the allowable interest, costs and reasonable attorneys' fees, shall also be the personal

obligation of the person who was the Owner of such property at the time when the Community Assessment fell due and succeeding Owners to the extent permitted by the Community Declaration.

- 4.17.2 The Community Association may elect to require administration and collection of the Community Assessments by the Association, in which event the Association shall levy and collect the Community Assessments due from the Owners of the Neighborhood. Any such funds collected by the Association shall be held in trust by the Association for the Community Association and shall be disbursed to the Community Association as provided in the Community Declaration.
- 4.17.3 If the Community Association so elects, pursuant to the provisions of the Community Bylaws and the Community Declaration, the Neighborhood assessments provided for herein may be preempted by the Community Association. If the Community Association so elects to preempt the Neighborhood assessments, or any portion of them, the funds so collected shall be utilized in the manner and for the purposes specified herein and in the Community Declaration as Neighborhood assessments.

ARTICLE 5 - USE RESTRICTIONS AND COVENANTS

5.1 **General.** The use and enjoyment of the Neighborhood by Owners and their tenants, guests, invitees or any other person deriving rights from such Owner, shall be subject to the covenants and restrictions contained in the Governing Documents. Each such person shall comply with the provisions hereof and be subject to any enforcement actions in the event of violations. Unless otherwise stated in the Governing Documents, the Association, through the Board of Directors, shall be responsible for the enforcement of these provisions.

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

- 5.2.1 The Association shall have an easement in, to, and throughout the Common Area and the improvements thereon to perform its duties and exercise its powers.
- 5.2.2 Except as provided in this Restated Declaration, there shall be no judicial partition of the Common Area, nor shall the Association or any person acquiring an interest in all or any part of the Neighborhood seek any judicial partition.

- 5.2.3 Subject to the provisions of this Restated Declaration, each Owner has non-exclusive rights of ingress, egress, and support through the Common Area. These rights shall be appurtenant to any deed of conveyance. However, these rights shall not interfere with, and shall be subordinate to, any exclusive right to use a portion of the Common Area.
- 5.2.4 The Owners' rights of use and enjoyment of the Common Area shall be subject to the restrictions set forth in the Governing Documents, and the right of the Association, subject to the limitations of any laws or the Governing Documents, to:
- (a) Adopt and enforce reasonable Rules and Regulations for the use of the Common Area and the Neighborhood.
 - (b) Reasonably limit the number of Persons using the Common Area.
 - (c) Charge a fee or deposit for use of any Common Area recreational facilities.
 - (d) Set fees and deposits for supplying and replacing keys, key codes, or other access devices to Common Areas, including charges calculated to limit distribution and deter loss of keys, codes, or access devices.
 - (e) Establish speed limits and other traffic regulations within the Neighborhood.
 - (f) Establish fire lanes within the Common Area.
 - (g) Assign or otherwise control the use of any unassigned parking spaces within the Common Area.
 - (h) Require the use of parking passes or decals.
 - (i) Remove any vehicle within the Neighborhood parked in violation of this Restated Declaration or the Rules and Regulations of the Board in accordance with the provisions of California Vehicle Code section 22658.2 and any amendments thereto.
 - (j) Suspend the voting rights of any Owner, and the rights of any Owner, and the Persons deriving rights from any Owner, to use and enjoy the Common Area recreational facilities for any period during which the Owner is delinquent

in the payment of any assessment or as otherwise provided in the Governing Documents.

- (k) Cause the construction of additional improvements in the Common Area, or cause the alteration or removal of existing improvements on the Common Area.
- (l) Dedicate, grant, or join in the grant or conveyance of easements, licenses or rights-of-way in, on and over the Common Area as may be determined by the Board to be in the best interests of the Association; provided that no such easement, license or right-of-way may be granted if it would unreasonably interfere with any exclusive easement, or with any Owner's use, occupancy, or enjoyment of the Owner's Unit without the approval of the affected Owner.
- (m) Reasonably restrict access to roofs, maintenance facilities or areas, landscaped areas, and similar areas of the Neighborhood.
- (n) Approve any proposed alteration of or modification to the Common Area.

5.2.5 Notwithstanding the easement rights or other rights contained herein, an Owner who has sold his or her Condominium to a contract purchaser or who has leased or rented the Condominium shall be deemed to have assigned his or her rights to use and enjoy the Common Area to the contract purchaser or tenant who resides in the Owner's Condominium, subject to reasonable regulation by the Board. If the Owner is deemed to have assigned such rights, the Owner and the Owner's family, guests, employees, and invitees shall not be entitled to use and enjoy the Common Area for so long as the assignment remains effective.

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

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

- 5.3.1 Attempt to further subdivide a Unit or combine one or more Units without obtaining the prior approval of the Association.
- 5.3.2 Modify, alter or otherwise change his or her Unit except as provided in Article 7 herein.
- 5.3.3 Occupy or use a Unit, or permit all or any part of a Unit to be occupied or used for any purpose other than as a single, private residence. The Board may establish guidelines in the Rules and Regulations to allow certain home occupations which (a) are consistent with the normal residential usage of the Neighborhood, (b) do not cause any external effects which are detrimental to neighboring Units or the Neighborhood, and (c) are compatible with the characteristics of residential use in the Neighborhood.
- 5.3.4 Lease or rent a Unit in derogation of the following:
- (a) All leases and rental agreements must be in writing.
 - (b) All leases and rental agreements must be for the entire Unit and not merely parts thereof, unless the Owner remains in occupancy. A garage or parking space may not be leased or rented separate and apart from the Unit to which it is appurtenant.
 - (c) No lease or rental shall be for a period of less than sixty days or for hotel, transient or time-share purposes.
 - (d) All leases and rental agreements shall be subject in all respects to the Governing Documents, and shall provide that failure to comply with the requirements of the Governing Documents shall constitute a default under the lease or rental agreement which may be cured by eviction of the tenant either by the Owner or the Association. If the Association must evict the tenant, the Association may recover all its costs and expenses, including attorneys' fees, from the Owner whether or not the matter actually proceeds to court.
 - (e) An Owner who leases or rents their Unit shall promptly notify the Association in writing of the names of all tenants and members of a tenant's family occupying such Unit, provide the make, model and license number of all residents' vehicles, a telephone number for the tenant, keep all information current, and provide any other information reasonably needed and requested by the Association.

- (f) All Owners leasing or renting their Unit shall promptly notify the Association of the address and telephone number where such Owner can be reached.
- (g) Owners shall provide their tenants with copies of the Governing Documents, including the Rules and Regulations. Owners shall be responsible for the costs of reproducing the Governing Documents.

- 5.3.5 Permit anything to obstruct the Common Area or store anything on the Common Area without the prior written consent of the Board, except as otherwise provided in the Governing Documents.
- 5.3.6 Perform any act or keep anything on or in any Unit or in the Common Area that will increase the rate of insurance on the Common Area without the Board's prior written consent. Further, no Owner shall permit anything to be done or kept in his or her Unit or in the Common Area that would result in the cancellation of insurance on any Unit or on any part of the Common Area or that would violate any law.
- 5.3.7 Disconnect, damage, tamper with or otherwise modify any protection system, including, but not limited to fire sprinklers, fire alarms and fuse boxes.
- 5.3.8 Store gasoline, kerosene, cleaning solvents, or other flammable liquids or substances, or any toxic or hazardous materials on the Common Area or in any Unit, provided, however, that amounts of these liquids, substances or materials which are reasonable for household use may be placed in appropriate containers and properly stored.
- 5.3.9 Discharge or cause the emission of any dust, sweepings, dirt, cinders, odors, gases, mold spores, or other substances into the atmosphere other than those caused by normal residential use.
- 5.3.10 Erect or display any sign on or from any Unit except as allowed by sections 712, 713 and 1353.6 of the California Civil Code and the Rules and Regulations. No signs may be erected or displayed on the Common Area except with the prior written approval of the Board.
- 5.3.11 Erect or display any radio or television antenna, satellite dish or other equipment or apparatus for transmitting or receiving transmissions. Notwithstanding the foregoing, an Owner may erect a video or television antenna, including a satellite dish, as allowed

- 5.3.16 Engage in any type of harassment, illegal, noxious or offensive activity toward any Owners, residents, Association representatives, management representatives, Board members and/or vendors working in the Neighborhood.
- 5.3.17 Alter, attach, construct, or remove anything on or from the Common Area, except upon the written consent of the Board.
- 5.3.18 Perform any vehicle overhaul, repair, or non-emergency maintenance within the Neighborhood.
- 5.3.19 Keep or maintain any fixture, personal property or other object upon any patio garden or balcony which interferes with the enjoyment of adjacent Units, patio gardens or balconies or which may be in derogation of the Rules and Regulations.
- 5.3.20 Erect any basketball standard or other fixed sports apparatus without prior written approval of the Board.
- 5.3.21 Convert or use any garage for purposes other than parking of the number of vehicles such garage was designed to contain and storage of reasonable amounts of household goods that do not interfere with the ability to park the number of vehicles such garage was designed to accommodate or create a fire or safety hazard.
- 5.3.22 Park any automobile or other motor vehicle in the Neighborhood except wholly within a garage or in a space designated for the Owner by the Board or the Governing Documents. No junk or derelict vehicle or unregistered vehicle shall be kept upon any portion of the Neighborhood so as to be visible from the Common Area or another Unit. The Board, in its discretion, may adopt reasonable Rules and Regulations governing the operation, maintenance, storage and parking of any vehicle, including trucks, campers, trailers, boats or commercial vehicles in the Neighborhood, including the streets, garages, driveways, and Common Area.

5.4 ***Mechanic's Liens.*** No labor performed or services or materials furnished with the consent of, or at the request of, an Owner, the Owner's agents or contractors shall be the basis for the filing of a lien against any other Unit or Common Area or any other Owner in the Neighborhood unless that other Owner has expressly consented to or requested the performance of the labor or furnishings of the materials or services. However, express consent shall be deemed to have been given by the Owner of any Condominium in the case of emergency repairs thereto. Labor performed or services or materials furnished for the Common Areas, if duly authorized by the Association, shall be deemed to be performed or furnished with the express consent of each Owner. The

by any applicable statute or law, with Board approval. The Board may impose reasonable restrictions on its approval.

5.3.12 Raise or keep pets or other animals in violation of the following:

- (a) Owners or residents of the Neighborhood may keep and raise a reasonable number of pets in the Unit subject to the provisions of the Rules and Regulations; provided, however, that no Owner or other occupant of a Unit may raise or keep pets which interfere with, or have a reasonable likelihood of interfering with, the rights of any Owner or other occupant of a Unit to the peaceful and quiet enjoyment of the Unit. In the event the Board determines that any pet or other animal creates an unreasonable annoyance or nuisance to any Owner or other occupant of a Unit, the raising or keeping thereof shall be discontinued within a reasonable time after such determination.
- (b) No pets or other animals shall be permitted in the Common Area except as specifically permitted by the Rules and Regulations, and then only when on a leash held by a person capable of controlling the animal.
- (c) No Owners may raise or keep animals for commercial purposes.
- (d) The Association, its Board, Officers, employees and agents shall have no liability to any Owner, their family members, guests, invitees, tenants and contract purchasers, or any other person in the Neighborhood, for any damage or injury to persons or property caused by any pet, absent of or lacking any willful or wanton negligence on the part of the Association, or its Board, Officers, employees and agents.

5.3.13 Allow rubbish, trash, and garbage to accumulate within the Unit or Common Area.

5.3.14 Allow brush, weeds, or undergrowth to accumulate upon any Lot so as to render the Lot or any portion of it a fire hazard, unsightly, or detrimental to other Lots or the Common Area.

5.3.15 Engage in any illegal, noxious or offensive activity in any part of the Neighborhood, or do any act which unreasonably threatens the health, safety and welfare of other residents of the Neighborhood.

Owner of any Condominium may remove his or her Condominium from a lien against two or more Condominiums or any part thereof by payment to the holder of the lien of the fraction of the total sum secured by the lien which is attributable to the Owner's Condominium.

5.5 **Damage Liability.** Each Owner shall be liable to the Association for any damage to the Common Area or to Association owned property if the damage is sustained because of the negligence, willful misconduct, or unauthorized or improper installment, repair or maintenance of any improvement by the Owner or the Owner's family, guests, tenants, contract purchasers, or invitees. In the case of joint ownership of a Condominium, the liability of the co-owners shall be joint and several, unless the co-owners and the Association have agreed in writing to an alternative allocation of liability.

5.6 **Owner Responsibility.** Owners shall be responsible for their family members, guests, tenants, contract purchasers, and invitees while in the Neighborhood and may be held responsible for any violations of the Governing Documents committed by such persons.

5.7 **Vacating Unit; Costs.** As provided in Civil Code section 1364 or any successor statute, the Association shall have the power to temporarily remove any Unit resident for such periods and at such times as may be necessary in connection with any maintenance or repair work performed by the Association. The Owner shall provide the Association access as needed for maintenance or repair work by the Association. The costs of any temporary relocation during such maintenance or repair work shall be paid by the Unit Owner affected. Except in case of emergency, the Association shall give notice of the need to temporarily vacate a Unit to the record Owners and occupants not less than fifteen days nor more than thirty days prior to the date of the temporary relocation. The notice shall state the reason for the relocation, the date and time of the beginning of work, the anticipated date and time of termination of work and that the occupants will be responsible for all necessary accommodations during the relocation.

5.8 **Community Declaration.** The provisions of this Article 5 shall not be construed to be in derogation of or to limit the use restrictions contained in the Community Declaration.

ARTICLE 6 - REPAIR AND MAINTENANCE

6.1 **General; Standards of Maintenance.** The Association and all Owners are required to fulfill the maintenance requirements imposed by the Governing Documents. For purposes of this Article "maintenance" shall include, without limitation, painting, weatherproofing and cleaning to keep in a clean, safe, properly ventilated, watertight, dry and sanitary condition necessary to preserve the attractive appearance of each Condominium and the Neighborhood and protect the values thereof, and to ensure that there is no threat to the health, safety or welfare of any resident. The Board shall have the

power to determine the standards of such maintenance. The replacement of exterior items by Owners shall be subject to the requirements of Article 7 herein.

6.2 **Division of Responsibility.** Attached hereto as Exhibit "B," and incorporated herein by reference, is a listing of the allocation of responsibility for various components in the Neighborhood. Generally, each Owner shall be responsible for the maintenance, repair and replacement of his or her Unit, Exclusive Use Common Areas appurtenant to the Unit, and those items located anywhere within the Neighborhood which are used exclusively by that Owner, and the Association shall be responsible for the maintenance, repair and replacement of any other area of the Common Area. In the event of any inconsistency between the above general provisions and the specific provisions of Exhibit "B," the provisions of Exhibit "B" shall prevail. In the event of any inconsistency between the provisions of Exhibit "B," the most specific provision shall prevail. Provided any item is not listed in Exhibit "B," the responsibility for its maintenance shall be determined in accordance with the above general provisions or as otherwise provided by statute or law. Except as otherwise provided in the Governing Documents, the costs of maintenance, repair and replacement shall be borne by the party responsible for the maintenance, repair and replacement.

6.3 **Owner Improvements.** Each Owner shall be responsible for the maintenance, repair, and replacement of any improvements installed or planted by the Owner, any resident in the Owner's Unit, or the Owner's predecessor in interest, within the Unit, the Exclusive Use Common Areas, or upon the Common Area. The Owner is also responsible for damages to the Common Area caused by such installation, maintenance, use, or repair. Installation of any improvement within the Common Area is subject to the provisions of Article 7 herein.

6.4 **Access over Common Area.** The Owner of the Unit shall be entitled to reasonable access over and through the Common Area, subject to the consent of the Association and to any other conditions reasonably imposed by the Association, for the purposes of performing any maintenance, repairs or replacement as required by the Governing Documents. The Association's consent shall not be unreasonably withheld.

6.5 **Failure to Maintain.** In the event an Owner fails to maintain the areas described herein pursuant to the standards set by the Board, the Board may notify the Owner of the work required and request that the same be done within a reasonable time from the giving of such notice. In the event the Owner fails to carry out such maintenance within said time period, the Board may, following notice and an opportunity for hearing, as provided in Section 3.14 of the Bylaws, cause such work to be done and the cost thereof shall immediately be paid by such Owner to the Association and until paid shall bear interest at the rate of twelve percent per annum (but no greater than the maximum rate authorized by law). The Association shall have an easement over the Units and Exclusive Use Common Area for the purpose of performing the work described herein.

6.6 **Damage During Repairs.** In the course of carrying out the maintenance and repair responsibilities of the Association, it may be necessary for agents or representatives of the Association to remove floor or wall coverings, appliances, fixtures or other similar items within a Unit. In this event, the Association's agents or representatives shall use care to cause as little damage as possible. The Association shall restore the floor or wall. The Owner of the Unit shall be responsible, at his or her sole expense, to paint and to repair or replace any such floor or wall coverings, appliances, fixtures or other similar items which might be damaged during such repair or replacement by the Association's representatives or agents unless the damage is caused by the gross negligence of the Association, its Board, Officers, agents or employees.

6.7 **Termite Control.** The responsibility for control of wood destroying pests or organisms shall be as follows:

- 6.7.1 Owners shall be responsible for the maintenance and repair of their personal property and their Unit and Exclusive Use Common Area as required to control the presence of or damage caused by wood-destroying pests or organisms.
- 6.7.2 The Association shall be responsible for the maintenance and repair of the Common Area, except the Exclusive Use Common Area, as required to control the presence of or damage caused by wood destroying pests or organisms in accordance with the provisions of Civil Code section 1364.
- 6.7.3 The Association shall have the power to temporarily remove any Unit resident for such periods and at such times as may be necessary for prompt, effective treatment of such pests or organisms. The costs of any temporary relocation during such maintenance or repair shall be paid by the Unit owner affected. The Association shall give notice of the need to temporarily vacate a Unit to the record Owners and occupants not less than fifteen days nor more than thirty days prior to the date of the temporary relocation. The notice shall state the reason for the relocation, the date and time of the beginning of treatment, the anticipated date and time of termination of treatment and that the occupants will be responsible for all necessary accommodations during the relocation.
- 6.7.4 Neither the Association, the Board, Officers, agents nor employees shall have any liability, absent willful or wanton negligence, to any Owner, family member, guest, invitee or tenant for any damage caused by the treatment.
- 6.7.5 Notwithstanding anything else herein, in the event that an Owner wishes to obtain a termite clearance certificate for any purpose, the

Owner shall be solely responsible for any and all costs associated with obtaining the certificate, including, without limitation, the costs of maintenance and repair of the Unit, Exclusive Use Common Area, or Common Area which may be necessary to obtain the termite clearance certificate. An Owner or group of Owners may agree, in a signed writing delivered to the Association, with such reasonable assurances as the Board may request, to agree to share the above costs.

6.8 Damage Caused by Owner or Item Under Control of Owner. Should any damage to the Common Area or any Unit result from the willful or negligent act or neglect of any Owner, or such Owner's tenants, guests, invitees, pets or other person or entity deriving any interest through such Owner, or from any item the maintenance, repair or replacement of which is an Owner responsibility, the cost of all repairs shall be borne solely by the responsible Owner. This includes, but is not limited to, responsibility for damages caused by overflowing sinks and toilets or malfunctioning plumbing fixtures within the Unit.

The Association shall be responsible for performing the repair of any damage to the Common Area or items over which the Association has control at the responsible Owner's expense. The responsible Owner shall perform the repair of any damage to his or her Unit for which such Owner has control. The Owner of any other Unit which sustained damage shall perform the repair of any such damage, and may charge the cost thereof to the responsible Owner.

If the responsible Owner disputes or refuses to pay any repair costs incurred by the Association, the Association, after reasonable notice and opportunity for a hearing, may charge the cost of those repairs to such Owner as an individual assessment, with the full authority to lien on such amount in the event of non-payment. If the damage is such as may be covered by any insurance carried by the Association, the Board may, in its sole discretion, elect to submit the claim for the cost of repairs to its insurance carrier. Provided the submitted claim is covered by the Association's insurance, the responsible Owner shall pay the cost of any deductible applicable to the covered claim. If the submitted claim is not covered by the Association's insurance, or the Board elects not to submit the claim, the Owner shall be responsible for the total cost of repair.

All repairs performed to correct any damage shall be sufficient to return the damaged property only to its condition prior to the damage, with upgrades as may be required to conform with any applicable building codes in effect at the time the damage is repaired.

6.9 Limitation of Liability. The Association shall not be liable to any Owner or his or her tenants, guests or others, for damage to or loss of any property, or the cost of repair or replacement of any damaged property or portions of such Owners' Unit or Exclusive Use Common Area, unless such damage is caused by the gross negligence of the Association, its Board, Officers, agents or employees.

6.10 Damages to Unit; Water Intrusion Damage. Each Owner shall be solely responsible for the repair or replacement of any damage to any and all interior items of his or her Unit, and the cost thereof, including, but not limited to, any personal property, decorations, interior surfaces, floor and wall coverings, appliances, fixtures or other items therein, or any exterior items such as landscaping, caused by any Common Area component or improvement or any other component or improvement maintained by the Association, including water intrusion from any Common Area source. An Owner may obtain and maintain such insurance, at his or her sole expense, to protect against any damage or loss of property, or the cost of repair or replacement of damaged items for which such Owner is responsible. The Association shall not be liable for damage to property in the Neighborhood resulting from water which may leak or flow from outside of any Unit or from any part of the building, or from any pipes, drains, conduits, appliances or equipment or from any other place or cause, unless caused by the gross negligence of the Association, its Board, Officers, agents or employees

Owners shall cause notice to be given to the Association of any water within, or water intrusion into, their Unit immediately upon discovery of such leak or water intrusion. Within twenty-four hours or sooner of the discovery of a leak or water intrusion, Owner shall cause all water to be extracted, and the Unit cleaned. If Owner has not had water extraction and cleaning performed within forty-eight hours of discovery of the leak or water intrusion, Association may cause such work to be done and assess the cost of the work to the Owner as an individual assessment. If repairs are required to a Unit following a leak or water intrusion, all work shall be performed by a licensed contractor experienced in water extraction and mold remediation. Containment procedures designed to prevent contamination of the affected Units, other Units and the Common Areas shall be utilized. Owner and his or her tenants, guests, invitees, agents and employees shall hold the Association harmless for any claim for property damage or personal injury alleged to arise from the presence of mold or fungi in his or her Unit unless the damages or injuries were caused by the gross negligence of the Association, its Board, Officers, agents or employees.

6.11 Owner Notification to Association. If, at any time, an Owner discovers or otherwise becomes aware of any condition within the Common Area that may constitute a risk to the health, safety or welfare of the Owners, their family members, tenants, and any other persons entering the Neighborhood, the Owner shall notify Association representatives of the condition as soon as possible.

ARTICLE 7 - ARCHITECTURAL AND DESIGN CONTROL

7.1 General. Any change or improvement to the exterior of a Unit, or to the interior which affects the exterior of Unit, any wall, or any mechanical or utility systems (HVAC systems, gas, water or electrical pipes or wires, etc.), or the structural integrity of any building, shall be governed by this Article. Changes or improvements to the Common Area by the Association do not need to comply with the requirements of this Article. The powers and duties set forth in this Article shall be vested in, and exercised by, the Board.

The Board may establish an architectural committee as provided herein to assist the Board in reviewing architectural submittals, and to provide recommendations to the Board with regard to approval or disapproval of any submittal. The foregoing notwithstanding, the Board shall be solely responsible for approving or rejecting any architectural submittal.

7.2 General Changes Requiring Prior Approval. Nothing may be erected, placed or planted on the exterior of any Unit, or on the Common Area by any Owner, including any building, fence, wall, pool, spa, obstruction, wiring, balcony, screen, patio, patio cover, tent, awning, carport, carport cover, trellis, tree, grass, shrub or other landscaping, any improvement or structure of any kind, nor may any excavation or demolition commence without the prior written approval of the Board. Modifications to the interior of Units which involve alterations to the floor plan, or removal of a wall or have the potential to affect the Common Area, including the walls, roofs and mechanical or utility systems shall require prior approval. Additionally, prior written Board approval shall be required for any alteration, modification, painting or other change or addition to any existing improvement or landscaping.

7.3 Specific Changes. Subject to other applicable restrictions contained in the Governing Documents, Owners may modify their Units subject to the following:

- 7.3.1 Modifications or alterations of the exterior of any Unit must have the prior written consent of the Board, including any modifications to facilitate handicapped access as provided by section 1360 of the California Civil Code. Any approval of such handicapped access modification may be conditioned on such modification's removal, by the Owner at his or her sole expense, once the handicapped access is no longer necessary for the Unit.
- 7.3.2 Alterations to the floor plan of a Unit, removal of walls, or any portion thereof, may not be made within a Unit without the prior written approval of the Board of Directors.
- 7.3.3 No Owner may replace floor coverings, other than small area rugs, within the Unit without the prior approval of the Board. In deciding upon floor coverings, Owners shall take all reasonable measures to choose floor coverings that mitigate sound transfer between Units. The Board shall have the power to order an Owner who has not complied with this Section to remove and replace any floor covering which does not adequately mitigate sound transfer.
- 7.3.4 No Owner may install any shutter, screen, blind, curtain, drape or other appurtenance in or on any window or door except those items which are in conformance with standards established by the Board.
- 7.3.5 No Owner may enclose his or her Unit's patio garden or balcony.

- 7.3.6 No Owner may erect or install any shed, doghouse, overhead trellis, or other structure in the patio garden or balcony without the prior consent of the Board.
- 7.3.7 Except as provided by the Governing Documents, Owners shall not have the right to paint, decorate, remodel or alter any Exclusive Use Common Area or the Common Area without the prior written consent of the Board.
- 7.3.8 The Board may condition its approval on obtaining and recording a signed license and indemnity, hold harmless, or other similar agreement from the Owner if the improvements affect the Common Area.

7.4 Procedure for Obtaining Approval of Architectural Changes. The procedure for obtaining approval of any architectural change shall be as follows:

- 7.4.1 Complete plans and specifications showing the nature, kind, shape, color, size, height, materials to be used and location of any proposed improvements, alterations or landscaping, as well as the proposed licensed contractor and any other information as required by the Board, shall be prepared by the requesting Owner and submitted to the Association, along with any fee or deposit established in the Architectural Rules. The Board may establish a construction deposit and require that it be paid with the plans and specifications.
- 7.4.2 The architectural committee, if any, shall review the submission and provide a written recommendation as to approval or disapproval of any such submission, including the reasons for any decision, to the Board and the requesting Owner within thirty days of receipt of such submission.
- 7.4.3 The Board shall review such recommendation within thirty days of receipt of the architectural committee's written recommendation, if any, or within sixty days of receipt of the submission, whichever is earlier, and provide a written response to the requesting Owner, including reasons for such response.
- 7.4.4 In the event the Board fails to provide a written response to the requesting Owner within sixty days of receipt of the request from the Owner, the Owner may notify the Board in writing that a response has not been received. If the Board fails to respond within thirty days of the receipt of the notice, approval will not be required and the related covenants shall be deemed to have been fully satisfied.

- 7.4.5 Once an Owner has obtained approval for an architectural submittal, work on such approved submittal shall promptly commence and shall be completed within a reasonable time.

7.5 **Architectural Rules.** The Board may, in its sole discretion, adopt, amend and repeal, as it deems necessary, Architectural Rules. The Architectural Rules shall interpret and implement the provisions of this Article by setting forth the standards for review by the Board and architectural committee and guidelines for architectural design, placement of buildings, landscaping, color schemes, exterior finishes and materials and similar features which are recommended for use in the Neighborhood, provided, however, that said Architectural Rules shall not be in derogation of the standards required by this Restated Declaration. The Architectural Rules may also address the information which is required to be presented in connection with an architectural submittal.

7.6 **Standard of Architectural Review.** An architectural submittal made by an Owner shall be reviewed for conformity with the Architectural Rules. Additional factors to be considered include, but are not limited to, the quality of proposed workmanship, the design and harmony of the improvement with existing structures, the location of the improvement in relation to surrounding structures, topography, and finish grade elevation, Owner and contractor insurance coverage, compliance with governmental permit requirements and contractor license status.

7.7 **Architectural Committee.** The architectural committee, if any, shall consist of at least three members, formed as follows:

- 7.7.1 The Board shall have the right to appoint all of the members of the committee.
- 7.7.2 Members appointed to the committee by the Board must be Members of the Association.
- 7.7.3 Members shall be appointed for terms as prescribed by the Board. All members of the committee may be removed by the Board at any time with or without cause.
- 7.7.4 The committee shall meet as often as it deems necessary to properly carry out the obligations imposed upon it, unless otherwise directed by the Board.
- 7.7.5 The vote or written consent of the majority of the committee shall be required for any recommendation.

7.8 **Fee for Review.** The Board shall have the right to establish a fee for the review and approval of plans and specifications which must be submitted to it pursuant to the provisions of this Article, which shall be reasonably related to the duties performed. Owners shall be responsible for the Association's costs incurred for review of their plans.

7.9 **Compensation.** The members of the Board and architectural committee shall receive no compensation for services rendered, other than reimbursement by the Association for expenses incurred by them in the performance of their duties hereunder.

Notwithstanding the above, the Board may hire an architect or other design professional to consult with the committee and Board and the Association may compensate the architect or design professional for services rendered to the Association.

7.10 **Liability.** Neither the Board, the architectural committee nor any member thereof shall be liable to the Association or to any Owner for any damage, loss or prejudice suffered or claimed on account of: (a) the approval or disapproval of any plans, drawings and specifications, whether or not defective, (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings, and specifications, or (c) the development of any property outside the Neighborhood; provided, however, that such member has acted in good faith on the basis of such information as may be possessed by him or her.

7.11 **Enforcement.** In addition to other enforcement remedies set forth in this Restated Declaration, the Board shall have enforcement rights with respect to any matters required to be submitted to and approved by it, and may enforce such architectural control by any proceeding at law or in equity in accordance with this Section.

- 7.11.1 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.
- 7.11.2 The Board shall have the authority to order an abatement of any construction, alteration or other matter for which approval is required, to the extent that it has not been approved by the Board or if it does not conform to the plans and specifications submitted to the Board.
- 7.11.3 The Board or committee may periodically enter any Unit to ensure that the construction is proceeding according to any approved plans.
- 7.11.4 If the Owner fails to remedy any noticed noncompliance within the time specified by the Board, the Board shall set a date on which a hearing before the Board shall be held regarding the alleged noncompliance. The notice and an opportunity for a hearing shall comply with the requirements of Section 3.14 of the Bylaws.
- 7.11.5 At the hearing, the Owner, a representative(s) of the architectural committee and, in the Board's discretion, any other interested person may present information relevant to the question of the

alleged noncompliance. After considering all such information, the Board shall determine whether there is a noncompliance.

- 7.11.6 If a noncompliance is determined to exist, the Board shall require the Owner to remedy or remove the same within such period or within any extension of such period as the Board, at its discretion, may grant.
- 7.11.7 If the Owner fails to take corrective action after having a reasonable opportunity to do so, the Board at its option, may pursue all legal and equitable remedies available to remedy or remove the noncomplying improvement and the Owner shall reimburse the Association for all expenses incurred in connection therewith upon demand. If such expenses are not properly repaid by the Owner to the Association, the Board shall recover such expenses through the levy of an individual assessment against such Owner.
- 7.11.8 The approval by the Board of any plans, drawings or specifications for any work of improvement done or proposed, or for any other matter requiring the approval of the Board under this Restated 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 location for improvements, the size of the improvement, proximity to other Units or the Common Area and other factors may be taken into consideration by the Board in reviewing a particular submittal.
- 7.11.9 Notwithstanding any other provisions herein, the Board of Directors shall have the authority to obtain a restraining order or injunction at any time after discovery that work is proceeding without approval of the Board or in a manner that is different than that approved by the Board if the Board deems such action necessary to protect the Association's interests.

7.12 **Non-Compliance with Laws.** Neither the Association, the Board nor the architectural committee shall be responsible for any non-compliance with any governmental law, rule or regulation of any improvement or other structure erected, constructed, installed, placed, altered or maintained in accordance with or pursuant to any plans and specifications approved by the Board or any defect in any conditions or requirements they may have imposed with respect thereto.

7.13 **Governmental Permits and Approvals.** Prior to commencing any alteration or improvements approved by the Board, the Owner shall comply with all appropriate governmental laws and regulations. The Association shall not be obligated to enforce the

provisions of this Section. Approval by the Board shall not be considered to satisfy the approvals that may be required by any governmental entity with appropriate jurisdiction, nor shall the approval of any governmental entity be considered to completely satisfy the requirement of Board approval. An Owner's failure to obtain any required governmental approval may subject such Owner to certain penalties imposed by the governmental entity, notwithstanding the approval of the Board, which penalties shall be the responsibility of such Owner.

7.14 ***Precedence of Community Architectural Committee.*** The Board and architectural committee shall act in coordination with the Community Architectural Committee and shall undertake such duties and responsibilities as may be delegated to the Neighborhood by the Community Architectural Committee, all as more particularly provided in the Community Declaration. The rulings and decisions of the Community Architectural Committee shall have precedence over and shall supersede any such decisions or rulings of the Neighborhood. To facilitate the coordination of the Board and the Community Architectural Committee, the Board shall have the right, but not the obligation, to assign all or any part of its architectural responsibilities and duties hereunder to the Community Architectural Committee; provided, however, that such assignment of responsibilities shall only be effective if agreed to by the Community Architectural Committee.

ARTICLE 8 - INSURANCE

8.1 ***Fire and Casualty Insurance.*** The Association shall obtain and maintain a policy or policies of fire and casualty insurance with an extended coverage endorsement for the full insurable replacement value of the improvements located in the Common Area, except the Exclusive Use Common Area, and for which the Association is responsible pursuant to Article 6 herein. The Association shall have no obligation to insure improvements or fixtures such as cabinets, built-in appliances or floor or wall coverings, within the Unit or Exclusive Use Common Area. The amount of any deductible shall be determined by the Board. This insurance shall be maintained for the benefit of the Association, the Owners, and their Lenders, as their interests may appear as named insured, subject, however, to any loss payment requirements set forth in this Restated Declaration. If required by any First Lender who notifies the Association of its requirement, and if economically feasible and available, such policies shall contain an agreed amount endorsement, an inflation guard endorsement, and a construction code endorsement.

8.2 ***General Liability Insurance.*** The Association shall obtain and maintain a policy or policies insuring the Association, its Officers, Directors, agents and employees, and the Owners against any liability for bodily injury, death, and property damage arising from the activities of the Association and its Members, with respect to the Common Area and any Units owned by the Association. Limits of liability under the insurance shall not be less than Three Million Dollars covering all claims for death, personal injury, and property damage arising out of a single occurrence.

8.3 **Directors and Officers Liability Insurance.** The Association shall obtain and maintain one or more policies of insurance which include coverage for individual liability of Officers and Directors of the Association for negligent acts or omissions of those persons acting in their capacity as Officers and Directors. Limits of liability under this insurance shall be determined by the Board at its sole discretion.

8.4 **Fidelity Coverage.** The Association shall purchase and maintain fidelity coverage for any person or entity handling funds of the Association, whether or not such persons or entities are compensated for their services. If an agent handles Association funds, such agent shall be covered by the Association's coverage, unless such agent provides similar coverage. The Association's coverage may be in the form of a separate bond, a separate policy (e.g., crime policy), or may be added by endorsement to the general policies carried by the Association. The coverage may be in an amount that is at least equal to the estimated maximum of funds, including reserve funds, in the custody of the Association or its managing agent at any given time during the term of each bond or policy. The bond or policy must contain a provision that it may not be cancelled or substantially modified without at least ten days' prior written notice to the Association.

8.5 **Other Association Insurance.** The Association shall purchase and maintain workers' compensation insurance to the extent necessary to comply with any applicable laws. The Association also may purchase and maintain a blanket policy of flood insurance, and demolition insurance in an amount that is sufficient to cover any demolition that occurs following the total or partial destruction of the Neighborhood and a decision not to rebuild. The Association may purchase such other insurance the Board considers necessary or advisable, including earthquake insurance coverage.

8.6 **Review of Insurance; Notice of Cancellation or Modification.** The limits and coverage of insurance carried by the Association shall be reviewed at least annually by the Board and increased or decreased in its discretion. Such policies shall include a provision for at least ten days' prior written notice to the Association, and, if available, to each First Lender which is listed as a scheduled holder of a First Mortgage in the insurance policy, of any cancellation or substantial modification by any party.

8.7 **Qualifications of Insurance Carriers.** The Association shall use generally acceptable insurance carriers from which to purchase and maintain the coverage required herein.

8.8 **Failure to Acquire Insurance.** The Association, and its Directors and Officers, shall have no liability to any Owner or Lender if, after a good faith effort, it is unable to obtain any insurance required hereunder, because the insurance is no longer available or, if available, can be obtained only at a cost that the Board in its sole discretion determines is unreasonable under the circumstances, or the Members fail to approve any assessment increase needed to fund the insurance premiums. In such event, the Board immediately shall notify each Member and any Lender entitled to notice that the specific insurance will not be obtained or renewed.

The Association, and its Directors and Officers, shall also have no liability to any Owner or Lender if it does not obtain any of the insurance referenced hereunder which is not required but may be obtained at the discretion of the Association. The Board may, in good faith in its sole discretion, determine that obtaining any of the discretionary insurance is unreasonable or unnecessary under the circumstances. In making a determination as to whether to acquire any such discretionary insurance, the Board may base its decision upon, among other things, a vote of the Owners.

8.9 **Trustee for Policies.** The Association, acting through its Board, is appointed and shall be deemed trustee of the interests of all named insureds under all insurance policies purchased and maintained by the Association. All insurance proceeds under any of those policies shall be paid to the Board as trustee. The Board shall use the proceeds for the repair or replacement of the property for which the insurance was carried or for the purposes described in Article 9 herein. The Board also is authorized to negotiate loss settlements with the appropriate insurance carriers, to compromise and settle any claim or enforce any claim by any lawful action, and to execute loss claim forms and release forms in connection with such settlements.

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

8.11 **Insurance Policy Deductibles.** The Board of Directors shall have the power, in its sole discretion, to determine the amount of any deductible applicable to any insurance policy carried by the Association. In the event of a loss for which Association insurance coverage is used, the responsibility for payment of any deductible shall be as follows:

- 8.11.1 Owners shall be responsible for the cost of any deductible if the damage or loss occurs to the Owners' real or personal property, or other property for which the Owner is responsible ("Owner Property").
- 8.11.2 The Association shall be responsible for the cost of any deductible if the damage or loss occurs to any real or personal property owned by the Association, or for which the Association is responsible ("Association Property").
- 8.11.3 If the damage or loss occurs to any Owner Property and any Association Property, or to more than one Owner's Property, the responsibility for the payment of any deductible shall be apportioned among the affected parties on the basis of the ratio of each party's cost of repair to the total costs of repair.

- 8.11.4 The foregoing notwithstanding, if the damage or loss is caused by the negligence or misconduct of any Owner, or resident, guest, tenant or invitee of an Owner or is the Owner's responsibility pursuant to Section 6.8 herein, such Owner shall be liable for the full amount of the deductible.

8.12 **Insurance Disclosures.** The Association shall disclose such information regarding insurance coverage as and when required by any applicable statute or law. Failure to disclose such information shall not impose any liability upon the Association or Board other than that provided for in such statute or law.

8.13 **Individual Property Insurance.** An Owner is responsible for obtaining and maintaining such insurance, at his or her sole expense, to protect against any damage to, or loss of the Owner's real or personal property, and the cost of repair or replacement of damaged items, including, but not limited to, any improvements made by an Owner, any personal property, decorations, floor and wall coverings, appliances, cabinets, fixtures or other items for which the Owner is responsible by the terms of this Restated Declaration, or any exterior items for which such Owner is responsible, such as landscaping, which is caused by any Common Area component or any component maintained by the Association or any failure thereof. The Owner's policy shall be the primary policy for any claims for damages to or loss of Owner's property. The Association shall not be liable to any Owner or his or her tenants, guests or others, for damage to or loss of any such property, or the cost of repair or replacement of any damaged property or portions of such Owners' Unit or Exclusive Use Common Area, unless such damage is caused by the gross negligence of the Association, its Board, Officers, agents or employees.

8.14 **Individual Liability Insurance.** An Owner shall carry personal liability and property damage liability insurance with respect to his or her Unit to insure against any liability for bodily injury, death and property damage arising from the activities within Owner's Unit or from any item which is the maintenance or repair responsibility of the Owner.

ARTICLE 9 - DAMAGE OR DESTRUCTION

9.1 **Duty to Restore.** Any portion of the Common Area that is damaged or destroyed must be repaired or replaced promptly by the Association unless:

- 9.1.1 The Neighborhood is terminated.
- 9.1.2 Repair or replacement would be illegal under a state statute or municipal ordinance.
- 9.1.3 Eighty percent of Owners, including each Owner of a Unit or Exclusive Use Common Area that will not be rebuilt, vote not to rebuild.

9.2 **Cost of Repair.** Any cost of repair or replacement of the Common Area in excess of any insurance proceeds and reserves shall be a common expense, levied against Condominiums in the same proportion as regular assessments are levied.

9.3 **Repair Plans.** The Common Area must be repaired and restored in accordance with either (a) the original plans and specifications, updated as required to reflect applicable building codes, or (b) other plans and specifications which have been approved in writing by the Board, a majority of Owners, and at least fifty-one percent of Eligible Lenders holding Mortgages on Units subject to the repair.

9.4 **Replacement of Less Than Entire Neighborhood.**

9.4.1 Any insurance proceeds attributable to the damaged Common Area shall be used to restore the damaged area to a condition compatible with the remainder of the Neighborhood.

9.4.2 Except to the extent that other persons or entities will be distributees:

(a) Any insurance proceeds attributable to a Unit and Exclusive Use Common Area that are not rebuilt must be distributed to the Owner of that Unit and the Owner of the Unit to which the Exclusive Use Common Area is appurtenant, or to lien holders, as their interests may appear.

(b) The remainder of any proceeds must be distributed equally to the Owners of each Unit which will remain or to Lenders, as their interests may appear.

9.4.3 If the Owners vote not to rebuild a Unit, the common interest portions of the Unit shall be reallocated among all other Units, and the Association shall prepare, execute and record an amendment to this Restated Declaration reflecting the reallocations.

9.5 **Insurance Proceeds.** An insurance trustee appointed by the Board or insurance company, or if there is no trustee, then the Board, acting by the President, shall hold any insurance proceeds in trust for the Association, Owners and Lenders. Subject to the provisions of this Restated Declaration, the proceeds shall be disbursed first for the repair or restoration of the damaged Common Area. The Association, Owners and Lenders are not entitled to receive payment of any portion of the proceeds unless there is a surplus after the Common Area has been completely repaired or restored, or unless the Neighborhood is terminated.

9.6 **Disbursements to Owners and Lenders.** Any insurance proceeds distributed to Owners and Lenders of Units which will be rebuilt shall be distributed proportionately according to the fair market values of the Units at the time of the

destruction as determined by an independent appraisal. That appraisal shall be performed by an independent appraiser who shall be selected by the Board and who shall be a member of, and apply the standards of, a nationally recognized appraiser organization.

9.7 **Certificates By Board.** The trustee, if any, may rely on the following certifications in writing made by the Board:

- 9.7.1 Whether or not damaged or destroyed property is to be repaired or restored.
- 9.7.2 The amount or amounts to be paid for repairs or restoration and the names and addresses of the parties to whom such amounts are to be paid.

9.8 **Certificates by Attorneys or Title Insurance Companies.** If payments are to be made to Owners or Lenders, then the Board and the trustee, if any, shall obtain and may rely on a title insurance company's or attorney's title certificate or a title insurance policy based on a search of the Official Records of the County Recorder, stating the names of the Owners and the Lenders.

9.9 **Casualty Destruction of Unit.** In the event of damage or destruction to any Unit, and unless the Owners vote not to build the Unit, the Owner thereof shall reconstruct the same as soon as reasonably practicable and substantially in accord with the original plans and specifications therefor; provided, however, that any such Owner may, with the written consent of the Board, reconstruct or repair the same pursuant to new or changed plans and specifications. In the event the Board fails to approve or disapprove such changed plans and specifications within sixty days of the receipt thereof, they shall be deemed to have been approved.

ARTICLE 10 - EMINENT DOMAIN

10.1 **Representation by Association.** The Association shall represent the Owners in the event of any threatened condemnation, condemnation proceedings or in negotiations, settlements and agreements with the condemning authority for acquisition of the Common Area, or any part thereof. In furtherance of this purpose, each Owner, by acceptance of a deed to his or her Condominium, irrevocably appoints the Association as their attorney-in-fact to represent the Owners in any condemnation proceeding.

10.2 **Common Area Taking.** In the event of a taking or acquisition of part or all of the Common Area by a condemning authority, the award or proceeds of settlement, less any fees or costs incurred in collection thereof, shall be payable to the Association, or any trustee appointed by the Association, for the use and benefit of the Owners and their Lenders according to the relative values of the Condominiums as determined by an independent appraiser affected by the condemnation where Condominiums are not valued separately by the condemning authority or by the court.

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10.3 **Condominium Unit Taking.** In the event of an award for the taking of any Condominium in the Neighborhood by eminent domain, the respective Owner(s) and Lenders of such Condominium shall be entitled to receive the award for such taking, less any fees and costs incurred in collecting such amount and only up to the fair market value of the Condominium, and after acceptance thereof he or she and the Lender shall be divested of all interest in the Neighborhood if such Owner shall vacate his Condominium as a result of such taking. The remaining Owners shall decide by majority vote whether to rebuild or repair the Neighborhood, or take other action. The remaining portion of the Neighborhood shall be resurveyed, if necessary, and this Restated Declaration shall be amended to reflect such taking and to readjust proportionately the percentages of undivided interest of the remaining Owners in the Neighborhood based on the number of Units remaining in the Neighborhood.

10.4 **Substantial Taking.** If there is a substantial taking of the Neighborhood (more than fifty percent), the Owners may terminate the legal status of the Neighborhood and, if necessary, bring a partition action under California Civil Code section 1359 or any successor statute, on the election to terminate by fifty-one percent of the total voting power of the Association. The proceeds from the partition sale, less any costs or fees incurred in collection thereof, shall be distributed to the Owners and their respective Lenders in proportion to the fair market values of the Condominiums.

ARTICLE 11 - RIGHTS OF LENDERS

11.1 **General.** No breach of any of the covenants, conditions and restrictions herein contained, nor the enforcement of any lien provisions herein, shall render invalid the lien of any First Mortgage on any Unit made in good faith and for value, but all of said covenants, conditions and restrictions shall be binding upon and effective against any Owner whose title is derived through foreclosure or trustee's sale, or otherwise.

11.2 **No Right of First Refusal.** This Restated Declaration neither contains nor shall be amended to contain any provision creating a "right of first refusal" to the Association before a Unit can be sold. Should any such rights nevertheless be created in the future, such rights shall not impair the rights of any First Lender to: (a) foreclose or take title to a Unit pursuant to the remedies provided in the mortgage, (b) accept a deed (or assignment) in lieu of foreclosure in the event of a default by a mortgagor, or (c) sell or lease a Unit acquired by the Lender.

11.3 **Unpaid Dues or Charges.** Where the Lender of a First Mortgage of record or other purchaser of a Unit obtains title to the same pursuant to the remedies in the Mortgage or as a result of foreclosure, such acquirer of title, his successors and assigns, shall not be liable for the share of the common expenses or assessments made by the Association chargeable to such Unit which became due prior to the acquisition of title to such Unit by such acquirer. Such unpaid share of common expenses or assessments shall be deemed to be common expenses collectible from all of the Units including such acquirer, his successors and assigns.

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11.4 **Action Requiring Lender Approval.** Except as provided by statute in case of condemnation or substantial loss to the Condominiums and Common Area, unless at least two-thirds of the First Lenders (based upon one vote for each mortgage owned), or two-thirds of the voting power of the Association have given their prior written approval, the Association and/or the Owners shall not be entitled to:

- 11.4.1 By act or omission seek to abandon, or terminate the Neighborhood as a condominium Neighborhood (except for abandonment or termination provided by law in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain).
- 11.4.2 Change the pro rata interest or obligations of any individual Condominium for the purpose of (i) levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards, or (ii) determining the pro rata share of ownership of each Condominium in the Common Area, provided that no Owner's undivided interest in the Common Area may be changed without the consent of that Owner.
- 11.4.3 Partition or subdivide any Condominium.
- 11.4.4 By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Area, or any property owned, directly or indirectly, by the Association (the granting of easements for public utilities or other public purposes consistent with the intended use of the Common Area by the Association is not a transfer in the meaning of this clause).
- 11.4.5 Use hazard insurance proceeds for losses to any of the Neighborhood (whether to Condominiums or to Common Area) for other than the repair, replacement or reconstruction of such property.

11.5 **Payment of Taxes and Insurance.** First Lenders may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Area property and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for such Common Area property. First Lenders making such payments shall be owed immediate reimbursement from the Association.

11.6 **Priority of Proceed or Award Distribution.** Any other provision herein contained to the contrary notwithstanding, no provision of the Governing Documents shall give an Owner, or any other party, priority over any rights of the First Lender pursuant to its Mortgage in the case of a distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

11.7 **Notification of Lender.** Upon written request to the Association, identifying the name and address of the holder, insurer or guarantor and the Unit number or address, any Eligible Lender will be entitled to timely written notice of:

- 11.7.1 Any condemnation loss or any casualty loss which affects a material portion of the Neighborhood or the Unit insured or guaranteed by such Eligible Lender;
- 11.7.2 Any default in the performance by an Owner of any obligation under the Governing Documents not cured within sixty days;
- 11.7.3 Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and
- 11.7.4 Any proposed action which would require the consent of a specified percentage of Eligible Lenders as required by the Governing Documents.

11.8 **Termination of Professional Management.** Provided professional management has previously been required by any Eligible Lender, any decision to establish self-management by the Association shall require the consent of at least sixty-seven percent of the voting power of the Association and at least fifty-one percent of Eligible Lenders; provided that so long as any Mortgage which is a lien on a Unit is insured or guaranteed by the Federal Housing Administration, any termination and failure to replace professional management shall require the prior written approval of the Federal Housing Administration.

11.9 **Inspection of Documents, Books and Records.** The Association shall make available to Eligible Mortgage Holders, current copies of the Governing Documents and the accounting books, records and financial statements of the Association. "Available" means available for inspection, upon request, during normal business hours or under other reasonable circumstances.

11.10 **Non-Curable Breach.** Any Lender who acquires title to a Unit by foreclosure or by deed in lieu of foreclosure or assignment-in-lieu of foreclosure shall not be obligated to cure any breach of this Restated Declaration that is non-curable or of a type that is not practical or feasible to cure.

11.11 **Loan to Facilitate.** Any First Mortgage given to secure a loan to facilitate the resale of a Unit after acquisition by foreclosure or by a deed-in-lieu of foreclosure or by an assignment-in-lieu of foreclosure shall be deemed to be a loan made in good faith and for value and entitled to all of the rights and protections of this Article.

11.12 **Lenders Furnishing Information.** Any Lender shall be entitled and authorized to furnish information to the Board concerning the status of any Mortgage.

11.13 **Financial Statement.** Any First Lender shall be entitled, on written request therefor, to have the Association provide an audited financial statement for the immediately preceding fiscal year, which statement shall be furnished within a reasonable time following such request.

11.14 **Termination without Substantial Destruction.** Except as provided by statute or by other provision of the Governing Documents in case of substantial destruction or condemnation of the Neighborhood, the consent of at least sixty-seven percent of the voting power of the Association and the approval of fifty-one percent of Eligible Lenders shall be required to terminate the Neighborhood; provided that if termination is for reasons other than substantial destruction or condemnation, the agreement of sixty-seven percent Eligible Lenders is required.

ARTICLE 12 - ENFORCEMENT

12.1 **Right to Enforce; Remedies.** The Association or any Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the Governing Documents. Each Owner of a Condominium shall have a right of action against the Association or any Owner for failure to comply with the provisions of the Governing Documents. The remedies provided for herein are to be considered cumulative and the use of one remedy shall not preclude the use of any other.

12.2 **Nuisance.** The result of every act or omission, whereby any provision, condition, restriction, covenants, easement, or reservation contained in the Governing Documents is violated in whole or in part, is declared to be and constitute a nuisance, and every remedy allowed by law or equity against a nuisance, either public or private, shall be applicable against every such result and may be exercised by any Owner and the Association. Each remedy provided herein shall be cumulative and not exclusive.

12.3 **Failure to Enforce.** Failure by the Association or any Owner to enforce any provisions of the Governing Documents shall in no event be deemed a waiver of the right to do so thereafter.

12.4 **Violation of Law.** Any violation of any state, municipal or local law, ordinance or regulation pertaining to the ownership, occupation or use of any Condominium within the Neighborhood is declared to be a violation of the Governing Documents and subject to any or all of the enforcement procedures herein set forth.

12.5 **Compliance with Statute.** All activities to enforce the provisions of the governing documents shall be conducted in accordance with all applicable laws, statutes and ordinances. This Section shall apply to both the Association and to all Owners.

ARTICLE 13 - COMMUNITY ASSOCIATION

13.1 **Easement to Community Association.** The officers, agents, employees and independent contractors of the Community Association shall have a nonexclusive easement to enter upon the real property, or any portion thereof, constituting the Neighborhood for the purpose of performing or satisfying the duties and obligations of the Community Association as set forth in the Community Declaration, the Community Bylaws, the Community Articles and the rules and regulations of the Community Board and the Community Architectural Committee.

13.2 **Supremacy of Community Declaration.** In addition to all of the rights and obligations which have been conferred or imposed upon the Association pursuant to this Restated Declaration, the Bylaws or the Articles, the Association shall be entitled to exercise any of the rights conferred upon it and be subject to all of the obligations imposed upon it pursuant to the Community Declaration, the Community Bylaws or the Community Articles. The Association shall also be subject to all superior rights and powers which have been conferred upon the Community Association pursuant to the Community Declaration, the Community Bylaws and the Community Articles.

13.2.1 Each Owner and such Owner's Condominium(s) shall be subject to all of the covenants, conditions, restrictions and provisions contained in the Community Declaration.

13.2.2 In the event of any conflict between any of the covenants, conditions, restrictions or provisions of this Restated Declaration, the Bylaws or the Articles with any of the covenants, conditions, restrictions or provisions of the Community Declaration, the Community Bylaws or the Community Articles, then, in such event, the covenants, conditions, restrictions and provisions of the Community Declaration, the Community Bylaws and the Community Articles shall govern and prevail.

13.3 **Enforcement.** A breach of any of the limitations, restrictions, conditions and covenants set forth in this Restated Declaration may be enjoined, abated or remedied by appropriate legal proceedings by the Community Association. The Community Association shall be deemed to be a person who may enforce the provisions of this Restated Declaration to the same extent as the Board or any Owner. The failure of the Community Association to enforce any of said limitations, restrictions, conditions or covenants shall not constitute a waiver of the right to enforce the same thereafter. No liability shall be imposed or, or incurred by, the Community Association as a result of such failure. The prevailing party in any action at law or in equity instituted by the Community Association to enforce or interpret said limitations, restrictions, conditions or covenants, shall be entitled to all costs incurred in connection therewith, including without limitation, reasonable attorneys' fees.

ARTICLE 14 - AMENDMENTS

14.1 Owner Approval of Amendments. Subject to Sections 14.2, 14.4, and 14.6 below, this Restated Declaration may be amended by the vote or written consent of Owners representing a majority of the voting power of the Association; provided, however, that the percentage of the voting power necessary to amend a specific clause or provision of this Restated Declaration shall not be less than the percentage of affirmative votes prescribed for action to be taken under that clause or provision.

An amendment becomes effective after (a) the approval of the required percentage of Owners has been given, (b) that fact has been certified in the form of a written document executed and acknowledged by an Officer designated by the Association for that purpose or, if no such designation is made, by the President of the Association and (c) the document has been recorded in San Diego County.

14.2 Approval of Specified Amendments. Notwithstanding Section 14.1 above, the consent of a majority of the voting power of the Association and the approval of fifty-one percent of Eligible Lenders shall be required to add or amend (i) any provision of this Restated Declaration which is for the express benefit of holders or insurers of First Mortgages, or (ii) any material provisions of this Restated Declaration which establish, provide for, govern or regulate:

- 14.2.1 Voting rights.
- 14.2.2 Increases in assessments that raise the previously assessed amount by more than twenty-five percent, assessment liens or the priority of assessment liens.
- 14.2.3 Reductions in reserves for maintenance, repair and replacement of the Common Area.
- 14.2.4 Responsibility for maintenance and repairs.
- 14.2.5 Reallocation of interests in the Common Area or Exclusive Use Common Area, or rights to their use.
- 14.2.6 Redefinition of any Unit boundaries.
- 14.2.7 Convertibility of Units into Common Area or vice versa.
- 14.2.8 Expansion or contraction of the Neighborhood, or the addition, annexation, or withdrawal of property to or from the Neighborhood.
- 14.2.9 Hazard or fidelity insurance requirements.

- 14.2.10 Imposition of any restrictions on the leasing of Units.
- 14.2.11 Imposition of any restrictions on an Owner's right to sell or transfer his or her Unit.

14.3 **Eligible Lender Approval Response.** An Eligible Lender who receives a written request to approve additions or amendments by first class mail, addressed to the address provided by such Eligible Lender, who does not deliver or post to the requesting party a negative response within thirty days after the notice of the proposed addition or amendment, shall be deemed to have approved such request. No Lender may charge a fee in connection with reviewing a request for a response. Any response from a Lender which only requests a fee for review shall not be deemed a "negative response" for the purposes of determining Lender consent within the meaning of this Section.

14.4 **Amendment of Restated Declaration or Bylaws by Board Vote.** The Board of Directors shall have the power to amend this Restated Declaration or the Bylaws, as the case may be, but only as this Section permits. By a majority vote of the full Board, the Board shall have the power to prepare and, in the case of the Restated Declaration, to record an amendment for the following purposes:

- 14.4.1 To correct any printing or grammatical error or omission in this Restated Declaration or Bylaws.
- 14.4.2 To make any change in the Restated Declaration or Bylaws required by a change in any applicable law, which obligates the Association, the Board or the Owners to conform their conduct with the terms of the law.
- 14.4.3 To make any change in the Restated Declaration or Bylaws needed to comply with any requirements of an Institutional Lender.

If the Board approves an amendment using the procedure in this subparagraph 14.4.2 or 14.4.3, the amendment shall not be recorded or filed until the following procedure is implemented. The Board shall first send notice of such action to the Owners, which notice shall include the text of the proposed amendment and an opinion from legal counsel that the proposed change in the Governing Documents is either required by law or by an Institutional Lender. An amendment shall be considered ratified, unless within thirty days after the date such notice is sent to the Owners, the Owners entitled to cast twenty percent of the votes in the Association, sign a written petition to reconsider the Board's action and file it with the Board. If such a petition is filed, the Board shall call a special meeting of the Members to reconsider the Board's action. At the meeting, unless a majority of the total voting power of the Association rejects the proposed amendment, the amendment shall be considered ratified, whether or not a quorum is present at the special meeting.

This section shall not restrict the powers of the Owners to amend this Restated Declaration or the Bylaws by any other method, but is intended to authorize a simple

process for amendment where the property rights of Owners are not materially or adversely affected.

14.5 **Statute of Limitations to Challenge Amendments.** No action to challenge the terms or validity of any amendment to this Restated Declaration or to the Bylaws may be made more than one year after the recording date in the case of an amendment to the Restated Declaration, or more than one year after the official tally of the vote in the case of an amendment to the Bylaws.

14.6 **Community Approval.** This Restated Declaration shall not be amended, modified, or rescinded without the prior written consent of the Community Board. Such consent shall be attached to any amendment and recorded with the amendment.

ARTICLE 15 - GENERAL PROVISIONS

15.1 **Term.** The provisions of this Restated Declaration shall continue in effect for a term of fifty years from the date of execution. Thereafter, it shall be automatically extended for successive periods of ten years, until the membership of the Association decides to terminate it.

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

15.3 **Severability; Invalidity.** The provisions of this Restated Declaration shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one provision shall not affect the validity or enforceability of any other provision. If for any reason this Restated Declaration is declared completely invalid in its entirety, the Declaration shall be deemed to have survived and thereafter become effective without any further action.

15.4 **Binding.** This Restated Declaration, as well as any amendment thereto and any valid action or directive made pursuant to it, shall be binding on the Owners and their heirs, grantees, tenants, successors, and assigns.

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

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

15.7 **Fair Housing.** Neither Association nor any Owner shall, either directly or indirectly, forbid the conveyance, encumbrance, renting, leasing, or occupancy of the Owner's Unit to any person on the basis of race, color, sex, sexual orientation, religion, ancestry, national origin, age, marital status, physical handicap or any other classification prohibited by law.

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

15.9 **Attorneys' Fees.** In the event an attorney is engaged by the Board to enforce the Governing Documents, the Association shall be entitled to recover from the adverse party to the controversy its actual attorneys' fees and costs so incurred, whether or not such controversy proceeds to litigation. In the event litigation is commenced to enforce the Governing Documents, the prevailing party shall be entitled to its attorneys' fees and costs. Said costs and attorneys' fees shall constitute a lien on the Unit which is enforceable pursuant to Article 4 herein. This Section shall also apply to actual attorneys' fees incurred to collect any post-judgment costs.

15.10 **Variances.** The Board may authorize variances from compliance with any of the architectural or use provisions of this Restated Declaration as follows:

- 15.10.1 Variances may be granted, without limitation, to restrictions upon use contained in Article 5, restrictions on repair and maintenance in Article 6, and architectural restrictions in Article 7, when circumstances such as topography, location, engineering, economy, hardship, aesthetic or environmental considerations warrant.
- 15.10.2 Variances shall be in writing and shall become effective upon final approval by the Board.
- 15.10.3 When a variance is granted, no violation of the Restated Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of a variance shall not operate to waive any of the terms and provisions of this Restated Declaration for any purpose except as to the particular property and particular provision covered by the variance, nor shall it affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting the use of the premises, including, but not limited to, zoning ordinances and lot setback lines or requirements imposed by the County of San Diego or any other governmental authority.
- 15.10.4 The Association may charge a reasonable fee to cover any costs associated with the variance approval process, or for issuance of a variance.

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15.10.5 The Board may enact additional rules and regulations regarding the variance approval process, the circumstances under which a variance may be granted, and the execution of indemnity or other agreements by the Owner as a condition to issuance of a variance.

15.11 **Governing Document Priorities.** In the event of a conflict between the Governing Documents, or any provision thereof, the following documents shall take precedence in the order given: (1) the Articles, (2) the Condominium Plan, (3) this Restated Declaration, (4) the Bylaws, and (5) the Rules and Regulations.

15.12 **Conflict with Statutes.** Provided any federal, state or local statute, law or ordinance is inconsistent with any provision or provisions of the Governing Documents, and compliance with that statute, law or ordinance is mandatory, neither the Association, the Board nor any member thereof shall have any liability for complying with the federal, state or local statute, law or ordinance and not with the inconsistent provision or provisions of the Governing Documents.

15.13 **References to Code Sections.** In the event any of the statutes or laws referenced herein are amended, modified, or otherwise changed, the references herein shall be deemed to refer to the statutes or laws as amended, modified or otherwise changed. If a statute or law is deleted, any reference herein shall be deemed to refer to any successor statute or law.

IN WITNESS WHEREOF, the undersigned has executed this 2004 Amended and Restated Declaration of Restrictions this 27th day of April, 2005, ~~2004~~.

ASSOCIATION:

LOMAS BERNARDO HOMEOWNERS ASSOCIATION, a California nonprofit mutual benefit corporation

By: *William H. Lewis*
President

By: *Thomas S. Kuczyński*
Secretary

STATE OF CALIFORNIA)
)
COUNTY OF SAN DIEGO)

On April 27, 2005 before me, Krystal Avery, Notary Public, personally appeared William Lewis and Thomas Kuczyński,

personally known to me

- OR -

proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.



Krystal Avery
Notary Public

EXHIBIT "A" - NEIGHBORHOOD LEGAL DESCRIPTION

- Phase 1 Lots 3 and 6 as shown on that certain Subdivision Map entitled "Map of Bernardo Heights No. 1" Map No. 9559, City of San Diego, County of San Diego, California recorded in the Office of the San Diego County Recorder on February 20, 1980 as File/Page No. 80-057731.
- Phase 2 Parcel 1 of Parcel Map No. 12951, in the City of San Diego, County of San Diego, State of California, according to Parcel Map recorded in the Office of the County Recorder of San Diego County on October 13, 1983.
- Phase 3 Parcel 1 of Parcel Map No. 12461, in the City of San Diego, County of San Diego, State of California recorded in the Office of the County Recorder of San Diego County on December 3, 1982 as File/Page No. 82-371824.

EXHIBIT "B" - MAINTENANCE LIST

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The following is a listing of the items within the Neighborhood, the maintenance, repair and replacement duty for which Owners and the Association are responsible in accordance with Section 6.2 of the Restated Declaration. This does not eliminate the Owner's responsibility to request and receive architectural approval pursuant to the Governing Documents or supercede the Owner's obligations under Section 6.8 or any other similar provision in the Governing Documents.

COMPONENT(S)	OWNER	ASSOC
Air Conditioning System - Each Unit	X	
Appliances - Built-in	X	
Appliances - Free Standing	X	
Bathtub Waste and Overflow	X	
Cabinets - in Units	X	
Carpeting - in Units	X	
Carport/Driveway/Parking Space - Concrete and Asphalt Surfaces		X
Caulking - Exterior		X
Caulking - Interior	X	
Ceilings	X	
Common Area Improvements		X
Crawl Spaces in Attic (including personal contents)		X
Doorbell - Exterior Components/Button Switch	X	
Doorbell - Interior Components; Wiring	X	
Doors - Entry - Frame & Door	X	
Doors - Entry - Locks and Hardware	X	
Doors - Entry - Painting - Exterior Surface	X	
Doors - Entry - Painting - Interior Surface	X	
Doors - Entry - Weather Stripping/Waterproofing	X	
Doors - Interior	X	

COMPONENT(S)	OWNER	ASSOC
Doors, Screen/Storm/Security	X	
Doors, Sliding Glass	X	
Doors, Sliding Glass - Frame and Tracks	X	
Doors, Sliding Glass - Screen	X	
Drainage Systems (e.g., ditches, catch basins)		X
Drains - Bathtubs, Showers, Sinks	X	
Drains - Curb		X
Drains - Yards		X
Dryer Vents - Cleaning	X	
Dryer Vents - Repair	X	
Drywall - Damage Repairs (e.g., cracks, inside minor localized water damage, dents, holes, etc.)	X	
Drywall - Interior - Replace	X	
Electrical Panel/Circuit Breakers/Interior	X	
Electrical Switches, Sockets, Wall Plates - Interior	X	
Electrical Wiring - Interior	X	
Exhaust Fans	X	
Exterior Building Surfaces		X
Exterior Faucets, Handles, Washers		X
Exterior Lighting Fixtures (Common Area)		X
Fences - Common Area		X
Fences - Individual		X
Fireplace - Chimney - Exterior and Spark Arrestor		X
Fireplace - Chimney Flue	X	
Fireplace - Chimney - Interior - Cleaning	X	
Fireplace - Fire Brick (fire box) ^{1/}	X	

^{1/}Ceramic brick walls of fireplace.

COMPONENT(S)	OWNER	ASSOC
Fireplace - Mantlepiece, Trim and Facing	X	
Floor		X
Floor Coverings - Carpet, Vinyl, Tile and Wood	X	
Front Entry Landings		X
Furnace - Unit Systems	X	
Garage Door Openers	X	
Garage Doors - Replacement		X
Garbage Disposal	X	
Gas Lines - Below Ground		X
Glass - Unit Windows/Doors	X	
Gutters & Downspouts		X
Hose Bibs		X
Insulation		X
Landscaping - Balconies	X	
Landscaping - Common Area; Greenbelt		X
Landscaping - Patios	X	
Lighting Fixtures - Common Areas		X
Lighting Fixtures - Inside Units	X	
Lighting Fixtures - Outside - Front	X	
Lighting Fixtures - Outside - Patio	X	
Linoleum & Vinyl Flooring - Inside Units	X	
Painting - Interior	X	
Patio/Balcony Deck Membranes/Waterproofing		X
Patio/Balcony Deck Railings - Painting (Inside/Outside Surfaces)		X
Patio/Balcony Deck Railings - Replacement		X
Patio/Balcony Painting		X
Planter Boxes - Townhouse Units	X	

COMPONENT(S)	OWNER	ASSOC
Plumbing Fixtures - Interior (Toilets/Tubs/Sinks/Faucets, etc.)	X	
Plumbing Lines - Inside Unit, if not located behind or within walls, floors or ceilings	X	
Plumbing Lines - Located within floors, behind or within walls or ceilings, and in Common Area		X
Pool, Pool Building, Jacuzzi, Equipment		X
Pressure Regulators	X	
Roof Decking		X
Roof Flashing & Other Roofing Components		X
Roof Shingles/Tiles		X
Roof Underlayment		X
Roof Vents		X
Sewer Backups		X
Sewer Lines - Common Use		X
Sewer Lines - Single Use	X	
Sidewalks - Common Areas		X
Slab		X
Sliding Patio Door Flashing/Waterproofing	X	
Sliding Patio Door Frames & Tracks	X	
Sliding Patio Door Hardware	X	
Sliding Patio Doors	X	
Spraying for Household Pests (Ants, Fleas, etc.)	X	
Spraying for Landscaping Pests		X
Streets		X
Stucco Painting/Coloring		X
Stucco Repair & Replacement		X
Toilet - Wax Ring	X	
Trim - Wood - Exterior - Maintenance & Replacement		X

COMPONENT(S)	OWNER	ASSOC
Trim - Wood - Exterior - Painting		X
Walls - Bearing, Studs, Frames, Tiedowns, Other Structural Items		X
Walls - Non-bearing	X	
Wallpaper/Paneling	X	
Water Heater - Common Area		X
Water Heater - Individual	X	
Water Softeners	X	
Window and Slider Screens	X	
Window Flashing/Waterproofing	X	
Window Frames	X	
Window Hardware	X	
Wiring - Cable TV	X	
Wiring - Electrical - From Breaker to Interior	X	
Wiring - Electrical - From Outside to Breaker in Unit	X	
Wiring - Telephone	X	

Lomas Bernardo HOA October of 2009



Frazer Paint Chart:

1. Stucco: Super Flat Exterior Acrylic New Neutral Base CLC 1203A
2. Wood Trim: Super Flat "Newberry" #CLC 1228W
3. Stucco: Flat Acrylic, Base Color "Astron" #CL-2803D
4. Wood Stairs and Patio: 203 Duratec II Flat; Base: Deep-402
B 1Y36.000/48, C 4Y 0.000/48, F 0Y36.00/48