

Requested By:
Bernardo Heights II Recreation Association

THE ORIGINAL OF THIS DOCUMENT
WAS RECORDED ON APR 04, 2014
DOCUMENT NUMBER 2014-0132993
Ernest J. Dronenburg, Jr., COUNTY RECORDER
SAN DIEGO COUNTY RECORDER'S OFFICE
TIME: 10:21 AM

When Recorded, Return To:

Susan Hawks McClintic, Esq.
EPSTEN GRINNELL & HOWELL, APC
10200 Willow Creek Road, Suite 100
San Diego, CA 92131

Above Space for Recorder's Use

2014 AMENDED AND RESTATED

DECLARATION OF RESTRICTIONS

FOR

BERNARDO HEIGHTS II RECREATION ASSOCIATION

A Residential Planned Development Recreation Association

NOTICE

(Govt. Code §12956.1)

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

TABLE OF CONTENTS

RECITALS	1
ARTICLE 1 – DEFINITIONS	3
1.1 “APPLICABLE LAW”	3
1.2 “ARCHITECTURAL RULES”	3
1.3 “ARTICLES”	3
1.4 “ASSESSMENT”	3
1.5 “ASSOCIATION” OR “RECREATION ASSOCIATION”	3
1.6 “BERNARDO HEIGHTS UNIT NO. 11”	4
1.7 “BERNARDO HEIGHTS UNIT NO. 12”	4
1.8 “BERNARDO HEIGHTS UNIT NO. 14”	4
1.9 “BERNARDO HEIGHTS UNIT NO. 24”	4
1.10 “BOARD”	4
1.11 “BYLAWS”	4
1.12 “CAPITAL EXPENDITURE” OR “CAPITAL IMPROVEMENT”	4
1.13 “COMMON EXPENSES”	4
1.14 “COMMUNITY”	4
1.15 “COMMUNITY ARCHITECTURAL COMMITTEE”	5
1.16 “COMMUNITY ARTICLES”	5
1.17 “COMMUNITY ASSESSMENTS”	5
1.18 “COMMUNITY ASSOCIATION”	5
1.19 “COMMUNITY BOARD”	5
1.20 “COMMUNITY BYLAWS”	5
1.21 “COMMUNITY COMMON AREA”	5
1.22 “COMMUNITY DECLARATION”	5
1.23 “COMMUNITY MEMBER”	5
1.24 “COMMUNITY RULES”	5
1.25 “CONDOMINIUM”	5
1.26 “DEVELOPMENT”	5
1.27 “DIRECTOR” OR “DIRECTORS”	5
1.28 “DWELLING”	5
1.29 “ELECTRONIC TRANSMISSION”	6
1.30 “ELIGIBLE LENDER”	6
1.31 “GOVERNING DOCUMENTS”	6
1.32 “IMPROVEMENT”	6
1.33 “LENDER”	6
1.34 “LOT” OR “SEPARATE INTEREST”	6
1.35 “MAJORITY”	6
1.36 “MEMBER”	6
1.37 “MORTGAGE”	6
1.38 “MORTGAGEE” OR “LENDER”	7
1.39 “NOTICE AND HEARING”	7
1.40 “OFFICERS”	7
1.41 “OWNER”	7

1.42	"RECREATION AREA"	7
1.43	"RESTATED DECLARATION" OR "DECLARATION"	7
1.44	"RULE"	8
1.45	"SUB-ASSOCIATION"	8
1.46	"VOTING POWER"	8
1.47	"WRITTEN" OR "IN WRITING"	8
ARTICLE 2 - THE DEVELOPMENT		8
2.1	RECREATION ASSOCIATION DEVELOPMENT SUBJECT TO RESTATED DECLARATION	8
2.2	SUPREMACY OF RECREATION ASSOCIATION DECLARATION	8
2.3	DUAL FUNCTIONS OF RECREATION ASSOCIATION	8
2.4	EQUITABLE SERVITUDES	9
2.5	ANNEXATION AND DE-ANNEXATION	9
2.6	PROHIBITION AGAINST SEVERANCE OF ELEMENTS	9
2.7	DRAINAGE EASEMENTS	9
2.8	RECREATION ASSOCIATION EASEMENTS OVER LOTS	10
2.9	OWNER EASEMENTS OVER RECREATION AREA	10
2.10	RECREATION ASSOCIATION GRANT OF EASEMENTS	10
2.11	ENCROACHMENT EASEMENTS	10
2.12	UTILITY EASEMENTS	10
ARTICLE 3 – THE RECREATION ASSOCIATION		11
3.1	ORGANIZATION OF THE ASSOCIATION	11
3.2	BOARD OF DIRECTORS	11
3.3	MEMBERSHIP	11
3.4	MEMBERSHIP CLASS; VOTING RIGHTS	11
3.5	GENERAL POWERS AND AUTHORITY	11
3.6	DUTIES OF THE ASSOCIATION	13
3.7	NON-LIABILITY OF BOARD	13
ARTICLE 4 – THE COMMUNITY ASSOCIATION		13
4.1	EFFECT OF COMMUNITY ASSOCIATION AND ITS GOVERNING DOCUMENTS	13
4.2	EASEMENT TO COMMUNITY ASSOCIATION	14
4.3	SUBORDINATION OF ASSESSMENT LIEN	14
4.4	COMMUNITY ASSOCIATION ASSESSMENTS	14
4.5	ENFORCEMENT	14
4.6	SUPREMACY OF COMMUNITY DECLARATION	14
ARTICLE 5 - ASSESSMENTS AND COLLECTION PROCEDURES		15
5.1	COVENANT TO PAY	15
5.2	PURPOSE OF ASSESSMENTS	15
5.3	REGULAR ASSESSMENTS	15
5.4	SPECIAL ASSESSMENTS	16
5.5	LIMITATIONS ON REGULAR AND SPECIAL ASSESSMENTS	16
5.6	OWNER NOTICE OF REGULAR AND SPECIAL ASSESSMENTS	16
5.7	INDIVIDUAL ASSESSMENTS	16
5.8	MONETARY PENALTY ASSESSMENTS	17

5.9	<i>COSTS, LATE CHARGES AND INTEREST</i>	17
5.10	<i>PRIORITY OF PAYMENTS</i>	17
5.11	<i>NO OFFSETS</i>	17
5.12	<i>ENFORCEMENT OF ASSESSMENTS AND LATE CHARGES</i>	17
5.13	<i>PRIORITY OF ASSESSMENT LIEN</i>	18
5.14	<i>STATEMENT OF DELINQUENT ASSESSMENT</i>	19

ARTICLE 6 - USE RESTRICTIONS APPLICABLE TO THE ENTIRE DEVELOPMENT.....19

6.1	<i>GENERAL</i>	19
6.2	<i>VIOLATION OF APPLICABLE LAW</i>	19
6.3	<i>OFFENSIVE ACTIVITY</i>	20
6.4	<i>HARASSMENT</i>	20
6.5	<i>RECREATION AREA</i>	20
6.6	<i>STORAGE IN RECREATION AREA</i>	21
6.7	<i>EFFECT ON RECREATION ASSOCIATION INSURANCE</i>	21
6.8	<i>DISCHARGE INTO STREETS OR GUTTERS</i>	22
6.9	<i>ALTERING THE RECREATION AREA</i>	22
6.10	<i>MECHANIC'S LIEN</i>	22
6.11	<i>DAMAGE LIABILITY</i>	22
6.12	<i>OWNER RESPONSIBILITY</i>	22

ARTICLE 7 - USE RESTRICTIONS WITHIN LAS BRISAS HOMES.....22

7.1	<i>APPLICABILITY OF ARTICLE</i>	22
7.2	<i>RESIDENTIAL USE OF LOT</i>	22
7.3	<i>NEW BUILDINGS</i>	23
7.4	<i>TRASH CONTAINERS AND COLLECTION</i>	23
7.5	<i>BALCONIES AND DECKS</i>	23
7.6	<i>NO SECOND-HAND MATERIALS: PAINTING REQUIRED</i>	23
7.7	<i>DILIGENCE IN CONSTRUCTION</i>	23
7.8	<i>TREES</i>	23
7.9	<i>NO ALTERATIONS</i>	23
7.10	<i>FENCES</i>	24
7.11	<i>ANTENNAS AND SATELLITE DISHES</i>	24
7.12	<i>DRYING YARDS</i>	24
7.13	<i>TENTS, SHACKS AND OUTBUILDINGS</i>	24
7.14	<i>VEHICLE USE AND PARKING</i>	24
7.15	<i>SIGNS</i>	25
7.16	<i>NO WELLS</i>	25
7.17	<i>ANIMAL RESTRICTIONS AND PETS</i>	26
7.18	<i>NO COMMERCIAL ACTIVITY</i>	26
7.19	<i>DRAINAGE</i>	26
7.20	<i>LOT MAINTENANCE</i>	27
7.21	<i>COMPLIANCE WITH ARCHITECTURAL CONTROL</i>	27
7.22	<i>HEIGHT LIMITATION</i>	27
7.23	<i>OBLIGATIONS TO LANDSCAPE</i>	27
7.24	<i>CONSTRUCTION CLEAN UP DEPOSIT</i>	27

7.25	<i>LEASING OR RENTING LOT</i>	28
7.26	<i>MAILBOXES</i>	29
7.27	<i>SUBDIVIDING LOT</i>	29
7.28	<i>RESIDENTIAL USE</i>	29
7.29	<i>NUMBER OF PERSONS</i>	29
7.30	<i>COMPLIANCE WITH LAW</i>	29
7.31	<i>STORAGE OF FLAMMABLE OR HAZARDOUS MATERIALS</i>	29
7.32	<i>EMISSIONS INTO THE AIR</i>	29
7.33	<i>POWER EQUIPMENT</i>	29
7.34	<i>GARAGES</i>	29
7.35	<i>DUTY TO RESTORE LOT</i>	30
7.36	<i>CONDEMNATION OF A LOT</i>	30

ARTICLE 8 - ARCHITECTURAL AND DESIGN CONTROL WITHIN LAS BRISAS HOMES.....30

8.1	<i>APPLICABILITY OF ARTICLE</i>	30
8.2	<i>GENERAL</i>	30
8.3	<i>GENERAL MODIFICATIONS REQUIRING PRIOR APPROVAL</i>	30
8.4	<i>SPECIFIC MODIFICATIONS</i>	31
8.5	<i>ARCHITECTURAL CHANGES NOT REQUIRING PRIOR APPROVAL</i>	31
8.6	<i>PROCEDURE FOR OBTAINING APPROVAL OF ARCHITECTURAL CHANGES</i>	32
8.7	<i>ARCHITECTURAL RULES</i>	33
8.8	<i>STANDARD OF ARCHITECTURAL REVIEW</i>	33
8.9	<i>ARCHITECTURAL COMMITTEE</i>	33
8.10	<i>FEE FOR REVIEW</i>	34
8.11	<i>COMPENSATION</i>	34
8.12	<i>LIABILITY</i>	34
8.13	<i>EFFECT OF OWNER-INSTALLED IMPROVEMENTS</i>	34
8.14	<i>ENFORCEMENT</i>	35
8.15	<i>NON-COMPLIANCE WITH APPLICABLE LAWS</i>	37
8.16	<i>GOVERNMENTAL APPROVAL</i>	37
8.17	<i>CONFLICTS BETWEEN APPLICABLE LAW AND RECREATION ASSOCIATION</i>	37
8.18	<i>VARIANCES</i>	37

ARTICLE 9 – RECREATION ASSOCIATION REPAIR AND MAINTENANCE38

9.1	<i>RECREATION AREA MAINTENANCE</i>	38
9.2	<i>OWNER LIABILITY FOR MAINTENANCE OR DAMAGE.</i>	38
9.3	<i>ACCESS OVER RECREATION AREA</i>	38
9.4	<i>RECREATION AREA DAMAGE CAUSED BY OWNER OR ITEM UNDER CONTROL OF OWNER</i> 39	
9.5	<i>LIMITATION OF LIABILITY</i>	39
9.6	<i>OWNER NOTIFICATION TO RECREATION ASSOCIATION</i>	39

ARTICLE 10 – ASSOCIATION INSURANCE.....39

10.1	<i>FIRE AND CASUALTY INSURANCE</i>	39
10.2	<i>COST OF REPAIR</i>	40
10.3	<i>GENERAL LIABILITY INSURANCE</i>	40

10.4	<i>DIRECTORS AND OFFICERS LIABILITY INSURANCE</i>	40
10.5	<i>FIDELITY COVERAGE</i>	40
10.6	<i>OTHER RECREATION ASSOCIATION INSURANCE</i>	40
10.7	<i>REVIEW OF INSURANCE; NOTICE OF CANCELLATION OR MODIFICATION</i>	41
10.8	<i>QUALIFICATIONS OF INSURANCE CARRIERS</i>	41
10.9	<i>FAILURE TO ACQUIRE INSURANCE</i>	41
10.10	<i>TRUSTEE FOR POLICIES</i>	41
10.11	<i>INSURANCE PREMIUMS</i>	41
10.12	<i>INSURANCE POLICY DEDUCTIBLES</i>	41
10.13	<i>INSPECTION OF POLICIES</i>	42
10.14	<i>OWNER NOTIFICATION OF INSURANCE</i>	42
10.15	<i>INDIVIDUAL OWNER PROPERTY AND LIABILITY INSURANCE</i>	42
ARTICLE 11 - DAMAGE OR DESTRUCTION		42
11.1	<i>DUTY TO RESTORE RECREATION AREA</i>	42
11.2	<i>REPAIR PLANS</i>	42
11.3	<i>INSURANCE PROCEEDS</i>	42
11.4	<i>DISBURSEMENTS TO OWNERS AND LENDERS IF RECREATION ASSOCIATION IS TERMINATED</i>	43
11.5	<i>CERTIFICATES BY BOARD</i>	43
11.6	<i>CERTIFICATES BY ATTORNEYS OR TITLE INSURANCE COMPANIES</i>	43
ARTICLE 12 - EMINENT DOMAIN OF RECREATION AREA		43
ARTICLE 13 - RIGHTS OF LENDERS		43
13.1	<i>GENERAL</i>	43
13.2	<i>NO RIGHT OF FIRST REFUSAL</i>	44
13.3	<i>UNPAID DUES OR CHARGES</i>	44
13.4	<i>ACTION REQUIRING ELIGIBLE LENDER APPROVAL</i>	44
13.5	<i>PAYMENT OF TAXES AND INSURANCE</i>	45
13.6	<i>PRIORITY OF PROCEED OR AWARD DISTRIBUTION</i>	45
13.7	<i>NOTIFICATION OF ELIGIBLE LENDER</i>	45
13.8	<i>TERMINATION OF PROFESSIONAL MANAGEMENT</i>	45
13.9	<i>INSPECTION OF DOCUMENTS, BOOKS AND RECORDS</i>	45
13.10	<i>NON-CURABLE BREACH</i>	46
13.11	<i>LOAN TO FACILITATE</i>	46
13.12	<i>LENDERS FURNISHING INFORMATION</i>	46
13.13	<i>FINANCIAL STATEMENT</i>	46
13.14	<i>TERMINATION WITHOUT SUBSTANTIAL DESTRUCTION</i>	46
ARTICLE 14 – ENFORCEMENT		46
14.1	<i>RIGHT TO ENFORCE; REMEDIES</i>	46
14.2	<i>BOARD DISCRETION WHETHER TO ENFORCE</i>	46
14.3	<i>NUISANCE</i>	46
14.4	<i>FAILURE TO ENFORCE</i>	47
14.5	<i>COMPLIANCE WITH APPLICABLE LAW</i>	47
14.6	<i>NONWAIVER OF REMEDIES</i>	47

ARTICLE 15 – AMENDMENTS	47
15.1 <i>OWNER APPROVAL OF AMENDMENTS</i>	47
15.2 <i>ELIGIBLE LENDER APPROVAL OF AMENDMENTS</i>	48
15.3 <i>ELIGIBLE LENDER APPROVAL RESPONSE</i>	49
15.4 <i>AMENDMENT OF RESTATED DECLARATION OR BYLAWS BY BOARD VOTE</i>	49
15.5 <i>STATUTE OF LIMITATIONS TO CHALLENGE AMENDMENTS</i>	50
ARTICLE 16 - GENERAL PROVISIONS	50
16.1 <i>TERM</i>	50
16.2 <i>SEVERABILITY</i>	50
16.3 <i>BINDING</i>	50
16.4 <i>INTERPRETATION</i>	50
16.5 <i>LIMITATION OF LIABILITY</i>	50
16.6 <i>FAIR HOUSING</i>	50
16.7 <i>NUMBER AND HEADINGS</i>	51
16.8 <i>ATTORNEYS' FEES</i>	51
16.9 <i>GOVERNING DOCUMENT PRIORITIES</i>	51
16.10 <i>CONFLICT WITH APPLICABLE LAWS</i>	51
16.11 <i>REFERENCES TO CODE SECTIONS</i>	51
EXHIBIT “A” – RECREATION ASSOCIATION LEGAL DESCRIPTION	53
EXHIBIT “B” – RECORDED DECLARATIONS, AMENDMENTS AND ANNEXATIONS	54
EXHIBIT “C” – RECREATION AREA LOTS	57
EXHIBIT “D” – CONSENT OF THE COMMUNITY ASSOCIATION	58
EXHIBIT “E” – ORDER GRANTING VERIFIED PETITION TO AMEND DECLARATION OF RESTRICTIONS	59

2014 AMENDED AND RESTATED

DECLARATION OF RESTRICTIONS

FOR

BERNARDO HEIGHTS II RECREATION ASSOCIATION
A Residential Planned Development Recreation Association

THIS 2014 AMENDED AND RESTATED DECLARATION OF RESTRICTIONS is made on the day and year hereinafter written, by Bernardo Heights II Recreation Association, a California nonprofit mutual benefit corporation ("***Recreation Association***"), with reference to the following Recitals.

RECITALS

A. The Recreation Association is a corporation that owns certain Recreation Area lots and whose Members are the Owners of all the residential Lots 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 (collectively "***Development***").

B. The Development was developed as a Planned Development, as defined in Section 1351(k) of the California Civil Code, and consists of five hundred sixty residential Lots and twelve Recreation Area Lots.

C. The Development is currently subject, in whole or in part, to various covenants, conditions, restrictions, rights, reservations, easements, equitable servitudes, liens and charges in the various Declarations, annexations and other recorded documents listed in Exhibit "B" attached to this Restated Declaration and incorporated herein as if set forth in full (hereafter "***Original Declaration***").

D. The Declaration of Restrictions for Bernardo Heights II recorded June 16, 1981 as File/Page No. 81-187472, which is part of the Original Declaration, provides in Article XIV, Section 2 that, so long as there is only one class of members, said document may be amended at any time, and from time to time, if approved by at least sixty-six and two-thirds percent of the total Voting Power of Members of the Recreation Association.

E. The Declaration of Restrictions for Bernardo Heights 12 Condominiums recorded August 20, 1981 as File/Page No. 81-266777, which is also part of the Original Declaration, provides in Article XVII, Section 2 that, after the Class B (or developer) membership has been converted to Class A membership, Articles II, III, IV and V, Section 1 of Article XVI, and Sections 2, 5 and 6 of Article XVII of said document, that are applicable to the Recreation Association only, may be amended at any time and from time to time if approved by at least sixty-six and two-thirds percent of the total Voting Power of Members of the Recreation Association.

F. The Declaration of Covenants, Conditions and Restrictions for Bernardo Heights Unit No. 24 Condominiums recorded June 6, 1985 as File/Page No. 85-200947, which is also part of the Original Declaration, provides in Article XV, Section 2 that, after the Class B (or developer) membership has been converted to Class A membership, Articles II, III, IV and V, Section 14.1 of Article XIV, and Sections 15.2, 15.5 and 15.6 of Article XV of said document, that are applicable only to the Recreation Association, may be amended at any time and from time to time if approved by at least sixty-six and two-thirds percent of the total Voting Power of Members of the Recreation Association.

G. All the Members of the Recreation Association are Class A Members, and there have been no developer (also referred to as "***Declarant***") members of the Recreation Association for 20 years or more.

H. The Recreation Association now desires to amend and restate the Original Declaration and replace it in its entirety with this Restated Declaration, so that any and all provisions that are applicable only to the Recreation Association as found in any parts of the Original Declaration as listed in Exhibit "B" will be amended and superseded by this Restated Declaration. The Recreation Association further desires that, upon recordation of this Restated Declaration, the Recreation Association shall be subject to the covenants, conditions, restrictions, rights, reservations, easements, equitable servitudes, liens, and charges contained herein, and that this Restated Declaration shall take the place of and relate back in time to the recording of the Original Declaration.

I. The undersigned President and Secretary of the Recreation Association certify as required by California Civil Code Section 4275(f) (formerly Civil Code Section 1356), that this Restated Declaration has received the written consent of the Board of Directors of the Community Association of Bernardo Heights as evidenced by the document attached hereto as Exhibit "D" and incorporated herein by this reference, and that they have signed and acknowledged the Restated Declaration.

J. Under California Civil Code Section 4270 (formerly Civil Code Section 1355), an amendment is effective after (1) approval of the percentage of Owners required by the Governing Documents has been given, (2) that fact has been certified in a writing executed and acknowledged by the Recreation Association President if no Officer has been designated in the Declaration for such purpose, and (3) the writing has been recorded in the County in which the Recreation Association is located.

K. The Association was unable to obtain the amount of votes necessary to amend the Declaration. Therefore, on December 17, 2013, the Association filed a Petition pursuant to the authority of California Civil Code section 1356 in the San Diego Superior Court as Case Number 37-2013-00080248-CU-PT-CTL (hereafter "Petition"). The Petition sought a court order approving the 2014 Amended and Restated Declaration of Restrictions. The court issued an order granting the Petition on March 14, 2014. A copy of the court's order is attached hereto as Exhibit "E" and is incorporated by reference. Pursuant to California Civil Code Section 4275(f), upon recordation of the amendment and court order, the declaration shall have the same force and effect as if the amendment were adopted in compliance with every requirement imposed by the governing documents.

NOW, THEREFORE, the Recreation Association hereby declares that all of the Development 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 Recreation Association. All provisions of this Restated Declaration shall constitute covenants running with the land and enforceable equitable servitudes upon the Development, and shall be binding on and for the benefit of all of the Recreation Association and all parties having or acquiring any right, title, or interest in all or any part of the Development, including the heirs, executors, administrators, and assigns of these parties and all subsequent owners and lessees of all or any part of the residential Lots or parcels subject to this Restated Declaration.

DECLARATION

ARTICLE 1 – DEFINITIONS

1.1 ***“Applicable Law”*** means the statutes and public laws and ordinances in effect at the time a provision of the Governing Documents is applied, and pertaining to the subject matter of the Governing Document provision. Statutes and ordinances specifically referenced in the Governing Documents are “Applicable Law” on the date of the Governing Document, and are not intended to apply to the Recreation Association if they cease to be applicable by operation of law, or if they are replaced or superseded by one or more other statutes or ordinances.

1.2 ***“Architectural Rules”*** mean the Rules regulating modifications and alterations to the Lots adopted pursuant to Section 8.7 herein.

1.3 ***“Articles”*** [Corp. Code §5035] means the Articles of Incorporation of Bernardo Heights II Recreation Association, filed in the Office of the Secretary of State of the State of California on March 19, 1981 as File No. 1021213 and any amendments thereto now existing or hereafter adopted.

1.4 ***“Assessment”*** means a charge against a particular Owner and the Owner's Lot, representing a portion of the Common Expenses or other charges that are to be paid by each Owner to the Association, as more fully set forth in Article 5. A ***“Regular Assessment”*** is the amount periodically assessed to each Owner throughout a given fiscal year to cover the budgeted operating expenses for that fiscal year, established as set forth in Section 5.3. A ***“Special Assessment”*** is an amount levied against Owners, as described in Section 5.4 when the Regular Assessments are insufficient to cover the financial needs of the Association. An ***“Individual Assessment”*** is an amount levied against a specific Owner, as described in Section 5.7.

1.5 ***“Association” or “Recreation Association”*** [Civil Code §§1351(a) & 1353] means Bernardo Heights II (*i.e.*, Roman numeral two) Recreation Association, a California nonprofit mutual benefit corporation created for the purpose of managing a common interest development.

1.6 ***“Bernardo Heights Unit No. 11”*** means Lots 1 through 99, inclusive, and Lots 101 and 102 of Bernardo Heights Unit No. 11 (*i.e.*, Arabic numeral eleven) according to Map thereof No. 9968 filed in the Office of the County Recorder of San Diego County, California, on January 14, 1981. Bernardo Heights Unit No. 11 is sometimes referred to as Las Brisas Homes.

1.7 ***“Bernardo Heights Unit No. 12”*** means Lots 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117 and 118 of Bernardo Heights Unit No. 12 according to Map thereof No. 9970 filed in the Office of the County Recorder of San Diego County, California, on January 15, 1981. Bernardo Heights Unit No. 12 is sometimes referred to as Las Brisas Condos.

1.8 ***“Bernardo Heights Unit No. 14”*** means Lots 1 through 129, inclusive, of Bernardo Heights Unit No. 14 according to Map thereof No. 11155 filed in the Office of the County Recorder of San Diego County, California, on February 27, 1985. Bernardo Heights Unit No. 14 is sometimes referred to as Las Flores Homes.

1.9 ***“Bernardo Heights Unit No. 24”*** means Lots 1 through 8, inclusive, of Bernardo Heights Unit No. 24 according to Map thereof No. 11156 filed in the Office of the County Recorder of San Diego County, California, on February 27, 1985. Bernardo Heights Unit No. 24 is sometimes referred to as Las Flores Condos.

1.10 ***“Board”*** [Corp. Code §5038] means the Board of Directors of the Recreation Association. One or more members of the Board of Directors may be referred to as a “Director” or “Directors.”

1.11 ***“Bylaws”*** [Corp. Code §5037] means the Bylaws of the Recreation Association and any amendments thereto.

1.12 ***“Capital Expenditure” or “Capital Improvement”*** means the use of Recreation Association funds to construct or build an addition to the Recreation Association, where such use of funds is optional under the Governing Documents, rather than mandatory, and is not otherwise required by Applicable Law. For purposes of the Governing Documents, the maintenance, repair or replacement of Improvements within the Development which the Recreation Association is obligated to maintain, using materials of similar kind, or using materials which are needed due to changes in building or fire codes or due to discontinued fabrication or unavailability, or using materials that have substantially similar cost over the useful life of the material shall not be considered a Capital Expenditure or Capital Improvement, notwithstanding that such expenditure or Improvement may be considered a Capital Expenditure or Capital Improvement for tax purposes.

1.13 ***“Common Expenses”*** means and includes the actual and estimated expenses of maintaining, repairing and otherwise operating the Recreation Association, and any reasonable reserve for such purposes as found and determined by the Board and all sums designated Common Expenses by or pursuant to the Governing Documents.

1.14 ***“Community”*** means The Community of Bernardo Heights of which the Development is a constituent part, being all of the real property subject to the Community Declaration or annexed thereto.

1.15 ***“Community Architectural Committee”*** means the Community Architectural Committee established pursuant to Article VIII of the Community Declaration.

1.16 ***“Community Articles”*** means the Articles of Incorporation of the Community Association, as they may from time to time be amended.

1.17 ***“Community Assessments”*** means the assessments levied by the Community Association pursuant to the Community Declaration.

1.18 ***“Community Association”*** means The Community Association of Bernardo Heights as defined and established in the Community Declaration.

1.19 ***“Community Board”*** means the Board of Directors of the Community Association.

1.20 ***“Community Bylaws”*** means the Bylaws of the Community Association duly adopted by the Community Board.

1.21 ***“Community Common Area”*** means all real property in which the Community Association owns an interest for the common use and benefit of the Community Members, their lessees, guests, invitees or patrons. The Community Common Area may include interests held by lease or easement as well as estates in fee.

1.22 ***“Community Declaration”*** means the Declaration of Covenants, Conditions and Restrictions for The Community of Bernardo Heights recorded on September 30, 1980, Official Records of San Diego County, as File No. 80-319018, and such amendments thereto as shall from time to time be recorded.

1.23 ***“Community Member”*** means any entity holding membership in the Community Association.

1.24 ***“Community Rules”*** means the Rules adopted by the Community Board pursuant to Section 3.8 of the Community Declaration, or as it may be amended from time.

1.25 ***“Condominium”*** [Civil Code §1351(f)] means an estate in real property, as defined in California Civil Code Section 1351, consisting of an undivided interest in common in a portion of the Development coupled with a separate interest in space called a Unit, the boundaries of which are shown and described on a recorded Condominium Plan.

1.26 ***“Development”*** means the entire common interest development as described in Exhibit “A” attached hereto, including all Improvements thereon.

1.27 ***“Director” or “Directors”*** [Corp. Code §5047] means one or more members of the Recreation Association’s Board of Directors.

1.28 ***“Dwelling”*** means a residential structure or structures on a Lot or within a condominium development, including any enclosed yard, patio areas and garages.

1.29 ***“Electronic Transmission”*** [Corp. Code §§20 & 21] means a communication delivered by facsimile, electronic mail or other means of electronic communication as more fully described in California Corporations Code sections 20 and 21.

1.30 ***“Eligible Lender”*** means a holder, insurer or guarantor of a First Mortgage that provides a written request to the Recreation Association stating the name and address of such holder, insurer or guarantor and the address, legal description or other information identifying the Lot or condominium, and requesting notice to which such Eligible Lender is due under the Governing Documents.

1.31 ***“Governing Documents”*** [Civil Code §1351(j)] means this Restated Declaration and any other documents such as the Articles, Bylaws, Rules and Regulations, or Architectural Rules which govern the operation of the Recreation Association.

1.32 ***“Improvement”*** means any structure or appurtenances thereto of every type and kind, including but not limited to, buildings, walkways, sprinkler pipes, carports, swimming pools, roads, driveways, parking areas, fences, screening walls, block walls, retaining walls, awnings, stairs, decks, landscaping, hedges, windbreaks, exterior surfaces of any visible structure and the paint or finish on such surfaces, planted trees and shrubs, poles, signs and water softener fixtures or equipment.

1.33 ***“Lender”*** means a person or entity 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 Lender 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 Lender that has priority over all other mortgages or holders of mortgages or deeds of trust encumbering the same Separate Interest or other portions of the Recreation Association. The term ***“Beneficiary”*** shall be synonymous with the term ***“Lender.”***

1.34 ***“Lot” or “Separate Interest”*** [Civil Code §1351(l)] means all the residential lots or residential parcels of land within the Development, including all Improvements now or hereafter constructed or existing thereon. Lot shall also be deemed to mean each Condominium, including the Condominium Units, shown on a recorded Condominium Plan within the Development, but Lot does not mean or include the Recreation Area.

1.35 ***“Majority”*** means more than half of the number from which majority is calculated.

1.36 ***“Member”*** [Corp. Code §5056] means every person or entity entitled to membership in the Recreation Association as provided in this Restated Declaration and the Bylaws.

1.37 ***“Mortgage”*** means a mortgage or deed of trust encumbering a Lot or any other portion of the Recreation Association. ***“First Mortgage”*** means a mortgage that has priority over

all other mortgages encumbering the same Separate Interest or other portions of the Recreation Association.

1.38 ***"Mortgagee" or "Lender"*** means a Person to whom a Mortgage is made and includes the beneficiary of a deed of trust and any institutional guarantor or insurer of a Mortgage. ***"Institutional Mortgagee"*** means a Mortgagee that is a financial intermediary or depository, such as a bank, savings and loan, or mortgage company, that is chartered under federal or state Law and that lends money on the security of real property or invests in such loans, or any insurance company or governmental agency or instrumentality, including the Veterans Administration ("VA"), Federal Housing Administration ("FHA"), Federal National Mortgage Association ("FNMA"), the Federal Home Loan Mortgage Corporation ("FHLMC"), and the Government National Mortgage Association ("GNMA"). ***"First Mortgagee"*** means a Mortgagee that has priority over all other Mortgagees or holders of Mortgages or liens encumbering the same Separate Interest or other portions of the Development. The term ***"Beneficiary"*** shall be synonymous with the term ***"Mortgagee."***

1.39 ***"Notice and Hearing"*** [Civil Code §1363(h) & Corp. Code§ 7341] means notice to an Owner and an opportunity for the Owner to be heard, prior to the imposition of any fine, penalty or other disciplinary measure, in the manner set forth in the Bylaws or other Governing Documents and in compliance with any Applicable Law.

1.40 ***"Officers"*** [Civil Code §1363(h) & Corp. Code§ 7341] mean the Officers of the Recreation Association appointed by the Board of Directors pursuant to the Bylaws.

1.41 ***"Owner"*** means any natural person, firm, corporation, partnership, trust or other entity that owns a fee simple interest in any Separate Interest, as shown on the most recent deed for the Separate Interest recorded in the Office of the San Diego County Recorder, including the Recreation Association, and any contract sellers under recorded contracts of sale. "Owner" shall not include any persons or entities that hold an interest in a Lot 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 legal 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.

1.42 ***"Recreation Area"*** [Civil Code §1363(b)] means those lots and all improvements thereon owned by the Recreation Association for the common use and enjoyment of the Owners, consisting of the Lots more fully described in Exhibit "C" attached hereto. "Recreation Area" has the same meaning as "Common Area" under Civil Code §1363(b).

1.43 ***"Restated Declaration" or "Declaration"*** [Civil Code §1351(h)] means this Amended and Restated Declaration of Restrictions and any amendments hereto. The term ***"Original Declaration"*** refers to the recorded documents that this Restated Declaration is amending and replacing.

1.44 **"Rule"** [Civil Code §1357.100] means any rule, including the Architectural Rules, for the Recreation Association regulating the use of the Lots, the Recreation Areas and any facilities located thereon adopted by the Board pursuant to Subsection 3.5.2 and Section 8.7 herein. "Rules" has the same meaning as "Operating Rule" under Civil Code §1357.100.

1.45 **"Sub-association"** means a common interest development whose boundaries lie entirely within the boundaries of the Development and whose owners and members are also Owners and Members of the Recreation Association.

1.46 **"Voting Power"** [Corp. Code §5078] means the total number of votes eligible to be cast in the Recreation Association based on one vote per Lot, less the votes of any Lot where voting rights have been suspended. If no voting rights have been suspended, total Voting Power in the Development is 560 consisting of 96 votes for 96 residential Lots in Bernardo Heights Unit No. 11, 186 votes for 186 residential Lots (*i.e.*, condominium units) in Bernardo Heights Unit No. 12, 128 votes for 128 residential Lots in Bernardo Heights Unit No. 14 and 150 votes for 150 residential Lots (*i.e.*, condominium units) in Bernardo Heights Unit No. 24.

1.47 **"Written" or "In Writing"** [Corp. Code §5079] includes facsimile and telegraphic communication, including an Electronic Transmission that satisfies the requirements of Corporations Code Section 20.

ARTICLE 2 - THE DEVELOPMENT

2.1 ***Recreation Association Development Subject to Restated Declaration.*** The entire Development shall be subject to this Restated Declaration upon recordation hereof.

2.2 ***Supremacy of Recreation Association Declaration.*** Except as otherwise provided in Section 4.6 as it pertains to the recorded covenants applicable to the Community Association of Bernardo Heights, if there is any conflict among 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 any articles of incorporation, recorded covenants or bylaws of any Sub-association located within Bernardo Heights Unit No. 11, Bernardo Heights Unit No. 12, Bernardo Heights Unit No. 14, or Bernardo Heights Unit No. 24, as such properties are legally described in Exhibit "A" attached hereto, then, in such event, the covenants, conditions, restrictions and provisions of this Declaration, the Bylaws and the Articles of the Recreation Association shall govern and prevail.

This Restated Declaration is intended to consolidate into this document all provisions that are applicable and relevant to the Recreation Association that are found in all of the declarations and annexation documents identified in Exhibit "B" attached hereto, and to amend and supersede such provisions in each of those documents.

2.3 ***Dual Functions of Recreation Association.*** The Recreation Association has two main functions. First, it is responsible for operation and maintenance of the clubhouse, pool and other recreational facilities on the Recreation Area lot known as Lot 97 in Bernardo Heights Unit No. 11. It also owns various other Recreation Area lots as described in Exhibit "C," although

these lots are subject to maintenance easements in favor of the Community Association which maintains the landscaping and irrigation facilities on these lots.

Second, the Recreation Association was originally responsible for architectural control within Bernardo Heights Unit Nos. 11, 12, 14 and 24. However, the Members amended the Original Declaration on December 20, 2000 as Doc. No. 2000-0695136 to establish separate architectural committees in Bernardo Heights Unit Nos. 12, 14 and 24 that now operate independently from the Recreation Association. The Recreation Association continues to be responsible for the Architectural Committee and architectural control provisions within Bernardo Heights Unit Nos. 11. It may also enforce other restrictions in the declaration that apply only within Bernardo Heights Unit Nos. 11.

In this Declaration, the following articles and/or individual sections apply to all of Bernardo Heights Unit Nos. 11, 12, 14 and 24: Article 1, Article 2, Article 3, Article 4, Article 5, Article 6, Article 9, Article 10, Article 11, Article 12, Article 13, Article 14, Article 15, except for Section 15.1.2, Article 16 and Exhibits A, B and C. Because the Owners in Bernardo Heights Unit Nos. 12, 14 and 24 each have their own Sub-associations with their own use restrictions and architectural control and design provisions, the following articles and/or individual sections apply only to the Owners and the Lots located in Bernardo Heights Unit No. 11: Article 7 and Article 8, and Article 15, Section 15.1.2.

2.4 *Equitable Servitudes.* [Civil Code §1354] 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 Recreation Association or by both.

2.5 *Annexation and De-annexation.* There shall be no annexation to or de-annexation from any part of the Recreation Association without first obtaining the same approval of Owners as required by Article 15 herein for amendments to this Restated Declaration.

2.6 *Prohibition Against Severance of Elements.* Any conveyance, judicial sale, or other voluntary or involuntary transfer of a Lot 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 Recreation Association. Any transfer that attempts to sever those component interests shall be void.

2.7 *Drainage Easements.* The Owner of a Lot shall permit free access by Owners of adjacent or adjoining Lots, or the Recreation Association and its agents, to slopes or drainageways located on his or her Lot, when such access is essential for the maintenance or permanent stabilization of said slopes, or maintenance of the drainage facilities for the protection and use of property other than the Lot on which the slopes or drainageway is located. The Owner of any Lot shall not in any way interfere with established slope ratios or create erosion or sliding problems. The Owner of any Lot shall not interfere with the established drainage pattern over his or her Lot from adjacent or adjoining Lots without prior Board approval and unless the Owner makes adequate provisions for continued drainage over his or her Lot from adjacent or

adjoining Lots. For the purpose herein, "***established drainage***" is defined as the drainage which occurred at the time a Lot was first conveyed from the Recreation Association developer to an Owner.

2.8 ***Recreation Association Easements Over Lots.*** The Recreation Association has an easement over each Lot to allow the Recreation Association's agents to enter the Lot to perform such duties and exercise such powers as may be set forth by the Governing Documents.

2.9 ***Owner Easements Over Recreation Area.*** Each Owner shall have a nonexclusive easement for use and enjoyment of the Recreation Area now or hereafter owned by the Recreation Association and for ingress, egress, and support over and through the Recreation Area. These easements shall be appurtenant to, and shall pass with the title to each Lot and shall be subordinate to any exclusive easements granted elsewhere in this Restated Declaration and subordinate to the right of the Recreation Association pursuant to the Governing Documents to perform its obligations under this Restated Declaration, or otherwise regulate the Recreation Area as provided in the Governing Documents. Each of the easements reserved or granted herein shall be covenants running with the land for the use and benefit of the Owners and their Lots superior to all other encumbrances applied against or in favor of any portion of the Recreation Association.

2.10 ***Recreation Association Grant of Easements.*** The Recreation Association may grant to third parties easements in, on, and over the Recreation Area for the purpose of constructing, installing, or maintaining necessary utilities and services, or for any other purpose reasonably related to the operation and maintenance of the Recreation Association. No such easement may be granted, however, if it would interfere with any exclusive easement, or with any Owner's use, occupancy, or enjoyment of his or her Lot without the approval of the affected Owner.

2.11 ***Encroachment Easements.*** None of the rights and obligations of the Owners created herein, or by the deeds creating the Development, shall be altered in any way by encroachments due to settlement or shifting of structures or any other cause. There shall be valid easements for the maintenance of such encroachments over the Recreation Area or Lots upon which the encroachment exists so long as the encroachments shall exist; provided, however, that in no event shall a valid easement for encroachment be created in favor of an Owner or Owners if said encroachment occurred due to the willful conduct of said Owner or Owners. In the event a structure on a Lot is partially or totally destroyed and then rebuilt or repaired, the Owners of any adjoining Lots agree that minor encroachments over the adjoining Lots shall be permitted and there shall be easements for maintenance of such encroachment so long as they shall exist.

2.12 ***Utility Easements.*** In the case where utility facilities are located on a Lot or Lots owned by other than the Owner of a Lot served by the utility facilities, the Owners of any Lots served by the utility facilities shall have the right of reasonable access for themselves or their agents to repair, replace and generally maintain the utility facilities as and when the same may be necessary. A Lot Owner shall be entitled to reasonable access to the Recreation Area for the purpose of maintaining utility facilities servicing such Owner's Lot. The access shall be subject to the consent of the Recreation Association, whose approval shall not be unreasonably withheld, and which may include such conditions as the Board determines reasonable.

In the case of utility facilities which serve more than one Lot, the Owner of each Lot served by the utility facilities shall be entitled to the full use and enjoyment of such portions of the utility facilities as service his or her Lot.

ARTICLE 3 – THE RECREATION 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 Recreation Association and is charged with the duties and invested with the powers prescribed by Applicable 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 the Bylaws.

3.3 **Membership.** Every Owner, upon becoming an Owner, shall automatically become a Member of the Association. Ownership of a Lot 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 Lot. All memberships shall be appurtenant to the Lot 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 Lot 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 Lot shall be assigned one vote, subject to the provisions of the Bylaws.

3.5 **General Powers and Authority.** [Civil Code §1363(c)] 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 herein.

3.5.2 [Civil Code §1357.130] The power to adopt reasonable Rules governing the use of the Lots, Dwellings, Recreation Area, any common facilities and Association owned property, and the conduct at Board and Members' meetings, in accordance with the following:

(a) The Rules may include, but are not limited to:

- (i) Reasonable restrictions on use of the Recreation Area, Lots and Dwellings 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 Recreation Area
 - (iii) Reasonable restrictions on the conduct of Owners and their families, guests, employees, tenants and invitees as to activities on the Lots and Dwellings in Bernardo Heights Unit No. 11.
 - (iv) The establishment of Notice and Hearing procedures and a schedule of monetary penalties and other disciplinary measures which may be imposed for violations of any provisions of the Governing Documents.
 - (v) Campaign, election and voting information.
- (b) The Board must comply with any Applicable Law when adopting any Rules.
 - (c) [Civil Code §1357.130] A copy of the current Rules, if any, and all modifications, revisions and updates shall be given to each Owner within fifteen days after adoption by the Board, unless otherwise provided by law.
 - (d) If any provision of the Rules 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.
 - (e) The Rules shall have the same force and effect as if they were set forth in and were part of this Restated Declaration and shall be binding on the Owners and their successors in interest whether or not actually received by them.
- 3.5.3 The rights 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, as provided in any Applicable Law.
- 3.5.4 Subject to Notice and Hearing requirements, 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 Recreation 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 Lot of the Owner, if allowed by Applicable Law.

- 3.5.5 The right for its agents and employees to enter any Lot 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 Recreation Areas or another Lot. 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.
- 3.5.6 The right to convey easements or title to one or more Recreation Area lots to the Community Association or any other entity, if approved by the vote of a majority of the votes cast by Member at a meeting or in an election by mail in which a quorum of the Members is represented and subject to any applicable Eligible Lender approval as set forth in Section 13.4.

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 use the general operating fund described in Article 5 herein to, among other things, acquire and pay for goods and services for the Recreation Association.

3.7 ***Non-Liability of Board.*** In discharging their duties and responsibilities, the Board acts on behalf of and as the representative of the Association which acts on behalf of and as the representative of the Owners, and no member of the Board shall be individually or personally liable for performance or failure of performance of his duties and responsibilities unless he fails to act in good faith.

ARTICLE 4 – THE COMMUNITY ASSOCIATION

4.1 ***Effect of Community Association and its Governing Documents.*** Each Lot subject to this Declaration is subject to the Declaration of Covenants, Conditions and Restrictions for the Community of Bernardo Heights (the “***Community Declaration***”), and each Lot is subject to assessment by The Community Association of Bernardo Heights, a California Nonprofit Mutual Benefit Corporation, as more fully set forth in this Article. The Recreation Association is the “***Neighborhood Association***” for the property owned by the members of the Association as that term is defined in the Community Declaration; and the property owned by the members of the Recreation Association shall constitute a “***Neighborhood***” as that term is defined in the Community Declaration.

4.2 ***Easement to Community Association.*** The officers, agents, employees and independent contractors of the Community Association shall have a nonexclusive easement to enter upon the Development, or any portion thereof, 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, the Community Rules and the rules and regulations of the Community Architectural Committee.

4.3 ***Subordination of Assessment Lien.*** The lien of , any assessment imposed upon any Lot pursuant to this Declaration shall be subordinate and inferior to the lien of any assessment imposed upon such Lot pursuant to the Community Declaration.

4.4 ***Community Association Assessments.*** Each Owner of a Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, does and is hereby deemed to covenant and agree to pay to the Community Association the Community Assessments imposed upon such Lots pursuant to the Community Declaration. The Community Assessments shall be levied and collected as provided in the Community Declaration.

The Community Association, in its sole and absolute discretion, may elect to require the Recreation Association to administer, levy, collect and enforce the Community Assessments imposed upon Lots. All such funds collected by the Recreation Association shall be held in trust by the Recreation Association for the benefit of the Community Association, and such funds shall be disbursed to the Community Association as provided in the Community Declaration.

The Community Association, in its sole and absolute discretion, may elect to administer, levy, collect and enforce the assessments by the Association provided for under this Declaration. All such funds collected by the Community Association shall be utilized in the manner and for the purposes specified in this Declaration and in the Community Declaration, the Community Bylaws, the Community Articles, the Community Rules and the rules and regulations of the Community Architectural Committee.

4.5 ***Enforcement.*** Breach of any of the limitations, restrictions, conditions and covenants set forth in this Declaration, or the continuation thereof, 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 Declaration pursuant to Article 14 hereof. 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 on, 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 attorney's fees.

4.6 ***Supremacy of Community Declaration.*** In addition to all of the rights and obligations which have been conferred or imposed upon the Recreation Association pursuant to this Declaration, the Bylaws or the Articles, the Recreation 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 Recreation Association (including, without limitation, the Architectural Committee of the Recreation 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.

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

In the event of any conflict between any of the covenants, conditions, restrictions or provisions of this 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.

ARTICLE 5 - ASSESSMENTS AND COLLECTION PROCEDURES

5.1 ***Covenant to Pay*** [Civil Code §1367.1] Each Owner by acceptance of the deed to the Owner's Lot is deemed to covenant and agrees to pay to the Recreation Association all assessments described in this Article and all other charges duly levied by the Recreation Association pursuant to the provisions of this Restated Declaration, including the Community Association assessments if required by the Community Association, as provided in Article 4. 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 a Lot at the time the assessment or other sums are levied. Co-Owners of a Lot shall be jointly and severally liable for all charges levied by the Recreation Association on that Lot. No Owner may waive or otherwise escape liability for these assessments by non-use of the Recreation Area or abandonment of the Owner's Lot.

5.2 ***Purpose of Assessments.*** [Civil Code §1366(a)] Except as provided herein, the Recreation Association shall levy assessments sufficient to perform its obligations. The assessments levied by the Recreation Association shall be used exclusively to promote the recreation and welfare of the Owners for the operation, replacement, improvement, and maintenance of the Recreation Association, and to discharge any other obligations of the Recreation Association under this Restated Declaration. All assessment payments shall be put into general operating and reserve funds to be used for the foregoing purposes.

5.3 ***Regular Assessments.*** [Civil Code §§1365 & 1366] Concurrently with preparation of the financial documents and budget for each fiscal year, 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 for the Recreation Association only shall be divided equally among all Lots. If required by the Community Association, as provided in Article 4, the Recreation Association shall add the amount of the Community Association

Assessment to the Regular Assessment as computed for the Recreation Association to determine the total Regular Assessment due for each Lot. 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 Regular Assessments to the Recreation Association in equal monthly installments on or before the first day of each month unless the Board adopts an alternative method for payment.

5.4 ***Special Assessments.*** [Civil Code §1366] 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 Improvements upon the Recreation Area, or any other reason, it shall make a Special Assessment for the additional amount needed, subject to any limitations imposed by Applicable Law or the Governing Documents. Special Assessments shall be levied equally against each Lot 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.

5.5 ***Limitations on Regular and Special Assessments.*** [Civil Code §§1363.03 & 1366] Except in emergency situations, the Board may not, without the approval of Members casting a Majority of the votes in a meeting of election of the Association at which a quorum is present, conducted in accordance with Civil Code §1363.03, impose a Regular Assessment per Lot 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 Recreation Association for that fiscal year. For purposes of this Section, a “*quorum*” means more than fifty percent of the Owners of the Recreation Association. These limitations shall not apply to assessment increases that are necessary for emergency situations. An emergency situation is an extraordinary expense defined by Applicable Law.

5.6 ***Owner Notice of Regular and Special Assessments.*** [Civil Code §1366] The Recreation 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.

5.7 ***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 Lots whenever the Recreation 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 Applicable 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 Recreation Association. Prior to levying an individual assessment, the Board shall provide the Owner with a Notice and Hearing. The Notice and Hearing regarding the levy of an individual assessment may be combined with the Notice and 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 Lot, in the same manner as regular and Special Assessments.

5.8 Monetary Penalty Assessments. [Civil Code §1367] 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 Lot. In the event the Board of Directors imposes a monetary penalty, that monetary penalty shall be subject to costs, late charges and interest as described in this Article for delinquent payment, and may become a lien on the Lot, collectible by the Recreation Association through judicial foreclosure as allowed in this Article. In no event may the Recreation Association collect a monetary penalty through nonjudicial foreclosure.

5.9 Costs, Late Charges and Interest. [Civil Code §1366] Late charges may be levied by the Recreation 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 Recreation Association may recover all of the following from the Owner:

- 5.9.1 Reasonable costs incurred in collecting the delinquent assessment, including actual attorneys' fees.
- 5.9.2 A late charge not exceeding ten percent of the delinquent assessment or ten dollars, whichever is greater, or the maximum amount allowed by Applicable Law.
- 5.9.3 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 Recreation Association as provided in this Article.

5.10 Priority of Payments. [Civil Code sections 1367 and 1367.1] The Board, in its sole discretion, may enact policies, in compliance with 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 Recreation Association from that Owner.

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

5.12 Enforcement of Assessments and Late Charges. [Civil Code §§1367, 1367.1, 1367.4 & 2924b] A delinquent assessment, and any related late charges, reasonable costs of collection (including actual attorneys' fees), and interest assessed in accordance with this Article, shall become a lien upon the Lot when a Notice of Assessment Lien is duly recorded as provided in Applicable Law. 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 Lot, 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 Recreation Association to enforce the lien by sale. The Notice may be signed by any Officer or Director of the Recreation Association, or any employee or agent of the Recreation Association authorized to do so by the Board. The Notice shall be mailed by certified mail to every person whose name is shown as an Owner of the Lot in the Recreation Association's records, and the notice shall be mailed no later than 10 calendar days after recordation.

Unless otherwise allowed by Applicable Law, the Notice of Assessment Lien may not be recorded until after the Recreation Association has mailed, via certified mail, a written demand for payment to the delinquent Owner. The written demand shall comply with the requirements of Applicable Law.

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 Applicable Law.

If all sums specified in the Notice of Assessment Lien are paid before the completion of any judicial or nonjudicial foreclosure, the Recreation 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 Recreation 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 may not become a lien on a Lot enforceable by the sale of the Lot through nonjudicial foreclosure. Any Notice of Assessment Lien recorded to enforce a monetary penalty must specifically state that such lien may not be enforceable by sale of the Lot through nonjudicial foreclosure.

5.13 *Priority of Assessment Lien.* [Civil Code §1367.1(d)] As set forth hereinbelow, the assessment lien referred to in this Article shall be superior to all other liens, except (i) all taxes, bonds and governmental assessments which, by Applicable 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:

5.13.1 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.

- 5.13.2 Neither the transfer of a Lot pursuant to a foreclosure of any Mortgage, nor an election by the Recreation 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.
- 5.13.3 No sale or transfer of any Lot shall relieve such Lot or its new Owner from liability for any future assessments which accrue during such Owner's period of ownership.
- 5.13.4 The personal obligation of any Owner for payment of delinquent assessments and charges may be satisfied, and therefore discharged, only by payment of the entire amount of the delinquent assessments and charges, whether or not such Owner remains in possession of his or her Lot.
- 5.13.5 To the extent permitted by Applicable Law, each Owner hereby waives the benefit of any homestead or exemption laws of the State of California now in effect, or in effect from time to time hereafter, to the extent of any liens created pursuant to the Governing Documents, whether such liens are now in existence or are created at any time in the future.

5.14 ***Statement of Delinquent Assessment.*** [Civil Code §1368] The Recreation 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 Lot.

ARTICLE 6 - USE RESTRICTIONS APPLICABLE TO THE ENTIRE DEVELOPMENT

6.1 ***General.*** The use and enjoyment of the Recreation Association 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 this Restated Declaration. Each such person shall comply with the provisions hereof and be subject to any enforcement actions in the event of violations. As more fully set forth in this Restated Declaration, both the Recreation Association, through the Board of Directors, and each Owner shall be entitled to enforce the Governing Documents.

6.2 ***Violation of Applicable Law.*** Any violation of any Applicable Law pertaining to the ownership, occupancy or use of any Lot within the Recreation Association is declared to be a violation of this Restated Declaration and subject to any or all of the enforcement procedures.

6.3 ***Offensive Activity.*** [Civil Code §3479] No one may engage in any illegal, noxious or offensive activity in any part of the Recreation Association, or do any act which is or becomes a public or private nuisance, or which causes unreasonable embarrassment, disturbance, or annoyance to Owners or occupants within the Development, or which unreasonably threatens the health, safety and welfare of other residents in the use or enjoyment of their property or the property of the Recreation Association.

6.4 ***Harassment.*** No one may engage in any type of harassment, illegal, noxious or offensive activity toward any Owners, residents, Recreation Association representatives, management representatives, Board members and/or vendors working in the Recreation Association.

6.5 ***Recreation Area.*** The following provisions govern the use and enjoyment of the Recreation Area:

- 6.5.1 Owners may use the Recreation Area subject to the provisions of this Restated Declaration.
- 6.5.2 An Owner who has sold his or her Lot to a contract purchaser or who has leased or rented the Lot shall be deemed to have delegated his or her rights to use and enjoy the Recreation Area to such contract purchaser or tenant, subject to reasonable regulation by the Board. If the Owner is deemed to have delegated such rights, the Owner and the Owner's family, guests, employees, and invitees shall not be entitled to use and enjoy the Recreation Area for so long as the delegation remains effective. The rights of a contract purchaser or tenant shall be subject to the same restrictions and regulations in the Governing Documents as are applicable to Owners.
- 6.5.3 No pets or other animals shall be permitted in or on any Recreation Area parcel.
- 6.5.4 The Board may:
 - (a) Adopt and enforce reasonable Rules for the use of the Recreation Association.
 - (b) Reasonably limit the number of guests and tenants using all or any portion of the Recreation Area.
 - (c) Charge a fee or deposit for use of any Recreation Area recreational facilities and improvements.
 - (d) Set fees and deposits for supplying and replacing keys, key codes, or other access devices to Recreation Areas, including charges calculated to limit distribution and deter loss of keys, codes or access devices.

- (e) Establish speed limits and other regulations for the use and of vehicles within the Recreation Association.
- (f) Establish fire lanes within the Recreation Area.
- (g) Assign, rent, lease or otherwise control the use of any unassigned parking spaces within the Recreation Area.
- (h) Require the use of parking passes or decals.
- (i) Remove any vehicle within the Recreation Association parked in violation of this Restated Declaration or the Rules in accordance with the provisions of California Vehicle Code section 22658 and any amendments thereto.
- (j) Suspend the right of any Owner, and the persons deriving rights from any Owner, to use and enjoy the Recreation Area recreational facilities for any period during which the Owner is delinquent in the payment of any assessment, is in violation of the Governing Documents, or as otherwise provided in the Governing Documents.
- (k) Cause the construction of additional Improvements in the Recreation Area, or cause the alteration or removal of existing Improvements on the Recreation Area.
- (l) Dedicate, grant, or join in the grant or conveyance of permits, easements, licenses or rights-of-way in, on and over the Recreation Area as may be determined by the Board to be in the best interests of the Recreation Association; provided that no such permit, 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 Lot without the approval of the affected Owner.
- (m) Approve any proposed alteration of or modification to the Recreation Area.

6.6 *Storage in Recreation Area.* No one may permit anything to obstruct the Recreation Area or store anything on the Recreation Area without the prior written consent of the Board, except as otherwise provided in the Governing Documents.

6.7 *Effect on Recreation Association Insurance.* No one may perform any act or keep anything that will increase the rate of insurance on the Recreation Area without the Board's prior written consent.

6.8 ***Discharge into Streets or Gutters.*** No one may discharge anything other than water and residue allowed by applicable water quality ordinances into any streets, gutters or drains maintained by the Recreation Association or into the Recreation Area.

6.9 ***Altering the Recreation Area.*** No one may alter, attach, construct, or remove anything on or from the Recreation Area, except upon the written consent of the Board.

6.10 ***Mechanic's Lien.*** 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 the Recreation Area. Labor performed or services or materials furnished for the Recreation Area, if duly authorized by the Recreation Association, shall be deemed to be performed or furnished with the express consent of each Owner.

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

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

ARTICLE 7 - USE RESTRICTIONS WITHIN LAS BRISAS HOMES

7.1 ***Applicability of Article.*** The provisions in this Article are applicable only to the Owners and the property within Bernardo Heights Unit No. 11, also known as Las Brisas Homes. For purposes of this Article "***maintenance***" and "***repair***" and words having a similar root shall include, without limitation, painting, weatherproofing and cleaning to keep Improvements in a clean, safe, and sanitary condition necessary to preserve the attractive appearance of the Lots, Dwellings, and the Recreation Area, and to protect the values of each.

The Board shall have the power to determine the standards of maintenance and repair and shall be the sole judge in determining compliance with the provisions of this Article. Each Owner shall promptly perform or conform to all directives issued by the Board for compliance with the provisions of this Article.

7.2 ***Residential Use of Lot.*** Lots shall be used for residential purposes only. No Lot may be used for time share purposes, or any other similar transitory use through fractionalized ownership or any other similar arrangement. Lots are intended to be used primarily as a residence. Subject to the prior written approval of the Board, a Lot may be used for in-home professional or administrative occupations or similar home office use so long as no external evidence is observable, and if: (i) such occupations are merely incidental to the use of the Lot as a residence, (ii) employees or business invitees do not regularly visit or conduct business on the

Lot or the Recreation Association, and (iii) the occupation is conducted in conformance with any Applicable Law and the Rules. The Board shall not unreasonably withhold its consent for any such business use, but any permission may be revoked if the use violates the requirements herein or in any Rules.

7.3 ***New Buildings*** . No building of any kind shall be moved from any other place onto any of said Lots, or from one Lot to another Lot, without the prior written consent of the Board, except for temporary structures used in connection with the construction of a building or Improvement on such Lot.

7.4 ***Trash Containers and Collection***. Each Owner shall place and keep all trash and garbage in covered containers of a type and style approved by the Board. Except during the period from twelve hours before to six hours after trash pickup by the trash disposal company, such containers shall be stored so as not to be visible from the street, such as behind landscaping, fencing or other material that obscures their presence in such a manner that satisfies the Board or Architectural Committee, as the case may be.

7.5 ***Balconies and Decks***. No deck shall be higher than ground level. Balconies are not permitted.

7.6 ***No Second-Hand Materials: Painting Required***. No second-hand materials shall be used in the construction of any building or other structure without the prior written approval of the Architectural Committee. All buildings and fences which are of frame construction shall be painted or stained with at least two (2) coats upon completion unless otherwise approved in writing by the Architectural Committee.

7.7 ***Diligence in Construction***. The work of constructing and erecting any Dwelling, Improvement or other structure shall be prosecuted diligently from the commencement thereof, and the same shall be completed within a reasonable time and in no event later than one hundred fifty (150) days after commencement of construction. No outbuilding shall be completed prior to the completion of the Dwelling, except that temporary storage and convenience facilities may be erected for workmen engaged in building a Dwelling on the Lot, but such temporary facilities shall be removed as soon as the dwelling is completed.

7.8 ***Trees***. All trees shall be trimmed by the Owner of the Lot upon which the same are located at the direction of the Board based upon a determination by the Board that such trimming is necessary to prevent the obstruction of the view of other Lot Owners within the Development. Before planting any trees the proposed location of such trees shall be approved in writing by the Board.

7.9 ***No Alterations***. No alteration shall be made in the exterior design or color of any Dwelling or other structure unless such alterations, including any additions, shall have first been approved in writing by the Board. Materials and motif to be used must harmonize, complement and be of similar materials and motif used in the construction of existing Dwellings on Lots in the Development. Where fences or hedges are allowed, review by the Board in relation to normal enjoyment of view by other Owners shall be required.

7.10 **Fences.** No fences, hedges or walls shall be erected or maintained on any Lot, other than those that have been previously installed and approved, except with the prior written consent of the Board.

7.11 **Antennas and Satellite Dishes.** [Federal Telecommunications Act] Exterior antennas and satellite dishes, not exceeding one meter (39.37") in diameter, are permitted, but only in strict compliance with Applicable Law and not on any portion of the Recreation Area. Except as permitted by Applicable Law, there shall be no outside television or radio antennae, satellite dishes, masts, poles or flag poles constructed, installed or maintained in the Recreation Association for any purpose whatsoever without the prior written consent of the Board. The Board may adopt Rules restricting the construction, installation, maintenance or replacement of any such equipment as long as such restrictions do not conflict with Applicable Law.

7.12 **Drying Yards.** No drying yards shall be permitted on any Lot unless screened from all views exterior to the Lot on which the drying yard is located by fence, hedge or shrubbery, which screening and the adequacy thereof shall be subject to the approval of the Board.

7.13 **Tents, Shacks and Outbuildings.** No tent, shack, trailer, basement, garage or outbuilding shall at any time be used on any Lot as a residence either temporarily or permanently, nor shall any residence of a temporary character be constructed, placed or erected on any Lot.

7.14 **Vehicle Use and Parking.**

7.14.1 Authorized Vehicles. The Recreation Association has the power to identify vehicles as "**Authorized Vehicles**" in the Rules.

7.14.2 Prohibited Vehicles. The following vehicles are "**Prohibited Vehicles:**" (i) recreational vehicles, including without limitation, motorhomes, travel trailers and other trailers, camper vans, camper shells, jet skis and boats), (ii) commercial-type vehicles (e.g., stakebed trucks, tank trucks, dump trucks, step vans, concrete trucks and limousines, or any vehicle with a commercial license plate. Commercial vehicles shall not include sedans or standard size pickup trucks which are used both for business and personal use, provided that any signs or markings of a commercial nature on such vehicles shall be unobtrusive and inoffensive as determined by the Board of Directors), (iii) buses or vans designed to accommodate more than ten people, (iv) vehicles having more than two axles, (v) trailers, (vi) inoperable vehicles or parts of vehicles, (vii) unregistered vehicles, (viii) aircraft, (ix) other similar vehicles, (x) noisy or smoky vehicles, or (xi) any vehicle or vehicular equipment deemed a nuisance by the Board. Prohibited Vehicles may not be parked, stored or kept on any public or private street within, adjacent to or visible from any location within Bernardo Heights Unit No. 11 ("Las Brisas Homes") unless (a) they are owned and used by the Recreation Association in

connection with management or maintenance of a part of the Recreation Association, (b) they are parked for brief periods as may be defined in the Rules, or (c) they are parked within an Owner's fully enclosed garage with the door closed. If a vehicle qualifies as both an Authorized Vehicle and a Prohibited Vehicle, then the vehicle is presumed to be a Prohibited Vehicle, unless the vehicle is expressly classified as an Authorized Vehicle in writing by the Board. The Recreation Association has the power to identify additional vehicles as Prohibited Vehicles in the Rules to adapt this restriction to all types of vehicles produced by manufacturers.

7.14.3 [Veh. Code §22658] Parking and Towing. All vehicles in the community shall be properly parked in compliance with Applicable Law. No one may park any automobile or other motor vehicle in the Recreation Association except wholly within a garage or in a space designated for the Owner by the Board or the Governing Documents. No Owner may park any vehicle in a manner so that the Recreation Association determines that the vehicle unreasonably extends beyond the boundaries of a parking space or into streets or sidewalks within the Recreation Association. No commercial trucks shall be parked in the Development except temporarily and exclusively for the purpose of loading or unloading. Trailers, campers, motor homes, boats, or similar vehicles shall not be parked in the Development for more than 24 hours in any seven day period, except in a garage where they cannot be seen from another Lot. No junk or derelict vehicle or unregistered vehicle shall be kept, stored or placed upon any Lot or adjacent to any Lot or in any portion of the Development so as to be visible to another Lot. An improperly parked vehicle in the community may be towed in accordance with Applicable Law.

7.14.4 Vehicle Rules. The Board, in its discretion, may adopt reasonable Rules governing the operation, maintenance, storage and parking of any vehicle, trailer or watercraft on the Recreation Area and on the Lots, including within the garages or driveways.

7.14.5 Vehicle Maintenance. No one may perform any vehicle overhaul, repair, or non-emergency maintenance within the Recreation Association.

7.15 **Signs.** [Civil Code §§712, 713 & 1353.6] No one may erect or display any sign on or from any Lot except as allowed by Applicable Law and the Rules. No signs may be erected or displayed on the Recreation Area without the prior written approval of the Board.

7.16 **No Wells.** No well for the production of, or from which there is produced, water, oil or gas shall be operated upon any Lot, nor shall any machinery, appliance or structure be placed, operated or maintained thereon for use in connection with any trading, manufacturing or repairing business.

7.17 *Animal Restrictions and Pets.* [Civil Code §1360.5] No one may keep pets or other animals in violation of the following:

- 7.17.1 No turkeys, geese, chickens, ducks, pigeons or fowl of any kind, or goats, rabbits, hares, horses or animals usually termed "farm animals," shall be kept or allowed to be kept on any Lot.
- 7.17.2 Owners or residents may keep a reasonable number of usual and ordinary domestic pets on the Lot subject to the provisions of the Rules; provided, however, that no Owner or other occupant of a Lot may keep any pet which interferes with, or has a reasonable likelihood of interfering with, the rights of any Owner or other occupant of a Lot to the peaceful and quiet enjoyment of the Lot.
- 7.17.3 No Owner or other occupant, or a guest of any Owner or occupant, may raise or keep pets which interfere with, or have a reasonable likelihood of interfering with, the rights of any Owner or other occupant to the peaceful and quiet enjoyment of their property or the property which they occupy. In the event that the Board or the Architectural Committee determines, after Notice and Hearing, that any pet or other animal creates an unreasonable annoyance or nuisance, the raising or keeping thereof shall be discontinued within thirty (30) days after such determination.
- 7.17.4 No Owners may breed, raise or keep animals for commercial purposes on any Lot.
- 7.17.5 The Recreation 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 on the Recreation Association, for any damage or injury to persons or property caused by any pet, absent any willful or wanton negligence on the part of the Recreation Association, or its Board, Officers, employees and agents.

7.18 *No Commercial Activity.* No commercial dog raising or cat raising or any kind of commercial business shall be conducted on any Lot. No public or private nuisance or activity which may become an annoyance or nuisance to the neighborhood shall be permitted on any Lot.

7.19 *Drainage.* Each Lot Owner shall permit free access by Owners of adjacent or adjoining Lots to slopes or drainageways located on such Owner's Lot when such access is necessary for the maintenance of permanent stabilization on said slopes, or of the drainage facilities to protect property other than the Lot on which the slope or drainageway is located.

No Owner of a Lot shall in any way interfere with the established drainage pattern over his Lot from adjoining or other Lots, and each Owner shall make adequate provisions for proper drainage in, the event it is necessary to change the established drainage over his Lot. For the

purpose hereof, "established" drainage is defined as the drainage which occurred at the time the overall grading of said Lots was completed by the original developer.

7.20 Lot Maintenance. Each Owner shall keep and maintain in good condition, repair and appearance all portions of the Lot and Improvements thereon, including, but not limited to, the Dwelling and any fences. Each Lot Owner shall also keep, maintain, water, plant, and replant all slope banks and other landscaped areas located on such Owner's Lot so as to prevent erosion and to create and maintain an attractive appearance. No structure, planting or other material shall be placed or permitted to remain or other activities undertaken on any of said slope banks or other portion of any Lot which may damage or interfere with established slope ratios, create erosion or sliding problems or which may change the direction of flow of drainage channels or obstruct or retard the flow of water through drainage channels. Lots shall be kept free of garbage, trash, brush, weeds and other unsightly material.

7.21 Compliance with Architectural Control. In the event of the failure of any Owner to comply with a written directive or order from the Board, then in such event the Board shall have the right and authority to perform the subject matter of such directive or order, including, if necessary, the right to enter upon the property where a violation of these restrictions exists, as authorized in Section 2.8, and the cost of such performance shall be charged to the Owner of the Lot following Notice and Hearing using the procedures described in Section 8.14 and such costs may be recovered by the Board in an action at law against such individual Lot Owner.

7.22 Height Limitation. Except upon the written consent of the Board, no Dwelling, Improvement or other structure shall be constructed or maintained on any Lot which is more than fifteen feet in height from the average finished grade of the Lot.

7.23 Obligations to Landscape. Each Lot shall be landscaped. All such landscaping shall be undertaken in accordance with the procedures of Article 8 of this Restated Declaration and the Architectural Control Article of the Community Declaration and any applicable Rules of the Community Association.

7.24 Construction Clean Up Deposit. When plans and specifications for the construction of Improvements are submitted to the Architectural Committee or Board pursuant to Article 8 hereof, the submission shall be accompanied by a deposit, to the extent provided in the Rules to guarantee that the construction site during the course of construction will be maintained reasonably free of debris at the end of each working day and that the construction will be completed and the Lot drainage swales and structures correctly drain surplus water to the street or other approved outlets, all as shown on the plans and specifications submitted to the Board for approval. In the event of a violation of this restriction, the Board may give written notice thereof to the builder and the Owner of the Lot in question that if such violation is not cured or work commenced to cure the same within forty-eight hours after the mailing of said notice, the Board may correct or cause to be corrected said violation and use said deposit, or as much thereof as may be necessary, to cover the cost of such correction work. In the event that the cost of curing said violation shall exceed the amount of said deposit, said excess cost shall be paid to the Recreation Association by the Owner of the Lot in question as a special individual assessment. Said deposit or any part thereof remaining in the hands of the Recreation Association at the

completion of the construction work shall be returned by the Recreation Association to the person who made the deposit.

7.25 ***Leasing or Renting Lot.*** No one may lease or rent a Lot in violation of the following:

- 7.25.1 All leases and rental agreements must be in writing.
- 7.25.2 All leases and rental agreements must be for the entire Dwelling, and not merely parts thereof, unless the Owner remains in occupancy. A carport, garage or parking space may not be leased or rented separate and apart from the Dwelling to which it is appurtenant.
- 7.25.3 No lease or rental shall be for a period of less than thirty days or for hotel, transient, fractionalized ownership interest or time-share purposes. Any lease which is either for a period of fewer than thirty days or pursuant to which the lessor provides any services normally associated with a hotel, shall be deemed to be for transient or hotel purposes.
- 7.25.4 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 which may be cured by eviction of the tenant either by the Owner or the Recreation Association. If the Recreation Association must evict the tenant, the Recreation Association may recover all the costs and expenses, including attorneys' fees, from the Owner whether or not the matter actually proceeds to court.
- 7.25.5 Any Owners leasing or renting their Lot shall promptly notify the Recreation Association in writing of the names of all tenants and members of a tenant's family occupying such Lot, provide the make, model and license number of all residents' vehicles, a telephone number for the tenant, keep all information current, and provide the Recreation Association with a complete copy of the lease or rental agreement and any other information reasonably needed and requested by the Recreation Association.
- 7.25.6 Any Owners leasing or renting their Lot shall promptly notify the Recreation Association of the address and telephone number where such Owner can be reached.
- 7.25.7 Owners shall provide their tenants with copies of the Governing Documents, including the Rules.

Each Owner-lessor shall provide any tenant or lessee with a current copy of all Governing Documents and shall be responsible for compliance by the tenant or lessee with all of

the provisions of the Governing Documents during the tenant's/lessee's occupancy and use of the Lot.

7.26 **Mailboxes.** There shall be no exterior newspaper tubes or freestanding mailboxes on any Lot or in the public right of way adjacent to any Lot, except as may be initially installed by Declarant or thereafter be approved by the Architectural Committee or as may be required by the United States Postal Service.

7.27 **Subdividing Lot.** No one may attempt to or further subdivide a Lot.

7.28 **Residential Use.** Dwellings must be occupied either by one individual or a family. A family is defined, for purposes of this restriction, as related or unrelated persons who jointly occupy and have equal access to all areas of a Dwelling and who function together as an integrated economic unit.

7.29 **Number of Persons.** Due to the limited nature of Lot and Recreation Area facilities, including parking, each Dwelling shall be occupied solely for single family residential purposes, and the total number of persons allowed to reside in each Dwelling shall not exceed the number computed by multiplying the number of bedrooms in each Dwelling by two and adding one. Therefore, in each one bedroom Dwelling, a maximum of three people may reside in such Dwelling, in each two bedroom Dwelling, a maximum of five people may reside in such Dwelling, and in each three-bedroom Dwelling, a maximum of seven may reside in each Dwelling. This section shall not prevent temporary guests of an Owner to stay in such Dwelling, however, any person occupying a Dwelling for longer than fourteen days each year shall conclusively be deemed to reside in such Dwelling.

7.30 **Compliance with Law.** No Owner shall permit anything to be done or kept on his or her Lot or in the Recreation Area that would result in the cancellation of insurance on any Lot or on any part of the Recreation Area or that would violate any law.

7.31 **Storage of Flammable or Hazardous Materials.** No one may store gasoline, kerosene, cleaning solvents, or other flammable liquids or substances, or any toxic or hazardous materials on the Recreation Area or in any Lot; 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.

7.32 **Emissions into the Air.** No one may 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.

7.33 **Power Equipment.** No one may set up a hobby shop for commercial purposes, except upon the written consent of the Board. Use of power equipment may be subject to reasonable Rules as to the time and duration of use and the level of noise.

7.34 **Garages.** Garages may not be altered or remodeled or converted in any way that will prohibit the parking of the number of vehicles that the garage was designed to contain. Garages may not be used to store household goods, business, commercial or industrial equipment, supplies or materials that interfere with the ability to park the number of vehicles

such garage was designed to accommodate. No division walls or other construction modifications of any kind shall be done in a garage space without prior association architectural approval. Garage doors cannot be made inoperable in any way or removed and replaced with a solid wall.

7.35 *Duty to Restore Lot.* [Civil Code §1365] If all or any portion of any Lot or Dwelling is damaged or destroyed by fire or other casualty, it shall be the duty of the Owner of such Lot to rebuild, repair or reconstruct the Dwelling and the Lot in a manner which will restore it substantially to its appearance and condition immediately prior to the casualty or as otherwise approved by the Board. The Owner of any damaged Lot or Dwelling shall be obligated to proceed with all due diligence hereunder, and such Owner shall mitigate any danger presented by such damage or destruction and thereafter cause reconstruction to commence within three months after the damage occurs and be completed within one year after damage occurs, unless prevented by causes beyond his or her reasonable control.

7.36 *Condemnation of a Lot.* If all or any part of a Lot is taken by eminent domain, the award shall be disbursed to the Owner of the Lot subject to the rights of the Owner's Lenders. If the taking renders the Lot uninhabitable, the Owner shall be divested of any further interest in the Recreation Association, including membership in the Recreation Association, and the interest of the remaining Owners shall be adjusted accordingly.

ARTICLE 8 - ARCHITECTURAL AND DESIGN CONTROL WITHIN LAS BRISAS HOMES

8.1 *Applicability of Article.* The provisions in this Article are applicable only to the Owners and the property within Bernardo Heights Unit No. 11, also known as Las Brisas Homes.

8.2 *General.* [Civil Code §1378] Any change or improvement to the exterior of a Dwelling or a Lot shall be governed by this Article. Changes or improvements to the Recreation Area by the Recreation 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 but is not required to 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. If the Board appoints an Architectural Committee, then the Architectural Committee will make the decisions regarding architectural applications and violations, and the Board shall be entitled to support or overrule the decisions of the Architectural Committee, if an applicant appeals the decision of the Architectural Committee.

8.3 *General Modifications Requiring Prior Approval.* Nothing may be erected, placed or planted on the exterior of any Dwelling or Lot, or on the Recreation Area by any Owner, including any building, shed, 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 obtained in accordance with this Article. Additionally, and except as provided in Section 8.5 below, prior written approval shall be

required for any alteration, modification, painting or other change, addition or deletion to any existing Improvement or landscaping.

8.4 ***Specific Modifications.*** The following provisions govern the specific changes and modifications outlined below:

- 8.4.1 [Civil Code §1360] Modifications or alterations of the exterior of any Dwelling or other portion of the Lot or Recreation Area to facilitate handicapped access as provided by California Civil Code §1360 must have prior written consent obtained in the manner required by this Article. Any approval of such handicapped access modification to the Recreation Area 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 Lot.
- 8.4.2 Installation of any landscaping, either "hard-scape" or "soft-scape," must have prior approval. Replacement of such landscaping will require approval only if it differs from the landscaping being replaced (*e.g.*, replacing a stone walkway with concrete or annual flowers with shrubs).
- 8.4.3 No Owner may enclose any patio, balcony, or deck without obtaining prior written consent in the manner required by this Article.
- 8.4.4 Maintenance of the landscaping, Lot and Dwelling (*e.g.*, pruning trees, trimming shrubs, replacing annual flowers, etc.) shall not be considered a modification for purposes of this Article.
- 8.4.5 Interior shutters, blinds, curtains, drapes or other appurtenances in or on any window or door do not need prior approval but must be in conformity with any standards established as provided in this Article. Owners shall be responsible for correcting any nonconforming appurtenances.
- 8.4.6 Except as provided by the Governing Documents, Owners shall not have the right to paint, decorate, remodel or alter the Recreation Area without prior written consent obtained in the manner required by this Article.

8.5 ***Architectural Changes Not Requiring Prior Approval.*** Notwithstanding Sections 8.3 and 8.4 above, no permission or approval shall be required to repaint in accordance with the original color scheme or as previously approved, or to rebuild or replace in accordance with plans and specifications previously approved pursuant to this Article. Nothing contained herein shall be construed to limit the right of an Owner to paint the interior of his or her Dwelling any color desired, or to improve or alter any improvements within the interior of the Dwelling; provided such improvement or alteration does not impair or alter the Recreation Area, any utilities, or other systems servicing the Recreation Area or other Lots.

8.6 ***Procedure for Obtaining Approval of Architectural Changes.*** [Civil Code §1378] The procedure for obtaining approval of any architectural change shall be as follows:

- 8.6.1 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 contractor and any other information as required by the Board or Architectural Committee, shall be prepared by the requesting Owner and submitted to Board or the Architectural Committee (if one has been appointed) 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. If no Architectural Committee has been appointed, the Board shall make the decisions on architectural applications using the same procedure below that is applicable if an Architectural Committee exists.
- 8.6.2 [Civil Code §1378] The Architectural Committee (if any) shall review the submission.
- 8.6.3 The Architectural Committee shall make a decision within thirty days after receipt of the submission and shall provide a written decision to the requesting Owner, including an explanation of the reasons for any disapproval and the procedure for any reconsideration by the Board. If the Architectural Committee denies the Owner's application and the Owner applicant wishes to appeal the decision of the Architectural Committee, the Owner must provide a written request to the Board to reconsider the Architectural Committee's decision no later than fifteen days after the date the written denial of the application has been sent to the Owner. There is no right to reconsideration of the Architectural Committee's decision by anyone other than an Owner-applicant. The Board must reconsider the Architectural Committee's decision at an open Board meeting. If the Board has made the decision, because there is no Architectural Committee, there is no right to a reconsideration of the decision.
- 8.6.4 In the event the Architectural Committee fails to provide a written response to the requesting Owner within thirty days after receipt of the submission from the Owner, the Owner may notify the Architectural Committee in writing that a response has not been received. If the Architectural Committee fails to provide a decision within thirty days after the receipt of the notice, approval will not be required and the related covenants shall be deemed to have been fully satisfied, so long as the proposed Improvement does not conflict with any existing requirements in the Governing Documents, including any Architectural Rules or Guidelines, or in any Applicable Law.

- 8.6.5 Once an Owner has obtained approval for an architectural submittal, work on such approved submittal shall promptly commence and shall be completed within 180 days, but the Board, in its discretion, may extend the time limit beyond 180 days.

8.7 ***Architectural Rules.*** [Civil Code §1357.130] The Board may, in its sole discretion, adopt, amend and repeal, as it deems necessary, Architectural Rules or a color palette, subject to the requirements of Applicable Law. The Architectural Rules shall interpret and implement the provisions of this Article by setting forth standards of review by the Board and Architectural Committee in addition to those in Section 8.8, if any, 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 Recreation Association; provided, however, that said Architectural Rules shall not be in violation 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. Unless any such Architectural Rules are complied with, an Owner's plans and specifications shall be deemed incomplete and not submitted.

8.8 ***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. Appropriate locations for Improvements, the size of any structure, proximity to other Dwellings or the Recreation Area and other factors may be taken into consideration by the Board and committee in reviewing a particular submittal. Neither the Recreation Association nor Architectural Committee is responsible for reviewing any architectural submittal for engineering or architectural adequacy or for compliance with Applicable Law.

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

- 8.9.1 The Board shall have the right to appoint all of the members of the committee.
- 8.9.2 Members appointed to the committee by the Board shall be Members of the Recreation Association.
- 8.9.3 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.
- 8.9.4 The committee shall meet as often as it deems necessary properly to carry out the obligations imposed upon it, unless otherwise directed by the Board.

8.9.5 The vote or written consent of the majority of the committee shall be required for any recommendation.

8.10 ***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 Recreation Association's costs incurred for review of their plans.

8.11 ***Compensation.*** The members of the Board and Architectural Committee shall receive no compensation for services rendered, other than reimbursement by the Recreation Association for expenses incurred by them in the performance of their duties hereunder. However, the Board may hire an architect or other professional to consult with the Architectural Committee and Board, and the Recreation Association may compensate the architect or professional for services rendered to the Recreation Association.

8.12 ***Liability.*** Neither the Board, the Architectural Committee nor any member thereof shall be liable to the Recreation 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 within the Development; provided, however, that such member has acted in good faith on the basis of such information as may be possessed by him or her.

8.13 ***Effect of Owner-Installed Improvements.*** This Section shall apply to all Improvements installed on any Lot or elsewhere in the Recreation Association, either by a current or former Owner or by that Owner's family members, agents, tenants, or anyone exercising the Owner's powers, and without regard to whether the Owner first complied with the requirements of this Article, including without limitation, the requirement for seeking and obtaining prior written approval before installing any such Improvements. This section is intended for the protection of the Association and its Members against claims that might be asserted against the Association due to or arising out of Improvements on an Owner's property that the Owner or the Owner's predecessors in title have installed.

An Owner shall pay all costs and expenses incurred in the construction and installation of any such Improvements, and shall be fully responsible for the maintenance, repair and replacement of such Improvements. Each Owner shall be responsible for any damages to persons, property or otherwise that result from the construction, maintenance, use or continued existence of such Improvements and shall hold the Recreation Association free and harmless from any and all costs and expenses attributable to the construction, installation, maintenance, repair, or replacement of such Improvements or to their continued existence or use. The Recreation Association shall have no responsibility either for securing or maintaining insurance for any such Improvements.

Each Owner covenants and agrees that any such Improvements shall be constructed in strict compliance with the plans and specifications and in the exact location approved by the Recreation Association, if so approved, and shall be maintained in good condition and repair in accordance with generally accepted construction, maintenance and repair

practices, and shall comply with all Applicable Laws. Owner shall be obligated to obtain any necessary building permits and inspections and to verify compliance with all requirements imposed by law. The Recreation Association's approval of any such Improvements, if given, is limited to an approval based solely on the criteria contained in the Governing Documents and does not include a review for compliance with Applicable Laws.

All such Improvements shall be subject to the jurisdiction of the Recreation Association, acting through the Board, and to the Governing Documents; and shall be subject to an easement in favor of the Recreation Association to perform its duties under the Governing Documents.

Owner shall defend, indemnify and hold harmless the Recreation Association, its Members, Board, Officers, agents and employees from and against any and all injuries, damages, causes of action or claims which may exist or be instituted against any or all of said parties because of, or in any manner arising from or connected with, the granting of written confirmation of approval for any Improvements, the power to grant and confirm such approval in writing, or the construction, maintenance, repair, replacement, existence or use of any such Improvements.

Each Owner releases the Recreation Association, its Members, Board, Officers, agents and employees from any duty or obligation to pay, or otherwise be responsible, for the cost of construction, maintenance, repair or replacement of any such Improvements, and releases said parties from any and all claims, injuries, damages and causes of action which may arise as a result of the construction, maintenance, repair or replacement of the Improvements or the continued existence or use of the Improvements.

If any Owner fails to construct, maintain or use such Improvements in accordance with any architectural approval granted by the Recreation Association and according to the terms of this Article, the Recreation Association shall have the power, at Owner's expense, either to maintain, repair or replace the Improvements or to remove the Improvements, in the Recreation Association's sole discretion.

The Recreation Association shall have the power, but not the obligation, unilaterally to record a document against the title to Owner's Lot identifying the nature, description and location of any Improvements installed by Owner, whether installed with or without the Recreation Association's approval, to put subsequent Owners on notice of their duties and obligations with respect to such Improvements under this Article.

8.14 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.

8.14.1 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.

- 8.14.2 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.
- 8.14.3 The Board or Architectural Committee may periodically enter any Lot to ensure that construction is proceeding according to any approved plans.
- 8.14.4 If the Owner fails to remedy any noticed noncompliance within the time specified by the Board, the Board shall provide Notice and Hearing regarding the alleged noncompliance.
- 8.14.5 At the hearing, the Owner, a representative or representatives 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.
- 8.14.6 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.
- 8.14.7 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 non-complying Improvement, and the Owner shall reimburse the Recreation Association for all expenses incurred in connection therewith upon demand. If such expenses are not properly repaid by the Owner to the Recreation Association, the Board may recover such expenses through the levy of an individual assessment against such Owner.
- 8.14.8 The approval by the Board of any plans, drawings or specifications for any work or 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.
- 8.14.9 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 Recreation Association's interests.

8.15 ***Non-Compliance with Applicable Laws.*** Neither the Recreation Association, the Board, nor the Architectural Committee shall be responsible for any noncompliance with any Applicable Law of any Improvement 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.

8.16 ***Governmental Approval.*** Prior to commencing any alteration or improvements approved by the Board, the Owner shall comply with all Applicable Laws. The Recreation Association shall not be obligated to enforce the provisions of this Section. Approval by the Board shall not be considered to satisfy any Applicable Law, nor shall the approval of any governmental entity be considered to satisfy the requirement of Board approval. An Owner's failure to comply with any Applicable Law 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. Each Owner, by accepting a deed to his or her Lot, agrees to reimburse the Recreation Association for any loss resulting from the violation of any Applicable Laws.

8.17 ***Conflicts Between Applicable Law and Recreation Association.*** In the event of any conflict between any Applicable Law and the Recreation Association's Governing Documents or other requirements, the more restrictive of such conditions shall be controlling. Further, nothing herein shall limit the Recreation Association from imposing conditions of approval of any proposed Improvements which are more restrictive than any Applicable Law.

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

- 8.18.1 Variances may be granted, without limitation, to restrictions upon use, restrictions on repair and maintenance, and architectural restrictions, when circumstances such as topography, location, engineering, economy, hardship, aesthetic or environmental considerations warrant.
- 8.18.2 Variances shall be in writing and shall become effective upon final approval by the Board.
- 8.18.3 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 Applicable Laws affecting the use of the premises, including, but not limited to, zoning ordinances and lot set back lines or requirements imposed by the City of San Diego or any other governmental authority.

- 8.18.4 The Recreation Association may charge a reasonable fee to cover any costs associated with the variance approval process, or for issuance of a variance.
- 8.18.5 The Board may enact additional Rules regarding the variance approval process, the circumstances under which a variance may be granted, and may require the execution of indemnity or other agreements by the Owner as a condition to issuance of a variance.

ARTICLE 9 – RECREATION ASSOCIATION REPAIR AND MAINTENANCE

9.1 ***Recreation Area Maintenance.*** [Civil Code §1364] The Recreation Association is required to fulfill the maintenance requirements imposed by Applicable Law and the Governing Documents. The Recreation Association is primarily responsible for maintenance of the swimming pool, recreation building and other facilities located on Lot 97 of Bernardo Heights Unit No. 11 according to Map thereof No. 9968 Tract as more fully described in Exhibit “C” attached hereto and shall keep all Improvements thereon in good repair and appearance. The Recreation Association shall also maintain and provide for the maintenance of other portions of the Recreation Area as described in Exhibit “C” attached hereto, except to the extent the Community Association is responsible for such maintenance as provided in various easements and other Governing Documents, including the easements referred to in the footnotes in Exhibit “C” attached hereto.

If the Community Association does not provide maintenance of the landscaped portions of the Recreation Association pursuant to the easement agreements in favor of the Community Association, the Recreation Association shall provide landscaping and gardening to properly maintain and periodically replace when necessary the trees, plants, grass and other vegetation originally placed in the Recreation Area pursuant to landscape plans submitted to The City of San Diego and approved by the City of San Diego.

9.2 ***Owner Liability for Maintenance or Damage.*** Each Owner shall be responsible for the costs of any damage to the Recreation Area caused by the acts or omissions of such Owner or such Owner’s family members, tenants, guests or invitees. Any unauthorized Improvement in the Recreation Area shall be considered a trespass on the Recreation Area and shall give the board of directors of the Recreation Association or the Community Association the right to remove the unauthorized Improvement summarily and without compensation to the party who installed it. Following Notice and a Hearing, the Association may charge the cost of removal to the Owner who installed it or who claims to own the Improvement. Any unauthorized Improvement is also subject to the provisions of Section 8.13 of this Declaration.

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

9.4 ***Recreation Area Damage Caused by Owner or Item Under Control of Owner.*** [Civil Code §1367] Should any damage to the Recreation Area, result from the willful or negligent act or omission 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 Improvement the maintenance, repair or replacement of which an Owner is responsible, the cost of all repairs shall be borne solely by the responsible Owner.

The Recreation Association shall be responsible for performing the repair of any damage to the Recreation Area or Improvements over which the Recreation Association has control at the responsible Owner's expense. The Owner of any other property which sustained damage shall perform the repair of any such damage, and may charge the cost of repairs and any relocation costs to the responsible Owner.

If the responsible Owner disputes or refuses to pay any repair costs incurred by the Recreation Association, then the Recreation Association, after Notice and 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 Recreation 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 Recreation 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 Recreation Association's insurance, or the Board elects not to submit the claim, the responsible 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 to any applicable building codes in effect at the time the damage is repaired.

9.5 ***Limitation of Liability.*** The Recreation 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 Owner's Lot unless such damage is caused by the negligence of the Recreation Association, its Board, Officers, agents or employees.

9.6 ***Owner Notification to Recreation Association.*** If, at any time, an Owner discovers or otherwise becomes aware of any condition within the Recreation 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 Recreation Association, the Owner shall notify the Recreation Association representatives of the condition as soon as possible.

ARTICLE 10 – ASSOCIATION INSURANCE

10.1 ***Fire and Casualty Insurance.*** The Recreation Association shall obtain and maintain a policy or policies of fire and casualty insurance with an extended coverage endorsement for the full insurable replacement cost of the Improvements in the Recreation Area and for all personal property owned by the Association. Insurance proceeds for Improvements in the Recreation Area and personal property owned by the Association shall be payable to the

Association. The Recreation Association shall have no obligation to insure the Lot, Dwelling or any Improvements or fixtures such as cabinets, built-in appliances or floor or wall coverings, fences, walls or landscaping within a Lot. The amount of any deductible shall be determined by the Board. This insurance shall be maintained for the benefit of the Recreation Association, the Owners, and their Lenders, as their interests may appear as named insured, subject, however, to any loss payable requirements set forth in this Restated Declaration. If required by any First Lender who notifies the Recreation Association of its requirement, and if economically feasible and available, such policies shall contain an inflation-guard endorsement and a construction code or increased cost of construction endorsement.

10.2 ***Cost of Repair.*** Any cost of repair or replacement of the Recreation Area in excess of insurance proceeds and reserves shall be a Common Expense, levied against all Lots as a Special Assessment.

10.3 ***General Liability Insurance.*** [Civil Code §1365.7] The Recreation Association shall obtain and maintain a comprehensive public liability and property damage liability policy or policies insuring the Recreation Association, its officers, directors, agents and employees and the Owners against any liability for bodily injury, death, and property damage arising from ownership and use of the Recreation Area. Limits of liability under the insurance shall not be less than one million dollars covering all claims for death, personal injury, and property damage arising out of a single occurrence. If the minimum amount necessary to comply with Civil Code Section 1365.7 or any successor statute is a larger amount, the statute shall control.

10.4 ***Directors and Officers Liability Insurance.*** [Civil Code §1365.7] The Recreation Association shall obtain and maintain one or more policies of insurance which include coverage for individual liability of Officers and Directors of the Recreation 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 in the minimum amount of one million dollars. If the minimum amount necessary to comply with Civil Code Section 1365.7 or any successor statute is a larger amount, the statute shall control.

10.5 ***Fidelity Coverage.*** The Recreation Association shall purchase and maintain fidelity coverage for any person or entity handling funds of the Recreation Association, whether or not such persons or entities are compensated for their services. If an agent handles any Recreation Association funds, such agent shall be covered by the Recreation Association's coverage, unless such agent provides similar coverage. The Recreation 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 Recreation Association. The aggregate amount of this coverage shall be at least three (3) months' aggregate Assessments on all Lots plus Reserves.

10.6 ***Other Recreation Association Insurance.*** The Recreation Association shall purchase and maintain worker's compensation insurance to the extent necessary to comply with any Applicable Laws. The Recreation Association may purchase such other insurance that the Board considers necessary or advisable, including earthquake insurance coverage.

10.7 *Review of Insurance; Notice of Cancellation or Modification.* The limits and coverage of insurance carried by the Recreation 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 Recreation 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.

10.8 *Qualifications of Insurance Carriers.* The Recreation Association shall use generally acceptable insurance carriers from which to purchase and maintain the coverage required herein, preferably carriers that are admitted to sell insurance in the State of California by the California Department of Insurance.

10.9 *Failure to Acquire Insurance.* The Recreation 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 Recreation Association 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 Eligible Lender entitled to notice that the specific insurance will not be obtained or renewed.

The Recreation 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 Recreation 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, but is not required to, base its decision upon, among other things, a vote of the Owners.

10.10 *Trustee for Policies.* The Recreation 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 Recreation 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. 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.

10.11 *Insurance Premiums.* Insurance premiums for any insurance coverage obtained by the Recreation Association shall be a Common Expense.

10.12 *Insurance Policy Deductibles.* [Civil Code §1365(f)] 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 Recreation Association. In the event of a loss for which Recreation Association insurance coverage is used, the Association shall be responsible for paying the deductible, but if the loss is due to the acts, omissions or legal responsibility of an

Owner, or the Owner's family members, tenants, guests or invitees, the Association may seek to recover the amount of the deductible from such Owner.

10.13 **Inspection of Policies.** Copies of all such insurance policies (or certificates thereof showing the premiums thereon to have been paid) shall be retained by the Association and open for inspection by Owners at any reasonable time(s). All such insurance policies shall (i) provide that they shall not be cancellable by the insurer without first giving at least ten (10) days' prior notice in writing to the Association, and (ii) contain a waiver of subrogation by the insurer(s) against the Association, Board and Owners.

10.14 **Owner Notification of Insurance.** [Civil Code §1365] The Recreation 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 Recreation Association or Board other than that provided for in such Applicable Law.

10.15 **Individual Owner Property and Liability Insurance.** The Recreation Association is not obligated to obtain and does not provide insurance coverage for any property and casualty losses involving an Owner's Lot or Condominium Units, nor does it provided insurance coverage to protect Owners against liabilities arising from their own acts or omissions or arising from conditions or incidents in the Owners' Units. Owners are responsible for obtaining and maintaining their own property and casualty insurance on their Lots or Condominium Units, and their own general liability insurance to protect themselves against their own acts and omissions.

ARTICLE 11 - DAMAGE OR DESTRUCTION

11.1 **Duty to Restore Recreation Area.** If all or any portion of the Recreation Area is damaged or destroyed, it must be repaired or replaced promptly by the Recreation Association unless:

11.1.1 The Recreation Association is terminated.

11.1.2 Repair or replacement would be illegal under an Applicable Law.

11.1.3 The damaged or destroyed portion of the Recreation Association is de-annexed in accordance with Section 2.5 above.

11.2 **Repair Plans.** The Recreation Area must be repaired and restored in accordance with either the original plans and specifications or other plans and specifications which have been approved in writing by the Board and by a majority vote of the Owners voting, so long as a quorum of Owners is represented in the voting. Updates to conform to currently applicable building codes shall be deemed to be repairs and restoration in accordance with the original plans.

11.3 **Insurance Proceeds.** An insurance trustee appointed by the Board, or if there is no trustee, then the Board, shall hold any insurance proceeds in trust for the Recreation 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 property. The Recreation Association shall receive any excess proceeds left after restoration or repair of the damaged property. The Owners and Lenders are not entitled to receive payment of any portion of the excess proceeds unless the Recreation Association is terminated.

11.4 *Disbursements to Owners and Lenders if Recreation Association is Terminated.* Any insurance proceeds distributed to Owners and Lenders if the Recreation Association is terminated shall be distributed equally to each Lot.

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

11.5.1 Whether or not damaged or destroyed property is to be repaired or restored; and

11.5.2 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.

11.6 *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.

ARTICLE 12 - EMINENT DOMAIN OF RECREATION AREA

The Recreation Association, acting through the Board, shall have the right to act on behalf of the Owners with respect to the negotiation, settlement and litigation of the issues with respect to the taking by eminent domain of any portion of the Recreation Area and the compensation for such taking. Each Owner hereby designates and appoints the Recreation Association as his or her attorney in fact for such purposes. If all or part of the Recreation Area is threatened to be, or shall be taken or condemned by any authority having the power of eminent domain, all compensation and damages for or on account of the taking of the Recreation Area, the award or consideration for such taking or transfer shall be paid to and belong to the Recreation Association.

ARTICLE 13 - RIGHTS OF LENDERS

13.1 *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 Lender on any Lot 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.

13.2 ***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 Recreation Association before a Lot 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 Lot 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 Borrower, or (c) sell or lease a Lot acquired by the Lender.

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

13.4 ***Action Requiring Eligible Lender Approval.*** Except as provided by statute in case of condemnation or substantial loss to the Lots and Recreation Area, approval of at least two thirds of the Eligible Lenders (based upon one vote for each Mortgage owned), is needed to:

- 13.4.1 Abandon or terminate the Recreation Association (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).
- 13.4.2 Change the pro rata interest or obligations of any individual Lot 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 Lot in the Recreation Area, provided that no Owner's interest in the Recreation Area may be changed without the consent of that Owner.
- 13.4.3 Partition or subdivide any Lot.
- 13.4.4 Seek to abandon, partition, subdivide, encumber, sell or transfer the Recreation Area, or any property owned, directly or indirectly, by the Recreation Association (the granting of easements for public utilities or other public purposes consistent with the intended use of the Recreation Area by the Recreation Association is not a transfer in the meaning of this clause). However, the Recreation Association shall be entitled to convey any Recreation Area lots to the Community Association that the Community Association is currently maintaining based on recorded maintenance easements so long as the Community Association is willing to accept such a conveyance.

- 13.4.5 Use hazard insurance proceeds for losses to any of the Recreation Area for other than the repair, replacement or reconstruction of such property.
- 13.4.6 Fail to maintain fire and extended coverage for the full insurable replacement cost of all insurable property owned by the Recreation Association.

13.5 ***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 Recreation 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 Recreation Area property. First Lenders making such payments shall be owed immediate reimbursement from the Recreation Association.

13.6 ***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 Recreation Area.

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

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

13.8 ***Termination of Professional Management.*** Provided professional management has previously been required by any Eligible Lender, any decision to establish self-management by the Recreation Association shall require the consent of at least sixty-seven percent of the total voting power of the Recreation Association and at least fifty-one percent of Eligible Lenders.

13.9 ***Inspection of Documents, Books and Records.*** The Recreation Association shall make available to Eligible Lenders, current copies of the Governing Documents and the accounting books, records and financial statements of the Recreation Association. "Available"

means available for inspection, upon request, during normal business hours or under other reasonable circumstances.

13.10 ***Non-Curable Breach.*** Any Lender who acquires title to a Lot 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.

13.11 ***Loan to Facilitate.*** Any First Mortgage given to secure a loan to facilitate the resale of a Lot 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.

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

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

13.14 ***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 Recreation Association, the consent of at least sixty-seven percent of the total voting power of the Recreation Association and the approval of fifty-one percent of Eligible Lenders shall be required to terminate the Recreation Association; provided that if termination is for reasons other than substantial destruction or condemnation, the agreement of sixty-seven percent of Eligible Lenders is required.

ARTICLE 14 – ENFORCEMENT

14.1 ***Right to Enforce; Remedies.*** . [Civil Code §§1354, 1363.810. *et seq.*, 1363.510, *et seq.*, Corp. Code §7231] The Recreation 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.

14.2 ***Board Discretion Whether to Enforce.*** In deciding whether to take any action to enforce the restrictions, conditions, covenants, reservations, liens and changes in the Governing Documents, the Board may exercise its discretion using the business judgment rule of Corporations Code Section 7231.

14.3 ***Nuisance.*** [Civil Code §3479] 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, may be exercised by any Owner and/or the Recreation Association and shall be applicable to every act, omission or

incident resulting in a nuisance. Each remedy provided herein shall be cumulative and not exclusive.

14.4 ***Failure to Enforce.*** Failure by the Recreation 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.

14.5 ***Compliance with Applicable Law.*** [Civil Code §§1354, 1363.810. *et seq.*, 1363.510, *et seq.*; Corp. Code §7231] All activities to enforce the provisions of the governing documents shall be conducted in accordance with all Applicable Laws. This Section shall apply to both the Recreation Association and to all Owners.

14.6 ***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.

ARTICLE 15 – AMENDMENTS

15.1 ***Owner Approval of Amendments.*** [Civil Code §§1355 & 1363.03] This Restated Declaration may be amended by the following procedures or as otherwise specified in Section 14.4 herein.

- 15.1.1 Amendments Applicable to Entire Development. First, the vote will be conducted by a secret ballot in accordance with the requirements of Applicable Law. Second, to constitute a quorum, the total number of ballots returned must come from at least a one-third of the Voting Power. Third, the vote must remain open for at least thirty days after the date the ballots are mailed, but the initial deadline may be extended periodically after that date, if a quorum of ballots has not been received by the initial deadline, and may be extended automatically for additional periods of time until a quorum of ballots has been returned. Fourth, the amendment must be approved by the affirmative vote of at least seventy-five percent of the ballots cast. A blank ballot or other action indicating an intention to abstain will be deemed to have a neutral effect, so it will be counted toward the quorum only, but it will not be counted as a ballot cast for purposes of computing the seventy-five percent approval.

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 Recreation Association for that purpose or, if no such designation is made, by the President of the Recreation Association and (c) the document has been recorded in San Diego County.

An amendment may change this Restated Declaration in any manner, including adding or deleting restrictions or increasing or decreasing the burdens on the Lots as long as the amendment is approved as specified herein or pursuant to Civil Code section 1356.

- 15.1.2 Amendments Applicable to Las Brisas Homes Only. If a proposed amendment would apply only to the Owners or only to the property within Bernardo Heights Unit No. 11, also known as Las Brisas Homes, or if it would apply only to the articles and sections of this Restated Declaration that are applicable to Las Brisas Homes, then the same procedures used in Section 15.1.1 may be used to approve the amendment, except that the Voting Power used to compute the quorum and the percentage of affirmative votes needed will be limited to the Voting Power of Owners and Members within Las Brisas Homes.
- 15.1.3 Amendments shall also be approved by the prior written consent of the Board of Directors of the Community Association which written consent shall not be unreasonably withheld.

15.2 ***Eligible Lender Approval of Amendments.*** In addition to the approval required by Section 14.1 above, the approval of fifty-one percent of Eligible Lenders shall be required to add or amend (i) any provision 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:

- 15.2.1 Voting rights;
- 15.2.2 Increases in assessments greater than twenty-five percent, assessment liens or the priority of such liens;
- 15.2.3 Reductions in reserves for maintenance, repair and replacement of the Recreation Area;
- 15.2.4 Insurance or fidelity bonds;
- 15.2.5 Rights to use the Recreation Area;
- 15.2.6 Responsibility for maintenance and repair of the several portions of the Recreation Association;
- 15.2.7 Expansion or contraction of the Recreation Association, or the addition to, annexation to or withdrawal of property from the Recreation Association;
- 15.2.8 Restoration or repair of the Recreation Association after damage or partial condemnation, in a manner other than that specified in the Governing Documents;

- 15.2.9 Convertibility of Lots into Recreation Area, or Recreation Area into Lots;
- 15.2.10 Restrictions on leasing of Lots;
- 15.2.11 Imposition of any restriction on the right of an Owner to sell, transfer or otherwise convey his or her Lot; or
- 15.2.12 Any provisions that expressly benefit mortgage holders, insurers or guarantors.

15.3 ***Eligible Lender Approval Response.*** An Eligible Lender who receives a written request to approve additions or amendments by certified or registered mail, return receipt requested, 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.

15.4 ***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:

- 15.4.1 To correct any printing or grammatical error or omission in this Restated Declaration or Bylaws.
- 15.4.2 To make any change in the Restated Declaration or Bylaws required by a change in any Applicable Law, including court decisions, which obligate the Recreation Association, the Board or the Owners to conform their conduct to the terms of the law.
- 15.4.3 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 subsection 15.4.2 or 15.4.3, 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 Applicable 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 Recreation 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 Recreation

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.

15.5 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.

ARTICLE 16 - GENERAL PROVISIONS

16.1 Term. The provisions of this Restated Declaration shall continue in effect for a term of fifty years from the date of recording. Thereafter, it shall be automatically extended for successive periods of ten years, until the membership of the Recreation Association decides to terminate it as provided in Section 13.14. This Section shall not preclude amending this Restated Declaration during the term of its existence.

16.2 Severability. 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 Original Declaration shall be deemed to have survived and thereafter become effective without any further action.

16.3 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.

16.4 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 common interest development. All questions of interpretation or construction of any of the terms or conditions herein shall be resolved by the Board, and its decision shall be final, binding and conclusive on all of the parties affected.

16.5 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 Lot but only with respect to obligations arising from and after the date of the divestment.

16.6 Fair Housing. Neither the Recreation Association nor any Owner shall, either directly or indirectly, forbid the conveyance, encumbrance, renting, leasing, or occupancy of the Owner's Lot 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.

16.7 **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.

16.8 **Attorneys' Fees.** [Civil Code §1354] In the event an attorney is engaged by the Board to enforce the Governing Documents, the Recreation Association shall be entitled to recover from the adverse party to the controversy its 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 Lot which is enforceable as an assessment pursuant to the Governing Documents. This Section shall also apply to attorneys' fees incurred to collect any post-judgment costs.

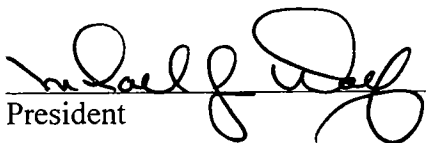
16.9 **Governing Document Priorities.** In the event of a conflict between the Governing Documents, or any provision thereof, the following documents shall take precedence in the order given: (1) this Restated Declaration, (2) the Articles, (3) the Bylaws, and (4) the Rules.

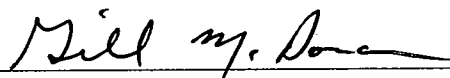
16.10 **Conflict with Applicable Laws.** Provided any Applicable Law is inconsistent with any provision or provisions of the Governing Documents, and compliance with that Applicable Law is mandatory, neither the Recreation Association, the Board, nor any member thereof shall have any liability for complying with the Applicable Law and not with the inconsistent provision or provisions of the Governing Documents.

16.11 **References to Code Sections.** In the event any of the Applicable Laws referenced herein are amended, modified, or otherwise changed, the references herein shall be deemed to refer to the Applicable Laws as amended, modified or otherwise changed. If an Applicable Law is deleted, any reference herein shall be deemed to refer to any successor Applicable Law.

IN WITNESS WHEREOF, the undersigned have executed this Amended and Restated Declaration of Restrictions as shown on the acknowledgments attached hereto.

BERNARDO HEIGHTS II RECREATION ASSOCIATION,
a California nonprofit mutual benefit corporation

By: _____
President

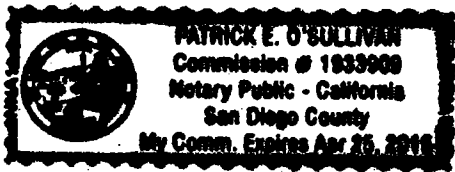
By: _____
Secretary

NOTARY ACKNOWLEDGMENT

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN DIEGO)

On 3/29/14, before me, PATRICK E. O'SULLIVAN Notary Public,
Date Name and Title of Officer (e.g. "Jane Doe, Notary Public")
personally appeared MICHAEL J. WOLF & GILL M. DONAR,
Name of Signer

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 and the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Patrick E. O'Sullivan
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: 2014 Amended Restated Declaration of Restrictions For BHI REGISTRATION ASSOCIATION

Document Date: _____ Number of Pages: _____

Signer Other Than Named Above: _____

CAPACITY(IES) CLAIMED BY SIGNER(S)

Signer's Name: _____

- ☐ Individual
☐ Corporate Officer
Title: _____
☐ Partner – ☐ Limited ☐ General
☐ Attorney-in-Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

Signer is Representing:

CAPACITY(IES) CLAIMED BY SIGNER(S)

Signer's Name: _____

- ☐ Individual
☐ Corporate Officer
Title: _____
☐ Partner – ☐ Limited ☐ General
☐ Attorney-in-Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

Signer is Representing:

EXHIBIT "A" – RECREATION ASSOCIATION LEGAL DESCRIPTION

The legal descriptions of all the property subject to the Declaration are set forth below.

Legal Description of Property within Bernardo Heights Unit No. 11

Lots 1 through 99, inclusive, and Lots 101 and 102 of Bernardo Heights Unit No. 11 according to Map thereof No. 9968 filed in the Office of the County Recorder of San Diego County, California, on January 14, 1981.

Legal Description of Property within Bernardo Heights Unit No. 12

Lots 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117 and 118 of Bernardo Heights Unit No. 12 according to Map thereof No. 9970 filed in the Office of the County Recorder of San Diego County, California, on January 15, 1981.

Legal Description of Property within Bernardo Heights Unit No. 14

Lots 1 through 129, inclusive, of Bernardo Heights Unit No. 14 according to Map thereof No. 11155 filed in the Office of the County Recorder of San Diego County, California, on February 27, 1985.

Legal Description of Property within Bernardo Heights Unit No. 24

Lots 1 through 8, inclusive, of Bernardo Heights Unit No. 24 according to Map thereof No. 11156 filed in the Office of the County Recorder of San Diego County, California, on February 27, 1985.

EXHIBIT "B" -- RECORDED DECLARATIONS, AMENDMENTS AND ANNEXATIONS

The documents set forth below are the recorded covenants that apply, in whole or in part, to the Recreation Association. The parenthetical headings indicate that the recorded covenant in question was recorded against property located in that tract.

(Bernardo Heights Unit No. 11 below and documents apply to all tracts)

1. The Declaration of Restrictions for Bernardo Heights II recorded June 16, 1981 as File/Page No. 81-187472 (recorded against Lots 1-99, inclusive, and Lots 101 and 102 of Bernardo Heights Unit No. 11).
2. The "Certificate of Amendment to Declaration of Restrictions for Bernardo Heights II Recreation Association in Accordance with SB 1148" recorded November 21, 2000 as Doc. No. 2000-0635161.
3. The Amendment to Declaration of Restrictions for Bernardo Heights II recorded December 20, 2000 as Doc. No. 2000-0695136.

(Bernardo Heights Unit No. 12 Condominiums below)

4. The Declaration of Restrictions for Bernardo Heights 12 Condominiums recorded August 20, 1981 as File/Page No. 81-266777 (annexes Lot 107 of Bernardo Heights Unit No. 12 to the jurisdiction of the Recreation Association).
5. The Declaration of Annexation (Bernardo Heights 12 Condominiums – Phase 2) recorded October 28, 1981 as File/Page No. 81-340966 (annexes Lot 108 of Bernardo Heights Unit No. 12 to the jurisdiction of the Recreation Association).
6. The Declaration of Annexation (Bernardo Heights 12 Condominiums – Phase 3) recorded July 9, 1982 as File/Page No. 82-212421 (annexes Lot 104 of Bernardo Heights Unit No. 12 to the jurisdiction of the Recreation Association).
7. The Declaration of Annexation (Bernardo Heights 12 Condominiums – Phase 4) recorded March 18, 1983 as File/Page No. 83-086474 (annexes Lot 110 of Bernardo Heights Unit No. 12 to the jurisdiction of the Recreation Association).
8. The Declaration of Annexation (Bernardo Heights 12 Condominiums – Phase 5) recorded June 7, 1983 as File/Page No. 83-189747 (annexes Lots 112, 113, and 114 of Bernardo Heights Unit No. 12 to the jurisdiction of the Recreation Association).
9. The Declaration of Annexation (Bernardo Heights 12 Condominiums – Phase 6) recorded August 1, 1983 as File/Page No. 83-265496 (annexes Lot 116 and 117 of Bernardo Heights Unit No. 12 to the jurisdiction of the Recreation Association).
10. The Declaration of Annexation (Bernardo Heights 12 Condominiums – Phase 7) recorded October 6, 1982 as File/Page No. 82-308273 (annexes Lot 103 of Bernardo Heights Unit No. 12 to the jurisdiction of the Recreation Association).

(Bernardo Heights Unit No. 14 below)

11. The Declaration of Annexation – Bernardo Heights Detached Homes recorded June 5, 1985 as File/Page No. 85-199999 (annexes Lots 25 through 44, inclusive, and Lot 129 of Bernardo Heights Unit No. 14).
12. The Declaration of Annexation – Bernardo Heights Detached Homes recorded March 10, 1986 as File/Page No. 86-092672 (annexes Lots 45 through 47, inclusive, Lots 66 through 69, inclusive, and Lots 113 through 125, inclusive, of Bernardo Heights Unit No. 14).
13. The Declaration of Annexation – Bernardo Heights Detached Homes recorded June 10, 1986 as File/Page No. 86-232019 (annexes Lots 48 through 65, inclusive, of Bernardo Heights Unit No. 14).
14. The Declaration of Annexation – Bernardo Heights Detached Homes recorded June 11, 1986 as File/Page No. 86-233649 (annexes Lots 70 through 87, inclusive, and Lots 109 through 112, inclusive, of Bernardo Heights Unit No. 14).
15. The Declaration of Annexation – Bernardo Heights Detached Homes recorded November 21, 1986 as File/Page No. 86-539345 (annexes Lots 88 through 108, inclusive, of Bernardo Heights Unit No. 14).
16. The Declaration of Annexation – Bernardo Heights Detached Homes recorded March 27, 1987 as File/Page No. 87-163706 (annexes Lots 1 through 24, inclusive, and Lots 126 through 128, inclusive, of Bernardo Heights Unit No. 14).

(Bernardo Heights Unit No. 24 Condominiums below)

17. The Declaration of Covenants, Conditions and Restrictions for Bernardo Heights Unit No. 24 Condominiums recorded June 6, 1985 as File/Page No. 85-200947 (annexes Lot 2 of Bernardo Heights Unit No. 24 to the jurisdiction of the Recreation Association).
18. The Declaration of Annexation (Bernardo Heights 24 Condominiums – Phase 2) recorded March 10, 1986 as File/Page No. 86-092670 (annexes Lot 3 of Bernardo Heights Unit No. 24 to the jurisdiction of the Recreation Association).
19. The Declaration of Annexation (Bernardo Heights 24 Condominiums – Phase 3) recorded June 10, 1986 as File/Page No. 86-232018 (annexes Lot 4 of Bernardo Heights Unit No. 24 to the jurisdiction of the Recreation Association).
20. The Declaration of Annexation (Bernardo Heights 24 Condominiums – Phase 4) recorded June 11, 1986 as File/Page No. 86-233648 (annexes Lot 5 of Bernardo Heights Unit No. 24 to the jurisdiction of the Recreation Association).
21. The Declaration of Annexation (Bernardo Heights 24 Condominiums – Phase 5) recorded October 3, 1986 as File/Page No. 86-445664 (annexes Lot 6 of Bernardo Heights Unit No. 24 to the jurisdiction of the Recreation Association).

22. The Declaration of Annexation (Bernardo Heights 24 Condominiums – Phase 6) recorded March 20, 1987 as File/Page No. 87-146238 (annexes Lot 7 of Bernardo Heights Unit No. 24 to the jurisdiction of the Recreation Association).
23. The Declaration of Annexation (Bernardo Heights 24 Condominiums – Phase 7) recorded April 21, 1987 as File/Page No. 87-216667 (annexes Lot 8 of Bernardo Heights Unit No. 24 to the jurisdiction of the Recreation Association).
24. The Declaration of Annexation (Bernardo Heights 24 Condominiums – Phase 8) recorded August 21, 1987 as File/Page No. 87-477288 (annexes Lot 1 of Bernardo Heights Unit No. 24 to the jurisdiction of the Recreation Association).

all in the Official Records of the County Recorder of San Diego County, hereinafter referred to together as “Declaration,” unless the context clearly indicates otherwise.

EXHIBIT "C" – RECREATION AREA LOTS

The legal descriptions of the Recreation Area Lots are set forth in the list below, showing the applicable Recreation Area Lot Numbers in the specified Bernardo Heights Unit Number according to the Map No. specified as filed with the County Recorder of San Diego County on the date indicated.

Recreation Area Lots located in Bernardo Heights Unit No. 11¹

Lots 97, 98, 99, 101 and 102 of Bernardo Heights Unit No. 11 according to Map thereof No. 9968 filed in the Office of the County Recorder of San Diego County, California, on January 14, 1981.

Recreation Area Lots located in Bernardo Heights Unit No. 12²

Lots 105, 106, 109, 111 115 and 118 of Bernardo Heights Unit No. 12 according to Map thereof No. 9970 filed in the Office of the County Recorder of San Diego County, California, on January 15, 1981.

Recreation Area Lots located in Bernardo Heights Unit No. 14³

Lot 129 of Bernardo Heights Unit No. 14 according to Map thereof No. 11155 filed in the Office of the County Recorder of San Diego County, California, on February 27, 1985.

Recreation Area Lots located in Bernardo Heights Unit No. 24

None

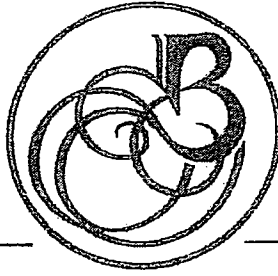
¹ Lot 97 includes the pool and the adjacent recreation building. Lots 98, 99, 101 and 102 are slopes. The grant deed to these lots was recorded September 1, 1981 as Doc. No. 81-280690. It refers to an easement for landscape maintenance in favor of The Community Association of Bernardo Heights ("Community Association") that was recorded September 1, 1981 as Doc. No. 81-280121 over Lots 98, 99, 101 and 102.

² Lot 105 is subject to an easement in favor of the Community Association recorded July 8, 1982 as Doc. No. 82-210665. The grant deed for Lots 105, 106, 109 and 111 dated December 16, 1983 as Doc. 83-459467 refers to the prior easement affecting Lot 105 and to an easement in favor of the Community Association affecting lots 106, 109 and 111 recorded November 10, 1983 as Doc. No. 83-409352. The grant deed to Lots 115 and 118 recorded October 21, 1994 as Doc. No. 1994-0617219 refers to a landscape easement maintenance agreement between the developer grantors and the Community Association recorded October 6, 1994 as Doc. No. 1994-0591165.

³ A landscape maintenance easement in favor of the Community Association is part of the recorded grant deed dated December 24, 1985 as Doc. 85-485004. There is also a separate landscape maintenance easement in favor of the Community Association recorded May 21, 1986 as Doc. 86-202465.

EXHIBIT “D” – CONSENT OF THE COMMUNITY ASSOCIATION

The written consent of The Community Association of Bernardo Heights is attached following this page.



THE COMMUNITY ASSOCIATION OF BERNARDO HEIGHTS RESOLUTION

Whereas, according to Article XIV, Section 2 of the Bernardo Heights II Recreation Association Declaration recorded June 16, 1981 as Document No. 81-187472 and Article X of the Bernardo Heights II Recreation Association Bylaws adopted May 4, 1981, any amendment of the said Declaration or Bylaws requires the prior written consent of the Board of Directors of The Community Association of Bernardo Heights; and

Whereas, Bernardo Heights II Recreation Association has requested that the Board of Directors of the Community Association of Bernardo Heights grant its written consent to a proposed Amended and Restated Declaration of Restrictions and to the proposed Amended and Restated Bylaws for Bernardo Heights II Recreation Association and provided a copy of the proposed Amended and Restated Declaration and Bylaws to the Board of Directors of the Community Association of Bernardo Heights for its review; and

Whereas, the Board of Directors of the Community Association of Bernardo Heights has completed its review of the said documents:

NOW THEREFORE, the Board of Directors of the Community Association of Bernardo Heights hereby grants its written consent to the proposed Amended and Restated Declaration of Restrictions and to the proposed Amended and Restated Bylaws for Bernardo Heights II Recreation Association.

We certify that the above resolution was approved and has been recorded in the minutes of a duly-held meeting of the Board of Directors of the Community Association of Bernardo Heights held on April 26, 2012.

By: Nick Anastasopoulos Dated: 4/26, 2012
Nick Anastasopoulos, President

By: Ralph Posey Dated: 4/26, 2012
Ralph Posey, Secretary

**EXHIBIT “E” – ORDER GRANTING VERIFIED PETITION TO AMEND
DECLARATION OF RESTRICTIONS**

The Court Filed Stamped Copy of the “Order Granting Verified Petition to Amend the Declaration of Restrictions” for The Community Association of Bernardo Heights is attached following this page.

FEB 18 '14 PM 2:50

F I L E D
San Diego Superior Court

MAR 14 2014

Clerk of the Superior Court
BY: H. HENSON

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO, CENTRAL DIVISION

In the matter of:

BERNARDO HEIGHTS II RECREATION
ASSOCIATION, a California Common
Interest Development,

Petitioner,

CASE NO. 37-2013-00080248-CU-PT-CTL

Assigned For All Purposes To:
Judge: Lisa Schall
Dept: 46

**~~[Proposed]~~ ORDER GRANTING
VERIFIED PETITION TO AMEND
DECLARATION OF RESTRICTIONS**

[Civ. Code § 4275]

Date: 3/14/14
Time: 1:30 p.m.

Petition Filed: 12/17/13

The verified petition of BERNARDO HEIGHTS II RECREATION ASSOCIATION ("Association") for an order to reduce the percentage of affirmative votes necessary to amend its Declaration of Restrictions for Bernardo Heights II ("Declaration") came on regularly for hearing on March 14, 2013, at 1:30 p.m. in Department 46 of the above-entitled court, located at located at 330 W. Broadway, San Diego, California 92101, the Honorable Lisa Shchall Judge Presiding. ~~Jodi A. Konorti~~ ^{JOHN HANSEN, JR.} and Pejman D. Kharrazian of the law firm of Epsten Grinnell & Howell, APC, appeared on behalf of Petitioner. No one appeared in opposition to the Petition.

The court, having considered the verified petition and the attached exhibits, the

1 memorandum of points and authorities, and other documents in support and in opposition of
2 the Petition, having heard the arguments before it and being fully advised in the matter, finds
3 as follows:

4 1. Petitioner gave not less than fifteen days' written notice of the hearing to all
5 members of the Association.

6 2. There are no mortgagees of mortgages and/or beneficiaries of deeds of trust
7 entitled to notice under the terms of the Declaration, and the Declaration does not require any
8 notice to the city and/or county where the Association is located.

9 3. Balloting on the Proposed 2014 Amended and Restated Declaration of
10 Restriction for Bernardo Heights II Recreation ("Restated Declaration") was conducted in
11 accordance with all applicable provisions of the Association's governing documents.

12 4. A reasonably diligent effort was made to permit all eligible members to vote on
13 the Restated Declaration.

14 5. Members having more than fifty percent (50%) of the votes voted in favor of
15 the amendment to the declarations.

16 6. The amendments to the Declaration are reasonable.

17 7. Granting the petition is not improper for any reason specified in Section
18 4275(e) of the Civil Code.

19 On proof being made to the satisfaction of the court, and for good cause shown,

20 IT IS, THEREFORE, ORDERED, ADJUDGED, AND DECREED that:

21 1. The Declaration's requirement at Article XIV, Section 2 relating to the
22 percentage of votes needed for approval of the Restated Declaration is reduced for the
23 purposes of this Petition and the Restated Declaration is validly approved on the basis of the
24 affirmative votes that were actually received during the balloting period that ended September
25 11, 2013.

26 2. Petitioner is hereby authorized to record a copy of this order along with the
27 Restated Declaration in the San Diego County Recorder's Office as part of the official records
28 of San Diego County.

3. Pursuant to California Civil Code section 4275(g), Petitioner is directed to mail a copy of the recorded Restated Declaration to each member of the Association within a reasonable time after said document is recorded, together with a statement that the amendment has been recorded.

IT IS SO ORDERED.

DATED: MAR 14 2014

LISA SCHALL

Judge of the Superior Court