

FIRST RESTATED
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
LAKE RANCHO VIEJO OWNERS' ASSOCIATION, INC.

The Master Declaration of Covenants, Conditions and Restrictions, for LAKE RANCHO VIEJO OWNERS' ASSOCIATION, INC., recorded on July 2, 1991, as Instrument No. 226055, of the Official Records of San Diego County, California ("Original Declaration"), and all amendments, which affect all of the Development described and commonly known as Lake Rancho Viejo is hereby amended and restated in its entirety to read as follows:

RECITALS

(A) The Original Declaration established LAKE RANCHO VIEJO OWNERS' ASSOCIATION, INC. ("Association") to oversee, manage, maintain and operate the real property ("Development") subject to the Original Declaration, plus all annexations to the Development. The Development subject to this Declaration is legally described in Exhibit "A" to this First Restated Declaration.

(B) The Development was originally conveyed, subject to certain easements, protective covenants, conditions, restrictions, reservations, liens and charges as set forth in the Original Declaration referred to above, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Development and all of which shall run with the Development and be binding on all parties having or acquiring any right, title or interest in any part of the Development, their heirs, successors and assigns, and shall inure to the benefit of each Owner.

(C) The Development is a "Planned Development," as defined in *Civil Code* Section 4175, and the Lots sold and conveyed to the Owners are subject to the protective covenants, conditions, restrictions, limitations, reservations, grants of easements, rights, rights-of-way, liens, charges and equitable servitudes as set forth in this Declaration.

(D) The Association now desires to amend and restate the Original Declaration and replace it in its entirety with this First Restated Declaration, and that upon recordation of same, the Development shall be subject to the covenants, conditions, restrictions, rights, reservations, easements, equitable servitudes, liens and charges contained in this First Restated Declaration which shall run with the Development and be binding on all parties having or acquiring any right, title or interest in any part of the Development, their heirs, successors and assigns, and shall inure to the benefit of each Owner.

ARTICLE 1

DEFINITIONS

Section 1.1. “**Annual Budget Report**” means the report prepared by the Association and distributed to the Owners by Individual Delivery as set forth in Article 10, Section 10.3(A) of the Bylaws and *Civil Code* Section 5300.

Section 1.2. “**Annual Policy Statement**” means the statement prepared by the Association and distributed to the Owners by Individual Delivery as set forth in Article 10, Section 10.3(D) of the Bylaws and *Civil Code* Section 5310.

Section 1.3. “**Architectural Committee**” means the committee created in accordance with Article 7 of this Declaration.

Section 1.4. “**Architectural Guidelines**” means the rules, regulations and/or guidelines pertaining to Improvements which have been or shall be adopted by the Board and amended from time to time.

Section 1.5. “**Articles**” means the Articles of Incorporation of LAKE RANCHO VIEJO OWNERS' ASSOCIATION, INC., which are filed in the Office of the California Secretary of State, as such Articles may be amended from time to time.

Section 1.6. “**Assessment**” means any Regular, Special or Reimbursement Assessment made or assessed by the Association against an Owner and his or her Lot in accordance with the provisions of Article 5 of this Declaration.

Section 1.7. “**Association**” means the LAKE RANCHO VIEJO OWNERS' ASSOCIATION, INC., a California nonprofit corporation (formed pursuant to the Nonprofit Mutual Benefit Corporation Law of the State of California), its successors and assigns. The Association is an “association” as defined in *Civil Code* Section 4080.

Section 1.8. “**Beneficiary**” means a Mortgagee under a Mortgage or, as the case may be, the beneficiary of or holder of a note secured by a Deed of Trust, and/or the assignees of such Mortgagee, Beneficiary or holder.

Section 1.9. “**Board of Directors**” or “**Board**” means the Board of Directors of the Association.

Section 1.10. “**Bylaws**” means the current Bylaws of the Association, as such Bylaws may be amended from time to time.

Section 1.11. “**City**” means the City of Fallbrook and its various departments, divisions, employees and representatives.

Section 1.12. “**Common Area**” means all the real property owned by the Association for the common use and enjoyment of the Owners. Unless the context clearly indicates a contrary intention, any reference to “Common Area” shall also include any Common Facilities located thereon. “Common Area” shall also mean the entire Development, except the Lots.

Section 1.13. “**Common Expense**” means any use of Association funds authorized by in the Governing Documents and includes, without limitation:

(A) All expenses or charges incurred by or on behalf of the Association for the management, maintenance, administration, insurance, operation, repairs, additions, alterations or reconstruction of the Common Area, Common Facilities or any portion of any Lot that the Association is obligated to maintain or repair;

(B) All expenses or charges reasonably incurred to procure insurance for the protection of the Association and its Board;

(C) Any amounts reasonably necessary for reserves for maintenance, repair and replacement of the Common Area and Common Facilities or any portion of any Lot that the Association is obligated to maintain or replace, and for nonpayment of any Assessments; and

(D) The use of such funds to defray the costs and expenses incurred by the Association in the performance of its functions or in the proper discharge of the responsibilities of the Board as provided in the Governing Documents.

(E) Any expense reasonably incurred to protect, preserve and maintain the Development in the discretion of the Board.

Section 1.14. “**Common Facilities**” means, without limitation, the trees, hedges, plantings, lawns, shrubs, landscaping, fences, utilities, pipes, lines, lighting fixtures, swimming pools, spas, tennis court, tot lot, restrooms, picnic tables and benches, gates, walls, curbs, parking areas, structures, buildings, volleyball court, tot lots, swing area, walking paths, marquee basketball court, clubhouse, wells, pump stations and other facilities constructed or installed, or to be constructed or installed, or currently located within the Common Area.

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

Section 1.16. “**Declaration**” means this instrument, including all of the exhibits (all of which shall be deemed incorporated by reference), as the same may be amended from time to time. The “Original Declaration” means and refers to the document referenced in the recitals to this Declaration, together with all amendments and annexations, adopted prior to adoption and recordation of this Declaration.

Section 1.17. “**Deed of Trust**” or “**Trust Deed**” means a Mortgage or Deed of Trust, as the case may be encumbering a Lot in the Development.

Section 1.18. “**Development**” means all parcels of real property (Common Area and Lots described and identified in Recital “A”) together with all buildings, structures, utilities, Common Facilities, and all other improvements now located or hereafter constructed or installed thereon, including all appurtenances.

Section 1.19. “**Director**” means a natural person who serves on the Board.

Section 1.20. “**Eligible Mortgagee**” means and refers to a holder of a first Mortgage on a Lot who has requested notice from the Association of those matters to which such holder is entitled by reason of this Declaration.

Section 1.21. “**General Delivery**” or “**General Notice**” means the delivery of documents or notification of information by the Association to the Owners through one or more of the methods set forth in Article 17, Section 17.1 of this Declaration and *Civil Code* Section 4045.

Section 1.22. “**Governing Documents**” is a collective term that includes, but is not limited to, this Declaration, the Articles, Bylaws, Rules and Regulations, Election Operating Rules and Architectural Guidelines.

Section 1.23. “**Improvement**” means, without limitation, the construction, installation, alteration, or remodeling of any buildings, outbuildings, cages, storage sheds, mailboxes, walkways, sprinkler pipes, irrigation systems, garages, walls, patios, gates, garage doors, skylights, lighting and lighting fixtures, fences, swimming pools, spas, recreation facilities, roads, driveways, alleys, ditches, culverts, bridges, parking areas, screening walls, retaining walls, stairs, decks, landscaping, landscape structures, hedges, windbreaks, plantings, planted trees and shrubs, poles, ornamental lighting, drainage facilities, utility lines, air conditioners or air conditioning systems, or any structure of any kind. The term “Improvement” shall not be interpreted to include projects which are restricted to the interior of any Residence.

Section 1.24. “**Individual Delivery**” or “**Individual Notice**” means the delivery of documents or notification of information by the Association to the Owners through one of the methods set forth in Article 17, Section 17.2 of this Declaration and *Civil Code* Section 4040.

Section 1.25. “**Lot**” means any parcel of real property designated by a number on any recorded subdivision map for any portion of the Development, excluding the Common Area. When appropriate within the context of the Governing Documents, the term “Lot” shall also include the Residence and other Improvements constructed or to be constructed on a Lot.

Section 1.26. “**Member**” means every person or entity who holds a membership in the Association.

Section 1.27. “**Mortgage**” means any security device encumbering all or any portion of a Lot, including any Deed of Trust. “Mortgagee” shall refer to the Beneficiary of, or the holder of a note secured by a first Deed of Trust or, as the case may be, the Mortgagee under a first Mortgage, and/or the assignee of such Beneficiary, holder or Mortgagee.

Section 1.28. “**Officer**” means the President, Vice-President, Secretary, Treasurer or any subordinate Officers of the Association as set forth in the Bylaws.

Section 1.29. “**Owner**” means any person, firm, corporation or other entity which owns a fee simple interest in a Lot. The term Owner shall not include persons or entities who hold an interest in a Lot merely as security for the performance of an obligation or as a contract purchaser (i.e., lease to own). The terms “Owner of Record” and “Member of the Association” include an Owner and means

any person, firm, corporation or other entity in which title to a Lot is vested as shown by the official records of the Office of the County Recorder.

Section 1.30. “**Regular Assessment**” means an Assessment levied against an Owner and his or her Lot in accordance with Article 5, Section 5.3.

Section 1.31. “**Reimbursement Assessment**” means an Assessment levied on an Owner and his or her Lot in accordance with Article 5, Section 5.6.

Section 1.32. “**Residence**” means a private, single family dwelling constructed on a Lot.

Section 1.33. “**Rules and Regulations**” means the rules, regulations and policies adopted by the Board of the Association, pursuant to *Civil Code* Sections 4340 - 4370, and this Declaration, as the same may be in effect from time to time.

Section 1.34. “**Special Assessment**” means an Assessment levied on an Owner and his or her Lot in accordance with Article 5, Section 5.4.

Section 1.35. “**Voting Power**” means the total number of Lots eligible to vote at any election or vote of the Owners.

ARTICLE 2

MEMBERSHIP AND VOTING RIGHTS IN ASSOCIATION

Section 2.1. **Membership.** All Owners, by virtue of their ownership of a Lot shall be a Member of the Association and shall be entitled to vote on all matters upon which Members of the Association are entitled to vote pursuant to the Governing Documents. Ownership of a Lot, or any interest in a Lot, shall be the sole qualification for, and entitlement to, membership in the Association. Each Owner shall remain a Member of the Association until such time as his or her ownership interest in all Lots in the Development ceases for any reason, at which time his or her membership in the Association shall automatically cease. A Member is not intended to include persons or entities who hold an interest in a Lot merely as security for performance of an obligation; nor is a Member intended to include contract purchasers. Each Member is obligated to promptly, fully and faithfully comply with and conform to the Governing Documents pertaining to the Association. Where title is held by a legal entity (other than a trust), the governing authority of the legal entity shall have the power to appoint a natural person to be a Member.

Section 2.2. **One Class of Membership.** The Association shall have one (1) class of membership and the rights, duties, obligations and privileges of the Members shall be as set forth in the Governing Documents.

Section 2.3. **Voting.** Subject to the provisions of the Governing Documents, each Owner shall be entitled to one (1) vote for each Lot in which he or she holds the interest required for membership and each Lot is allocated a vote equal to each other Lots' vote. Membership shall be appurtenant to and may not be separated from ownership of any Lot. Each Owner is obligated promptly, fully and faithfully to comply with and conform to the Governing Documents.

Section 2.4. Transfer. Membership in the Association shall not be transferred, pledged or alienated in any way, except upon the sale of the Lot to which it is appurtenant, and then only to the purchaser. The transfer of title to a Lot, or the sale of a Lot and transfer of possession to the purchaser, shall automatically transfer the membership appurtenant to such Lot to the transferee. Any attempt to make a prohibited transfer is void and will not be reflected upon the books and records of the Association. In the event an Owner should fail or refuse to transfer the membership registered in his or her name to the purchaser of such Lot, the Association shall have the right to record the transfer upon the books of the Association.

Section 2.5. Joint Owner Votes. The vote for each Lot shall be cast as a single vote, and fractional votes shall not be allowed. In the event that joint Owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. If any Owner casts a vote representing a certain Lot, it will be conclusively presumed for all purposes that he, she or they were acting with the authority and consent of all other Owners of the same Lot.

ARTICLE 3

PROPERTY RIGHTS, EASEMENTS AND OBLIGATIONS OF OWNERS

Section 3.1. Owners' Nonexclusive Easements of Enjoyment. Every Owner shall have a nonexclusive easement for use ~~and enjoyment~~ in and to the Common Area within the Development, ~~including ingress and egress to and from his or her Lot~~. Such right shall be appurtenant to and shall pass with the ownership of a Lot, subject to all of the easements, covenants, conditions, restrictions and other provisions contained in the Governing Documents, including, without limitation, the following provisions:

(A) The right of the Association to limit the number of guests of Owners using the recreational areas of the Common Facilities, subject to the provisions of California law;

(B) ~~The right of the Association to limit the use of the recreational areas of the Common Facilities by Owners not in possession of a Lot;~~

~~(C)~~ The right of the Board to adopt reasonable Rules and Regulations in accordance with the provisions of Article 4, Section 4.4(B) and California law;

~~(DE)~~ The right of the Association to temporarily suspend the voting rights and right to use the recreational portions of the Common Facilities by an Owner as more specifically set forth in Article 15 of this Declaration;

~~(ED)~~ Subject to the limitations set forth in this Declaration, the right of the Association to grant easements on, over and under the Common Area to public utilities or governmental entities or agencies; provided that such easement shall not unreasonably interfere with the right of any Owner to the use and enjoy of his or her Lot and the Common Area;

~~(EF)~~ The right of the Association to take such steps as are reasonably necessary to protect the Common Area against foreclosure;

~~(G)~~ Subject to the limitations set forth in Article 4, Section 4.6(D), the right of the Board to grant licenses or easements to individual Owners over the Common Area;

~~(HF)~~ The right of the Association to charge deposit fees to cover administrative costs for use of the Common Facilities, subject to the provisions of California law; and

~~(IG)~~ Subject to the limitations set forth in this Declaration, the right of the Association to borrow money for the purpose of improving the Development or any other purpose reasonably related to fulfill the Association's obligations under the Governing Documents.

Section 3.2. Utility Easements. Easements over the Development for the installation and maintenance of electric, telephone, water, gas and sanitary sewer lines and facilities, and for drainage facilities as shown on the recorded map of the Development, and as may be hereafter required or needed to service the Development are hereby created for the benefit of each Owner and the Association.

Section 3.3. Common Area Easements. Each Lot within the Development is hereby declared to have an easement over all of the Common Area, for the benefit of the Lots, the Owners thereof, and for their families, guests, invitees and tenants, for all of the purposes and uses described herein, including ingress, egress, and support, if necessary, over and through the Common Area.

Section 3.4. Utilities. Wherever sewer connections, water connections, electricity, gas, telephone and cable television lines or drainage facilities are installed within the Development, the Owners of Lots served by such connections, lines or facilities shall have an easement to the full extent necessary for the use and enjoyment of that portion of the connections which service his or her Lot, and to have utility companies enter upon Lots owned by others, in or upon which said connections, lines or facilities, or any portion thereof, to repair, replace and generally maintain said connections when it may be necessary.

Section 3.5. Establishment of Easements. The easements described in this Declaration shall be deemed established upon the recordation of this Declaration, and shall thereafter be considered covenants running with the land for the use and benefit of all of the Lots and the Common Area, superior to all other encumbrances affecting any portion of the Development. Individual conveyances of Lots may, but shall not be required to, set forth such easements.

Section 3.6. Drainage Easements. An easement for drainage is hereby created over each Lot and the Common Area, in favor of all Lots within the Development, in order to accommodate drainage flow from adjacent Lots. There shall be no modification, interference with or obstruction of the established surface drainage patterns or constructed drainage facilities unless adequate alternative provision is made for proper drainage. Any alteration of the established drainage pattern or constructed drainage facilities must comply with applicable ordinances of the City. For purposes of this Section, "established" drainage is the drainage which existed at the time the overall grading of any Lot was completed by the developer in compliance with the grading requirements of the City.

Section 3.7. Access Easements for Maintenance and Repair. An easement for access in favor of the Association is hereby created and declared to exist over each Lot within the Development, allowing the Association, its agents and employees to maintain and repair all Common Areas and portions of the Lots for which it has maintenance responsibility.

Section 3.8. Encroachment Easements. The Owner of each Lot is hereby granted an easement over all adjoining Lots and the Common Area for the purpose of accommodating any minor encroachments due to engineering errors, errors in original construction, settlement or shifting of any building, or any other cause. There shall be easements for the maintenance of such encroachments as long as they shall exist, and the rights and obligations of Owners shall not be altered in any way by such encroachments, settlement or shifting, provided, however, that in no event shall an easement for encroachment be created in favor of any Owner if such encroachment occurred due to the willful misconduct of an Owner. In the event any portion of a structure on the property is partially or totally destroyed and then repaired or rebuilt, each Owner agrees that minor encroachments over adjoining Common Area shall be easements for the maintenance of such encroachments so long as they shall exist.

Section 3.9. Persons Subject to Governing Documents. All present and future Owners, their family members, guests, tenants, invitees or occupants of Residences within the Development shall be subject to, and shall comply with, each and every provision of the Governing Documents, as the same or any of them shall be amended from time to time, unless a particular provision is specifically restricted in its application to one or more of such classes of persons (i.e., Owners, tenants, guests, etc.). The acceptance of a deed to any Lot, the entering into a lease or contract of sale with respect to any Lot, or the occupancy of any Residence shall constitute the consent and agreement of such Owner, his or her family members, guests, tenants, invitees or occupants that each and all of the provisions of the Governing Documents, as the same or any of them may be amended from time to time, shall be binding upon such person and that the person will observe and comply with the Governing Documents. The Owners of the Lots are at all times responsible for the actions of the family members, guests, tenants, invitees or occupants.

Section 3.10. Waiver of Use. No Owner, by non-use of the Common Area or Common Facilities, abandonment of the Owner's Lot or otherwise may avoid the burdens and obligations imposed on such Owner by the Governing Documents, including, without limitation, the payment of Assessments levied against the Owner and his or her Lot pursuant to this Declaration.

Section 3.11. Obligations of Owners. Owners of Lots within the Development shall be subject to the following:

(A) **Notification of Tenants and Contract Purchasers.** Each Owner shall notify the Secretary of the Association or the Association's community manager, if any, of the names of any contract purchaser or tenant of the Owner's Lot. Each Owner shall also notify the Secretary of the Association, or the Association's community manager, if any, of the names of all persons to whom such Owner has delegated any rights to use and enjoy the Development.

(B) **Contract Purchaser.** A contract seller of a Lot must delegate his or her voting rights as a Member of the Association and the seller's right to use and enjoy the Common Area and

Common Facilities to any contract purchaser in possession of the property subject to the contract of sale. Notwithstanding the foregoing, the contract seller shall remain liable for any default in the payment of Assessments by the contract purchaser until title to the property sold has been transferred to the purchaser.

(C) Payment of Assessments and Compliance With Governing Documents. Each Owner shall pay when due each Regular, Special and Reimbursement Assessment levied against the Owner and his or her Lot and shall observe, comply with and abide by any and all provisions of the Governing Documents.

(D) Discharge of Assessment Liens. Each Owner shall promptly discharge any Assessment lien that may hereafter become a charge against his or her Lot.

(E) Joint and Several Liability. In the event of joint ownership of any Lot, the obligations and liabilities of the multiple Owners under the Governing Documents shall be joint and several. Without limiting the foregoing, this subparagraph shall apply to all obligations, duties and responsibilities of Owners as set forth in the Governing Documents, including, without limitation, the payment of all Assessments.

(F) Termination of Obligations. Upon the conveyance, sale, assignment or other transfer of a Lot to a new Owner, the transferor-Owner shall not be liable for any Assessments due after the date of recording of the deed evidencing the transfer and, upon such recording, all Association membership rights possessed by the transferor by virtue of the ownership of the Lot shall cease.

Section 3.12. Delegation of Use. Any Owner may delegate his or her rights of enjoyment in the Development, including the Common Area, to his or her family members, guests, tenants, invitees or occupants, and to such other persons, subject to the terms and conditions set forth in the Association's Governing Documents. Neither an Owner of a Lot who has sold the same to a contract purchaser or has leased or rented same, nor his or her family members, guests or invitees shall be entitled to use and enjoy the Common Area while such Owner's Lot is occupied by a contract purchaser, lessee or renter. Any rights of enjoyment delegated pursuant to this Section are subject to suspension to the same extent that rights of the Owners are subject to suspension.

Section 3.13. Owner's Obligation for Taxes. Each Owner shall be obligated to pay any taxes or assessments assessed by the County assessor against his or her Lot and against his or her personal property.

Section 3.14. Sand Mining in San Luis Rey River. Each Owner, by its purchase of a Lot, acknowledges that sand mining occurs in the San Luis Rey River and may move closer than it now is to some homes along the River. The permit for that operation may be renewed by the County of San Diego. Noise levels from the extractive operation could constitute a nuisance to some people who are sensitive to noise. The County of San Diego supports this operation.

ARTICLE 4

POWER AND DUTIES OF THE ASSOCIATION

Section 4.1. Standard of Care; Limitation of Liability. Each Director shall perform his or her duties as a Director, including duties as a member of any committee of the Board upon which the Director may serve, in good faith, in a manner such Director believes to be in the best interests of the Association and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances. In performing the duties of a Director, he or she shall be entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, in each case prepared or presented by:

(A) One (1) or more Officers or employees of the Association whom the Director reasonably believes to be reliable and competent in the matters presented;

(B) Counsel, independent accountants or other persons that the Director reasonably believes to be within such person's professional or expert competence;

(C) A committee of the Board upon which the Director does not serve, as to matters within its designated authority, which committee the Director believes to merit confidence, so long as, in any such case, the Director acts in good faith, after reasonable inquiry when the need therefor is indicated by the circumstances and without knowledge that would cause such reliance to be unwarranted.

A person who performs the duties of a Director in accordance with the foregoing, shall have no liability based upon any failure or alleged failure to discharge the person's obligations as a Director.

In discharging their duties and responsibilities, the Board, Officers and committee members act on behalf of and as representatives of the Association, which acts on behalf of, and as a representative of, the Owners. No Director, Officer or committee member shall be individually or personally liable or obligated for performance or failure of performance of such duties or responsibilities unless he or she fails to act in the manner set forth in this Section.

Section 4.2. Conflict of Interest. A Director or committee member shall not vote on any of the following matters:

(A) Discipline of the Director or committee member;

(B) An Assessment against the Director or committee member for damage to the Common Area or Common Facilities;

(C) A request, by the Director or committee member, for a payment plan for overdue Assessments;

(D) A decision whether to foreclose on a lien on the Lot of the Director or committee member;

(E) Review of a proposed physical change to the Lot of the Director or committee member; or

(F) Granting a portion of the Common Area to the Director or committee member for his or her exclusive use.

Section 4.3. Management and Control. The Association shall have all those duties and powers set forth in the Governing Documents of the Association or permitted pursuant to the provisions of the *Corporations Code* for nonprofit mutual benefit corporations. All such duties and powers shall be subject to any specific limitations set forth in the Governing Documents. All such duties and powers shall be exercised by the Board unless specifically reserved to the Owners. The Board shall manage the affairs of the Association and shall have all the powers and duties necessary for the administration of the Development subject only to such limitations on the exercise of such powers as are set forth in the Governing Documents.

The Board shall have the power to do any lawful thing that may be authorized, required, or permitted to be done by the Association under California law and the Governing Documents, and to do and perform any act that may be necessary or proper for or incidental to, the exercise of any of the express powers of the Association.

Section 4.4. Specific Powers. The Board shall manage the affairs of the Association and shall have all the powers and duties necessary for the administration of the Development subject only to such limitations on the exercise of such powers as are set forth in the Governing Documents. The Board shall have the power to do any lawful thing that may be authorized, required, or permitted to be done by the Association under the Governing Documents, and to do and perform any act that may be necessary or proper for or incidental to, the exercise of any of the express powers of the Association.

In addition to the duties imposed by the Governing Documents or by any resolution of the Association that may hereafter be adopted, the Board shall have the power to and be responsible for, the following, in way of explanation, but not limitation:

(A) **Management of Business.** To conduct, manage and control the affairs and business of the Association as it deems best, for the operation of the Development. The Board may appoint such agents and employ such other employees, including professional property management, attorneys and accountants, as it sees fit to assist in the operation of the Association and to fix their duties and to establish their compensation.

(B) **Association Rules.** Subject to the provisions of the Governing Documents and California law, the Board shall have the right to adopt reasonable Rules and Regulations and to amend the same from time to time relating to the use of the Common Area and Lots, and all other facilities situated thereon by Owners, their family members, guests, tenants, invitees or occupants and the conduct of such persons and other activities reasonably contemplated under the Association's Governing Documents. The Rules and Regulations may include the establishment of a system of fines and penalties.

So long as required by *Civil Code* Sections 4340 - 4370, at least twenty eight (28) days prior to adopting, amending or repealing rules that relate to use of the Common Area, Lots, member discipline (including monetary penalties for violation of the Governing Documents), delinquent Assessment payment plans, and procedures regarding resolution of Assessment disputes, the Board

shall provide the Owners of the proposed Rule change by General Notice. This notice shall include the text of the proposed Rule change and a description of the purpose and effect of such proposed Rule change. The Rules and Regulations may be amended by a vote of the Board at a duly held meeting after consideration of any comments made by the Owners. The Board shall provide General Notice of the Rule change to every Owner within fifteen (15) days after making any rule change.

The requirement that Owners be sent General Notice of proposed Rule changes does not apply to any Rule change that the Board determines is necessary to address an imminent threat to public health or safety or imminent risk of substantial economic loss to the Association.

The Rules and Regulations shall be binding upon the Owners, their family members, guests, tenants and other occupants of the Lots, and shall be enforceable to the same extent as if they were specifically set forth as provisions in the Declaration or Bylaws. A copy of the Rules and Regulations shall be:

(1) Maintained in the office of the Association and be available for inspection at all reasonable times; and

(2) Made available to each Owner within a reasonable time after the Association has notice of his or her occupancy of a Lot.

(C) Delegation of Powers; Professional Management. To delegate the management of the activities of the Association to any person(s), management company or committee(s), however imposed, provided that the affairs of the Association shall be managed and all Association powers shall be exercised under the ultimate direction of the Board.

(D) Enforcement of the Governing Documents. To enforce the Governing Documents by the imposition of reasonable monetary fines, Reimbursement Assessments, and suspension of voting privileges and use of the recreational areas of the Common Area. These powers, however, shall not be construed as limiting any other legal means of enforcing the Governing Documents.

(E) Suspension of Rights and Privileges. To temporarily suspend an Owner's rights and privileges and/or assess monetary penalties against any Owner or other person entitled to exercise such rights or privileges for any violation of the Governing Documents. However, before a decision to impose such a suspension or monetary penalties is reached by the Board, the Board shall comply with the notice and hearing requirements set forth in Article 15 of this Declaration. If the Board decides to impose a penalty or suspension, written notice of the penalty or suspension shall be provided to the Owner by Individual Notice within fifteen (15) days after the date of the hearing in accordance with *Civil Code* Section 5855.

(F) Selection of Officers/Committee Members. To select and remove all the Officers, committee members, agents and employees of the Association, prescribe such powers and duties for them as may be consistent with law and the Governing Documents.

(G) Location of Office and Membership Meetings. To change the principal office for the transaction of the business of the Association from one location to another within the County and to

designate any place within reasonable proximity to the Development, in the sole discretion of the Board, within the County for the holding of any membership meeting.

(H) Reconstruction. As more specifically set forth in Article 11, to contract for and pay for reconstruction of any portion of the Development damaged or destroyed.

(I) Legal Action. To commence and maintain actions for damages and/or to restrain and enjoin any actual or threatened breach of any provision of the Governing Documents. The Board shall also have the power to prosecute or defend, in the name of the Association, any action affecting, or relating to, the Common Area, any property owned or maintained by the Association, the obligations of the Association as set forth in the Governing Documents and any action in which all or substantially all of the Owners have an interest.

(J) Deposits/Administrative Fees. To impose and receive deposit or other administrative fees for the use or operation of the Common Area and Common Facilities.

(K) Grant Permits, Licenses, Easements. To grant permits, licenses, utility easements, and other easements, permits, or licenses necessary for the proper maintenance or operation of the Development under, through, or over the Common Area, as may be reasonably necessary to or desirable for the ongoing development and operation of the Development.

(L) Borrowing Money. Subject to the limitations set forth in Section 4.6(A) of this Article, the Board may borrow money for the purposes of improvement or restoration of the Common Area and Common Facilities.

(M) Enter into Contracts. Subject to the provisions of Section 4.6(E) of this Article, to enter into contracts or arrangements for services or materials for the benefit of, or improvement to, the Common Area.

(N) Sell Association Property. Subject to the provisions of Section 4.6(C) of this Article, to sell property owned by the Association.

(O) Capital Improvements. Subject to the provisions of Section 4.6(B) of this Article, to expend money for capital improvements to the Common Area. For purposes of the Governing Documents, the term “capital improvement” means those items or elements which are new to the Development.

(P) Recording of Board Meetings. Subject to any notice and consent requirements established by local, state, or federal law, the power but not the duty to record meetings of the Board and to adopt policies regarding creation of, use, storage, and access to such recordings. Under no circumstances shall recordings of executive session meetings of the Board be more available for inspection by any party than the official minutes of the same meeting.

Section 4.5. Duties of the Association. In addition to the powers delegated to it by the Governing Documents, the Board, has the obligation to conduct all business affairs of common interest for all Owners and to perform each of the duties set forth below:

(A) Operation and Maintenance of Common Area. As more specifically set forth in Article 9 of this Declaration, to maintain, operate and otherwise manage all of the Common Area and Common Facilities, including the improvements and landscaping thereon, and all property subsequently acquired by the Association. In connection with this duty, the Board shall contract for and purchase tools, equipment, materials, supplies and other personal property and services for the maintenance and repair of the Common Area and improvements to the Development. The Board shall also have the right to assign, rent, license or otherwise designate and control the use of the Common Area and/or the improvements thereon. The Board has the power to remove any Common Area structures, improvements and appurtenances it deems necessary in furtherance of its duties under this Declaration.

(B) Taxes and Assessments. To pay all real and personal property taxes and assessments and all other taxes levied against the Association. The obligation to pay the taxes and assessments may be contested by the Association; provided, however, that they are paid, or that a bond insuring payment, is posted before the sale or the disposition of any property to satisfy the payment of such taxes or assessments.

(C) Water and Other Utilities. To acquire, provide and/or pay for water, sewer, garbage disposal, refuse and rubbish collection, electrical, telephone, gas, gardening service and other necessary utility services for the Common Area and make these and such other utilities as the Board may determine, available to all Lots if and when the Lots are not separately billed for these items.

(D) Insurance. As more particularly set forth in Article 10 of this Declaration, to contract and pay for fire, casualty, liability, fidelity and other insurance adequately insuring the Association, Directors and Owners with respect to the Common Area and the affairs of the Association. Each Owner is obligated to obtain and maintain adequate insurance for his or her Lot, Residence, personal property and maintenance items which are the Owner's responsibility.

(E) Assessments. To establish, fix, and levy Assessments against the Owners and to enforce payment of such Assessments, in accordance with the provisions of the Governing Documents and current California law.

(F) Annual Budget Report, Financial Statements and Assessment and Reserve Funding Disclosure Summary. The Board shall prepare Annual Budget Reports, financial statements and assessment and reserve funding disclosure summaries for the Association as required by *Civil Code* Sections 5300, 5305, and 5570.

(G) Bank Accounts. To maintain bank account(s) for funds under the control of the Association.

(H) Availability of Documents. To make available to, and reproduce upon the written request of, any Owner, any first Mortgagee, and the holders, insurers and guarantors of a first Mortgage encumbering any Lot, current copies of the Association's Governing Documents, and

other books, records and financial statements of the Association to which those persons or entities are entitled under the Governing Documents or current law. The Board can establish reasonable procedures to facilitate inspection of these records, including providing for reasonable fees to produce the same.

(I) Distribute Documents and Perform Other Duties. To prepare and distribute to the Owners documents as provided in the Article 10 of the Bylaws and as required by *Civil Code* Sections 4530, 5300, 5305, 5310, and 5810, and to perform other duties as required by *Civil Code* Sections 5500 and 5550.

(J) Shuttle Service. If required by the County of San Diego, the Association may provide shuttle between the Project and nearby commercial, medical and entertainment services as outlined in Major Use Permit No. P81-023 affecting the Project. The Board of Directors may adopt reasonable rules and regulations regarding the use of such shuttle van(s), including but not limited to creating a fee schedule.

Section 4.6. Limitations on Authority of the Board. The Board shall not take any of the actions listed below except with the vote or written consent of a majority of the Voting Power of the Association:

(A) Borrow Money. Borrow money and incur indebtedness for the purposes of the Association in excess of the aggregate sum of five percent (5%) of the budgeted gross expenses of the Association for that fiscal year.

(B) Expenditures for Capital Improvements. Make expenditures for capital improvements to the Development in excess of the aggregate sum of five percent (5%) of the budgeted gross expenses of the Association for that fiscal year. For purposes of the Governing Documents the term “capital improvement” means any new addition to the Development.

(C) Sales of Common Area. Sell during any fiscal year property of the Association having an aggregate fair market value greater than five percent (5%) of the budgeted gross expenses of the Association for that fiscal year.

(D) Convey or Grant Licenses/Easements. Sell, convey or grant licenses or easements to Owners to exclusively use portions of the Common Area where the value of the license or easement is five percent (5%) or more of the budgeted gross expenses of the Association for that fiscal year. For purposes of *Civil Code* Section 4600, the affirmative vote of zero percent (0%) of the Owners is required for the Board to sell, convey or grant exclusive use of any portion of the Common Area to any Owner if the value of the license or easement is less than five percent (5%) of the budgeted gross expenses of the Association for that fiscal year. Notwithstanding the provisions of this section, the Board shall not be obligated to obtain a vote of the Owners if any of the exceptions contained in *Civil Code* Section 4600(b) apply to any conveyance, sale or grant of easement, license and/or permit.

(E) Third Person Contracts. Enter into a contract with third persons for furnishing goods or services for the Common Area for a term longer than one (1) year, with the following exceptions:

(1) A contract with a public utility company if the rates charged for the materials or services are regulated by the Public Utilities Commission; provided, however, that the term of the contract shall not exceed the shortest term for which the supplier will contract at the regulated rate;

(2) Payment of any taxes and governmental special assessments which are and could become a lien on any portion of the Common Area;

(3) Agreements for cable television services and equipment, internet services and equipment, or satellite dish television services and equipment not to exceed five (5) years duration;

(4) Contracts for management. Additionally, the Board shall not have the power to approve or authorize any contract for the professional management of the Development which (1) does not permit the Association to terminate (a) for cause on thirty (30) days written notice and (b) without cause, or payment of a termination fee, on ninety (90) days or less written notice and/or (2) has a term greater than three (3) years;

(5) Prepaid casualty and/or liability insurance policy which does not exceed three (3) years duration provided that such policy permits for short rate cancellation by the insured; and

(6) Agreements for sale or lease of burglar alarm and fire alarm equipment, installation and services not to exceed a five (5) year duration.

(7) Contracts related to providing shuttle service to the Owners and Residents of the Association.

Section 4.7. Limited Right of Entry.

(A) For the purposes of constructing, maintaining and repairing the Common Area, enforcing the architectural and land use restrictions of the Governing Documents, or making necessary repairs that an Owner has failed to perform, the Association's Directors, Officers, committee members, agents or employees shall have the right, after at least twenty-four (24) hours prior written notice to the Owner, to enter his or her Lot, but not the Residence, at reasonable hours. Such persons shall not be deemed guilty of trespass by reason of any entry on any Lot pursuant to the provisions of the Governing Documents. The cost of such maintenance or repair may be imposed as a Reimbursement Assessment against the Owner in accordance with the Governing Documents.

(B) In addition to, and not in limitation of all other rights, the Association may enter onto the Lots but not into Residences for emergency, security, or safety purposes, which right may be exercised by the Association's Directors, Officers, committee members, agents, employees, managers, and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their respective duties. In an emergency situation, if practicable, prior to entering the Lot, a reasonable attempt will be made to notify the occupant and the Owner of the Lot of the Association's need and intent to enter the Lot.

(C) When there is entry into any Lot, such entry shall be made with as little inconvenience to the occupant as possible. Such persons entering pursuant to the provisions of the Governing Documents, shall not be deemed guilty of trespass by reason of any entry on any Lot pursuant to the provisions of the Governing Documents.

(D) The Association is responsible for providing notices under this Section only to the Owner. The Owner is responsible for notifying the occupants, residents, and/or tenants living in the Owner Residence of any notice received from the Association pursuant to this Section.

ARTICLE 5

COVENANT FOR MAINTENANCE ASSESSMENTS TO ASSOCIATION

Section 5.1. Assessments Generally.

(A) **Purpose of Assessment.** The Assessments for Common Expenses provided for in the Governing Documents shall be used for the general purpose of the preservation and proper operation of the Development and for promoting the recreation, health, safety, welfare, common benefit, and enjoyment of the Owners and/or occupants of Lots in the Development as may be more specifically authorized from time to time by the Board.

(B) **No Avoidance of Assessment Obligations.** No Owner may exempt himself or herself from personal liability for Assessments duly levied by the Association, nor release the Lot or other property owned by him or her from such liens and charges, by waiver of the use and enjoyment of the Common Area or any facilities thereon, by abandonment or non-use of his or her Lot or any other portion of the Development, by any alleged failure by the Association to perform services, or for any other reasons.

Section 5.2. Creation of Continuing Lien and Personal Obligation for Assessments. Each Owner of any Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed or conveyance, is deemed to covenant and agree to pay the Association: (a) annual Regular Assessments or charges; (b) Special Assessments, to be established and collected as provided in this Declaration; and (c) Reimbursement Assessments against any particular Lot which are established pursuant to the terms of the Association's Governing Documents.

(A) All such Assessments, together with late charges, interest, costs, and all attorneys' fees reasonably incurred, as provided in this Declaration and in the maximum amount permitted by the laws of the State of California, whichever is greater, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which each Assessment is made. Said continuing lien shall include Assessments, late charges, interest, costs, and all attorneys' fees accruing after the date of recordation. Such amounts shall also be the personal obligation of the person who was the Owner of such Lot at the time when the Assessment fell due or was levied. In the event more than one (1) person or entity was the Owner of a Lot, the personal obligation to pay such Assessment, or installment, shall be joint and several. Unless otherwise stated in the Association's policy with respect to collection of Assessments, Assessments shall be considered delinquent if not received by the fifteenth (15th) day of the month in which they are due.

(B) Assessments shall be paid on a monthly basis on the first day of each month or in such manner and on such dates as may be fixed by the Board.

(C) The personal obligation for delinquent Assessments, or delinquent installments, and such other sums, shall not pass to an Owner's good faith and for value successors in title unless expressly assumed by them.

(D) Any Assessment not paid within thirty (30) days after the date due shall bear interest from the date due at the rate of twelve percent (12%) per annum or any other amount provided for under California law, whichever is greater.

Section 5.3. Regular Assessments.

(A) Establishment of Regular Assessments. The total annual expenses estimated in the Association's Annual Budget Report (less projected income from sources other than Assessments) shall be a guide to establishing the aggregate Regular Assessment for the next succeeding fiscal year, provided that, except as provided in subparagraph (C) below, the Board may not impose a Regular Assessment that is more than twenty percent (20%) greater than the Regular Assessment for the Association's immediately preceding fiscal year without the vote or written assent of Owners, constituting a quorum, casting a majority of the votes at a meeting or election of the Association. For purposes of this Section, "quorum" means more than fifty-percent (50%) of the Owners of the Association.

(B) Mailing Notice of Assessment. The Board shall provide Individual Notice to each Owner at the street address of the Owner's Lot, or at such other address as the Owner may from time to time designate in writing to the Association, a statement of the amount of the Regular Assessment for the next succeeding fiscal year no less than thirty (30) days nor more than ninety (90) days prior to the beginning of the next fiscal year.

(C) Failure to Make Estimate. If, for any reason, the Board fails to make an estimate of the Common Expenses for any fiscal year, then the Regular Assessment made for the preceding fiscal year, together with any Special Assessment made pursuant to Article 5, Section 5.4 for that year, shall be assessed against each Owner and his or her Lot on account of the then current fiscal year and the Assessments shall be payable on the regular payment dates established by the Association.

(D) Ability to Change Regular Assessments. The Board may increase the amount of Regular Assessments at any time upon not less than thirty (30) nor more than sixty (60) days prior written Individual Notice to the Owners, subject to the limitations in Section 5.3(A).

Section 5.4. Special Assessments.

(A) In addition to the Regular Assessments, authorized above, the Board may levy Special Assessments for the purpose of defraying, in whole or in part, the cost of any capital improvement to the Common Area or such other purpose as may be determined by the Board; provided, however, Special Assessments shall not exceed, in the aggregate during any fiscal year of

the Association, an amount equal to five percent (5%) of the budgeted gross expenses of the Association for that fiscal year, without the vote or written assent of Owners, constituting a quorum, casting a majority of the votes at any meeting or election of the Association. For purposes of this Section, “quorum” means more than fifty-percent (50%) of the Owners of the Association. All such Special Assessments shall be levied upon each Lot in the same proportion as Regular Assessments are levied.

(B) Ability to Change Special Assessments. The Board may increase the amount of Special Assessments at any time upon not less than thirty (30) nor more than sixty (60) days prior written Individual Notice to the Owners, subject to the limitations in Section 5.4(A).

Section 5.5. Assessments to Address Emergency Situations. The requirement of a membership vote to approve Regular Assessment increases in excess of twenty percent (20%) of the previous year’s Regular Assessment or Special Assessments in excess of five percent (5%) of the budgeted gross expenses of the Association for that fiscal year shall not apply to Assessment increases necessary to address emergency situations. For purposes of this section, an emergency situation is any of the following, or otherwise defined by California law:

(A) An extraordinary expense required by an order of a court.

(B) An extraordinary expense necessary to repair or maintain the Common Area, Common Facilities or any portion of the Lots which the Association is obligated to maintain where a threat to personal safety is discovered.

(C) An extraordinary expense necessary to repair or maintain the Common Area, Common Facilities or any portion of the Lots which the Association is obligated to maintain that could not have been reasonably foreseen by the Board in preparing the Annual Budget Report pursuant to Section 5.3(A) above, provided that, prior to the imposition or collection of an Assessment under this subsection, the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process. The Board’s resolution shall be distributed to the Owners together with the notice of Assessment.

Section 5.6. Reimbursement Assessments.

(A) Circumstances Giving Rise to Reimbursement Assessments. The Board may impose Reimbursement Assessments against an Owner in any of the circumstances described, without limitation, in subparagraphs (1) through (4) below, provided that no Reimbursement Assessments may be imposed against an Owner pursuant to this Section until the Owner has been afforded the notice and hearing rights to which the Owner is entitled pursuant to this Declaration and *Civil Code* Section 5855, and, if appropriate, has been given a reasonable opportunity to comply voluntarily with the Association’s Governing Documents. Subject to the foregoing, the acts and circumstances giving rise to liability for Reimbursement Assessments include the following:

(1) Damage to Common Area or Common Facilities. In the event that any damage to, or destruction of, any portion of the Common Area or the Common Facilities, including any portion of the Lot which the Association is obligated to repair and maintain, is

caused by the willful misconduct or negligent act or omission of any Owner, his or her family members, guests, tenants, invitees or occupants, the Board shall cause the same to be repaired or replaced, and all costs and expenses incurred in connection therewith (to the extent not compensated by insurance proceeds) shall be assessed and charged solely to and against such Owner as a Reimbursement Assessment. Reimbursement Assessments imposed under this subsection may be collected in the same manner as Regular and Special Assessments, including the imposition of a lien, if allowed by California law.

(2) Expenses Incurred in Gaining Membership Compliance. In the event that the Association incurs any costs or expenses, to accomplish: (a) the payment of delinquent Assessments; (b) any repair, maintenance or replacement to any portion of the Development that the Owner is responsible to maintain under the Governing Documents but has failed to undertake or complete in a timely fashion; or (c) to otherwise bring the Owner and/or his or her Lot into compliance with any provision of the Governing Documents, the amount incurred by the Association (including reasonable attorneys' fees, title company fees, accounting fees, ~~and~~ court costs, and reasonable attorneys fees) shall be assessed and charged solely to and against such Owner as a Reimbursement Assessment.

(3) Required Maintenance on Lots. If any Lot is maintained so as to become a nuisance, fire or safety hazard for any reason, including without limitation, the accumulation of trash, junk automobiles, or improper weed or vegetation control, the Association shall have the right to enter the Lot, correct the offensive or hazardous condition and recover the reasonable cost of such action through imposition of a Reimbursement Assessment against the offending Owner.

(4) Unpaid Fines, Fees or other Charges. If an Owner does not pay a fine or any other fee or charge duly levied against him or her within thirty (30) days after the Board has notified the Owner of the fine, fee or charge, then the Board shall have the right to levy a Reimbursement Assessment against such Owner. Unless expressly permitted under California law, any lien against the Owner's Lot for nonpayment of a Reimbursement Assessment levied pursuant to this subsection (4) shall not be enforceable by nonjudicial foreclosure of the Lot.

(B) Levy of Reimbursement Assessment and Payment. Once a Reimbursement Assessment has been levied against an Owner for any reason described in the Governing Documents, and subject to the conditions imposed, Individual Notice shall be mailed to the affected Owner and the Reimbursement Assessment shall thereafter be due and payable in full to the Association within thirty (30) days after the mailing of Individual notice of the Assessment. The Reimbursement Assessment may be collected in the same manner as Regular and Special Assessments, including the imposition of a continuing lien, as allowed by California law.

Section 5.7. Notice/Certificate of Status. Annual written notice of an Assessment shall be given to every Owner with the Annual Budget Report and Annual Policy Statement prepared pursuant to Article 10 of the Bylaws and *Civil Code* Sections 5300, et. seq. Assessments may be collected on a monthly basis or otherwise as determined by the Board. The Association shall, upon demand and for a reasonable charge, furnish a certificate signed by an Officer or other agent of the Association setting forth whether the Assessments of a specified Lot have been paid.

Section 5.8. Exemption of Certain of the Properties From Assessments. The following real property subject to this Declaration shall, unless devoted to use as a residential dwelling, be exempted from the Assessments and the liens provided in this Article:

- (A) Any portion of the Development dedicated and accepted by a local public authority;
- (B) The Common Area and Common Facilities;
- (C) Any Lot owned by the Association.

Section 5.9. Remedies of the Association for Non-Payment of Assessments. The Association shall have the power to impose Assessments as provided in these Governing Documents. Such Assessments are the personal obligation of the Owner against whom they are assessed and constitute a continuing lien against that Lot. The Association shall have the authority to initiate a lawsuit and/or create and enforce the lien with a power of sale on each separate Lot (including the Residence and Improvements) to secure payment of the amount of any Assessment, to the full extent permitted by applicable law. The obligation and the lien for Assessments may also include the following:

- (A) A late or delinquency charge in the amount of the greater of ten dollars (\$10.00) or ten percent (10%), or such higher amount as may be authorized by the laws of the State of California, of the amount of each Regular Assessment or lump sum or installment payment of any Special Assessment or Reimbursement Assessment not paid when due;
- (B) Interest on each Assessment or installment not paid when due and on any delinquency fee or late charge from the date the charge was first due and payable at the rate of twelve percent (12%) per annum, or such higher rate as may be authorized by the laws of the State of California; and
- (C) Costs of collection, including court costs, the expenses of sale, any expense required for the protection and preservation of the Lot, and reasonable attorneys' fees actually incurred; and the fair rental value of the Lot from the time of institution of suit until the sale at foreclosure or other satisfaction of any judgment.

Section 5.10. Effect of Non-Payment of Assessments.

(A) At any time after any Assessments levied by the Association affecting any Lot have become delinquent, and the Association has complied with the pre-lien requirements set forth in Civil Code Section 5660, 5670, 5673, the Association, upon a vote of a majority of the Board made at an open Board meeting, may file for recording in the Office of the County Recorder a continuing lien upon the Lot, pursuant to Civil Code Section 5675, which lien shall also secure all other payments and/or Assessments which shall become due and payable with respect to the Lot following such recording, and all costs (including attorneys' fees), penalties, and interest accruing thereon. The lien shall continue until all amounts secured thereby are fully paid or otherwise satisfied.

(B) In the event the delinquent Assessments, and all other Assessments which have become due and payable with respect to the same Lot, together with all costs (including attorneys'

fees) and interest which have accrued on such amounts, are fully paid or otherwise satisfied prior to the completion of any sale held to foreclose the lien provided for in this Article, the Board shall record a further notice stating the satisfaction and releasing of such lien.

Section 5.11. Foreclosure of Assessment Lien. Each Assessment lien may be foreclosed upon as and in the same manner as the foreclosure of a Mortgage upon real property under California law or may be enforced by sale pursuant to *Civil Code* Sections 2924 et. seq., and 5705, and to that end a power of sale is hereby conferred upon the Association. Suit to recover a money judgment for unpaid Assessments, late fees, interest, attorney's fees, and rent shall be preserved without foreclosing or waiving the lien securing the same.

Section 5.12. Subordination of Lien. The lien of the Assessments provided for in this Article shall be subordinate to the lien of a first Mortgage, given and made in good faith and for value that is of record as an encumbrance against such Lot prior to the recordation of a notice of delinquency. The sale or transfer of any Lot shall not affect the Assessment lien described in this Article, nor shall such sale or transfer diminish or defeat the personal obligation of any Owner for delinquent Assessments. However, the sale or transfer of any Lot pursuant to a judicial foreclosure or foreclosure by power of sale of a first encumbrance shall extinguish any Assessment lien recorded prior to the time of such sale or transfer. Following a foreclosure, the interest of any purchaser at such foreclosure sale shall be subject to all Assessments becoming due after the date of such sale or transfer, and in the event of nonpayment of such Assessments, shall be subject to all of the remedies described in this Declaration. For the purpose of this Section, a sale or transfer of a Lot shall occur on the date of recordation of a deed or land sale contract evidencing the conveyance of record ownership of the Lot.

Section 5.13. Assignment of Rents. Each Owner does hereby presently assign to the Association, absolutely and regardless of possession of the property, all rents and other monies now due, or hereafter to become due, under any lease or agreement or otherwise for the use or occupation of any or all parts of any Lot owned by the Owner, now existing or hereafter made for the purpose of collecting all Assessments due to the Association pursuant to this Declaration which are in default. The Board hereby confers on each Owner the authority to collect and retain the rents and other monies derived from any such lease or agreement as they become due and payable, provided that the Board, in its sole discretion, may revoke such authority at any time, upon written Individual Notice to the Owner of a default in the payment of any Assessment due hereunder. Upon revocation of such authority the Board may collect and retain such monies, whether past due and unpaid or current. The Association's rights under this Section shall be subordinate to the rights of any first Mortgagee. Any attempt to collect rents under this Section shall be done after the Owner of the Lot has been given Individual Notice and an opportunity to be heard by the Board in accordance with the Governing Documents and current California law.

Section 5.14. No Offsets. No offsets against any assessments will be permitted for any reasons, including, without limitation, a claim that the Association is not properly exercising its duties.

Section 5.15. Waiver of Exemptions. Each Owner does hereby waive, to the extent of any liens created pursuant to this Article, the benefit of any homestead or exemption laws of the State of California in effect at the time any Assessment, or installment, becomes delinquent or any lien is imposed pursuant to the terms of this Declaration.

Section 5.16. Uniform Rate of Assessments. Except as otherwise specifically provided, Regular and Special Assessments, other than Reimbursement Assessments, must be fixed at a uniform rate for all Lots.

ARTICLE 6

USE RESTRICTIONS

Section 6.1. Occupancy.

(A) **Single Families.** ~~The Unless otherwise required by law, the~~ Residences within the Development are restricted exclusively to residential use, and no Residence shall be occupied by more than a single family. The term “family” shall be defined in accordance with applicable Federal and California laws, County and City codes and ordinances. ~~Occupancy and use of a Lot for dwelling purposes shall be in conformity with the Governing Documents and the requirements imposed by applicable zoning or other applicable laws or governmental regulations limiting the number of persons who may occupy residential dwellings. “Occupancy,” for purposes of the Governing Documents, shall be defined as staying overnight in a Residence for a total of more than thirty (30), either consecutive or non-consecutive days, in any one (1) year. The maximum number of occupants that may~~ reside in a Residence at any one time shall be as set forth in the City codes and ordinances.

(B) **Residential Use.** Each Residence shall be used for residential purposes only. Legal trade or business may be conducted in or from a Residence so long as there is no external evidence of such business and the business use is incidental to the primary purpose of the Lots as single family private residences ~~and there is no material impact of the Common Area due to the operation or conduction of such trade or business.~~ The Board may establish guidelines in the Rules and Regulations ~~pertaining to defining and regulating to allow certain~~ home occupations which: (a) are consistent and compatible with the typical residential use of the Development; and (b) do not have any detrimental effect on neighboring Lots or the Development.

(C) **Lessee/Tenant Bound by Governing Documents.** As more particularly set forth in Article 8, each Owner shall have the right to lease his or her Lot ~~and interest in the Common Area together,~~ provided that such lease is in writing and provides that the tenant shall be bound by and obligated to the provisions of the Governing Documents.

(D) No camping, whether temporary or permanent, shall be permitted on any Lot. ~~As used in this section, “camping” shall refer to staying in any tent, vehicle, shed, or other structure not customarily intended for habitation.~~

(E) **Drilling.** Except as authorized, in writing, by the Board, no drilling, refining, quarrying or mining operations of any kind shall be permitted within the Development.

Section 6.2. Subdivision of Lots and Structures. No Lot may be subdivided into a smaller Lot, except as approved by the Board or required by law, and no Lot Owner shall erect or use any

structure(s) of a temporary character, including but not limited to trailer, tent, shack, carport, garage, barn, or other outbuilding on any portion of the Lot at any time, either temporarily or permanently, except as approved by the Board.

Section 6.3. Pets.

(A) No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any part of the Development, except that no more than a reasonable number of domestic pets, as determined by the Board in the Rules and Regulations, may be kept by their respective owners in their respective Residences, provided that they are not kept, bred, or maintained for any commercial purpose and do not endanger the health or unreasonably disturb the Owner/resident of any Lot or otherwise create a nuisance.

(B) No pet, regardless of size or type, shall be permitted to be kept within any portion of the Development if it makes excessive noise or otherwise constitutes an unreasonable annoyance or danger to other Owners or residents.

(C) No pet enclosures shall be erected, placed, or permitted to remain on any property subject to this Declaration, except as approved by the Board.

(D) Each pet owner must immediately clean up after their pet. Dogs shall be allowed on the Common Area only when they are leashed and are otherwise under the supervision and restraint of their owners.

(E) The keeping of pets in the Development and their ingress, egress, and travel upon the Development shall be subject to such Rules and Regulations as may be issued by the Board.

(F) The Board has the right, but not the obligation, to require the permanent removal of any pet which is allowed to unreasonably threaten the physical or emotional well being of any Owner or resident of a Lot, is allowed to create a nuisance or disturbance, or causes damage to property. The Board has the sole discretion to determine whether any of the foregoing conditions exist which requires the permanent removal of a pet. Except in an emergency situation warranting an application for the issuance of a temporary restraining order or preliminary injunction, prior to requiring the permanent removal of a pet, the Owner of the Lot shall be provided with Individual Notice and an opportunity to be heard by the Board.

Section 6.4. Signs, Flags and Banners.

(A) Commercial Signs. Except as may be required by legal proceedings or authorized by the Association's Rules, no commercial signs, billboards, real estate flags or advertising of any kind shall be maintained or permitted on any portion of the Development without the prior written approval of the Board, except for one "For Sale" or "For Rent" sign per Lot, not larger than 18-inches by 24-inches.

(B) Non-Commercial Signs, Flags, and Banners. Non-commercial signs, flags and banners may only be displayed in accordance with the provisions of current California law and the Association's Rules.

(C) Common Area. No signs shall be erected or displayed on the Common Area, except signs placed by authority of the Board. The Board, on behalf of the Association, shall have the right to erect reasonable and appropriate signs on the Common Area. Flagpoles are not permitted to be installed by any Owner in the ground in the Common Area.

Section 6.5. Antennas and Similar Devices. No Owner may install a video or television antenna or satellite dish which has a diameter or diagonal measurement of greater than one (1) meter, or otherwise defined in OTARD. Owners may install a video or television antenna, including a satellite dish, that has a diameter or diagonal measurement of one (1) meter or less in diameter in accordance with the procedures adopted by the Board. These procedures may require reasonable screening, establish preferred locations, and impose other restrictions as permitted by applicable federal and state law, provided they do not preclude an acceptable signal or unreasonably increase the cost or cause unreasonable delay in the installation of same. These restrictions are subject to change based on federal and state law.

Section 6.6. Vehicles and Parking. The following parking and vehicle restrictions shall apply within the Development:

(A) Vehicles shall be parked in designated areas so as not to obstruct free traffic flow, constitute a nuisance, violate the Rules and Regulations, or otherwise create a safety hazard.

(B) Vehicles shall not park in fire lanes at any time and will be subject to tow at the vehicle owner's expense.

(C) Recreational vehicles, boats, motor homes, trailers, commercial vehicles, or any other special vehicles are not permitted to be parked in any area of the Development except for loading and unloading purposes, not to exceed two (2) successive days and less than four (4) total days in any calendar month. For purposes of this sub-section, "commercial vehicles" shall not include sedans or standard size pickup trucks or sport utility vehicles 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.

(D) The Board shall have the authority to tow at the vehicle owner's expense, any vehicle parked or stored in violation of this Section, or the Rules and Regulations. The Board shall post such notices or signs within the Development as may be required by law to effectuate this towing provision.

(E) The Board may adopt further reasonable Rules and Regulations regarding parking.

(F) No Owner, tenant or occupant shall store or allow to remain within the Development any inoperable or unregistered vehicle.

(G) All Owners, tenants and residents shall have and keep in force, at their own expense, property damage insurance on their automobiles.

(H) No Owner or any of his or her family members, guests, tenants, invitees or occupants, shall park, cause to be parked, left or abandoned, any vehicle in such a manner as to impede or prevent ready ingress, egress or passage to, from, over, across or through any parking space, driveway or sidewalk within the Development.

Section 6.7. Garages. No garage doors shall be permitted to remain open except for a temporary purpose. The Board shall have the power to make reasonable Rules and Regulations regarding the use of and storage in garages. For purposes of this Section, “temporary purpose” shall be defined as permitting reasonable work to be performed in the garage during normal daytime/evening hours. No Owner shall make any change to the interior of their garage including but not limited to installation or conversion for storage purposes without prior approval from the Association in accordance with Article 7 below.

Section 6.8. Impairment of Lots and Easements. No Owner, tenant or occupant shall perform or commence any work that will impair the structural soundness or integrity of another Lot, Common Area or impair any easement, or do any act nor allow any condition to exist which will adversely affect the other Lots or their Owners, tenants or occupants.

Section 6.9. Rubbish, Trash, and Garbage. All rubbish, trash and garbage shall be removed no less than weekly from the Lot and shall not be allowed to accumulate outside of any Residence and/or upon any Lot. No rubbish or debris of any kind shall be dumped, placed, or permitted to accumulate upon any portion of the Development. If a Residence is in the process of construction on any Lot, a dumpster must be placed on the Lot and emptied regularly. Trash containers shall, in any event, only be placed in locations approved by the Architectural Committee. Trash cans and trash shall be stored out of view when it is not trash pick-up day.

Section 6.10. Nuisance. No noxious, illegal, or materially offensive activities shall be carried out or conducted upon any Lot or Common Area or in any part of the Development, nor shall anything be done within the Development which shall unreasonably interfere with any other resident’s right to quiet enjoyment. No Owner or his or her family members, guests, tenants, invitees or occupants may use or allow the use of the Residence or any portion of the Lot in any way or for any purpose which may endanger the health or unreasonably annoy or disturb other Owners or occupants of a portion of the Lot; or in such a way as to constitute, in the sole opinion of the Board, a nuisance. Nothing in this Section, however, shall be construed to affect the rights of an aggrieved Owner or his or her family members, guests, tenants, invitees or occupants to proceed individually for relief from interference with his or her property or personal rights. The Association may unilaterally delegate responsibility for enforcing this Section in whole or in part to the Owners.

Section 6.11. Unsightly or Unkempt Conditions. The pursuit of activities, including without limitation, the assembly and/or disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly, or unkempt conditions, shall not be pursued or undertaken on any part of the Lot nor on or within any part of the Development.

Section 6.12. Dangerous Use of Lots/Indemnification. Nothing shall be done or kept on any Lot or within the Common Area which will increase the rate of insurance on any policy maintained by the Association without the prior written consent of the Board and no Owner shall permit anything to be done or kept on his or her Lot or within the Common Area which would cause any improvements

to be uninsurable against loss by fire or casualty or result in the cancellation of insurance on any Residence or any part of the Common Area.

Each Owner agrees for himself, herself and for his or her family members, guests, tenants, invitees or occupants, to indemnify each and every other Owner, the Association, its Directors, Officers, committee members, agents and employees, and to hold him or her harmless from, and to defend him or her against, any claim of any person or persons for personal injury or property damage occurring within the Lot of the indemnifying Owner.

Section 6.13. Responsibility for Damage to the Common Area. Each Owner shall be liable to the Association for all damages to the Common Area or any area in which the Association has the maintenance obligation, including but not limited to the buildings, Common Facilities and landscaping caused by any action, including without limitation, tortious acts by such Owner, his or her tenants, licensee(s) or any occupant of such Owner's Lot. In the event, after Individual Notice to the Owner and an opportunity to be heard by the Board, the Owner fails to pay the Association for the damage caused by the Owner, his or her family members, guests, tenants, invitees or occupants of such Owner's Lot, the Board, by majority vote, may impose a Reimbursement Assessment against the Owner as set forth in Article 5.

Section 6.14. Alterations of Residences. No Owner shall make or cause to be made structural alterations or modifications to his or her Residence, any modification to the interior of his or her garage, and/or any exterior alterations or modifications to the Lot without the prior written consent of the Architectural Committee as provided in Article 7. No building of any kind shall be moved from any other place onto any of such Lots, or from one (1) Lot onto another without the prior written consent of the Architectural Committee as provided in Article 7.

Nothing shall be done on any Lot or in any Residence or in, on, or to the Common Area which may impair the structural integrity of any building, or which would structurally change any building. Except as otherwise provided in the Governing Documents, nothing shall be altered or constructed in or removed from the Common Area except upon the written consent of the Board.

Section 6.15. Use of Common Area. Except as otherwise provided in the Governing Documents, the Common Area shall be improved and used only for the following purposes:

- (A) Affording vehicular passage and pedestrian movement within the Development, including access to the Lots;
- (B) Recreational use by the Owners and their family members, guests, tenants, invitees or occupants, subject to Rules and Regulations established by the Board;
- (C) Beautification of the Common Area through landscaping and such other means as the Board shall deem appropriate;
- (D) Parking of vehicles in areas provided therefor as may be designated and approved by the Board, upon such terms and conditions as may from time to time be determined by the Board;

(E) No part of the Common Area shall be obstructed so as to interfere with the use of the Common Area, nor shall any part of the Common Area be used for storage purposes (except as incidental to one of such permitted uses or for storage of maintenance equipment used exclusively to maintain the Common Area).

(F) No Owner shall make any alteration or improvement to the Common Area, or remove any plants, structure, furnishings or other object therefrom, except with the prior written consent of the Board. The building, construction or placing by any Owner, or by the Board, or by any other person or persons, of any structure, hedge, fence, shrubbery or any obstruction of any kind or character in such position as to encroach on any of such private roads or driveways as presently shown on the subdivision map, is prohibited. Each Owner shall be liable to the Association for all damage to the Common Area or to any improvements, including, but not limited to, buildings, recreational facilities and landscaping, caused by such Owner or his or her family members, guests, tenants, invitees or occupants of such Owner's Residence.

(G) Except as otherwise specifically provided in the Governing Documents, no Owner shall have the right to paint, decorate, remodel, landscape, or adorn any part of the Common Area without the written consent of the Board.

(H) No Owner, lessee, occupant, or their guests or invitees shall use the Common Area in any manner which shall increase the rate of insurance against loss by fire, or the perils of the extended endorsement to the California Standard Fire Policy form, or bodily injury, or property damage liability insurance to be canceled or suspended or the company issuing the same to refuse renewal.

Section 6.16. Window Covers. Curtains, drapes, shutters or blinds may be installed as window covers. No window shall be covered with aluminum foil or similar material. The Board shall have the power to make reasonable Rules and Regulations regarding window coverings which are visible from the exterior of the Residence. Each Owner shall promptly repair any broken windows on the Residence.

Section 6.17. No Timeshare Use.

(A) Use of any Lot in a manner which is consistent with timeshare projects, timeshare estates, timeshare programs and timeshare uses as defined in this Declaration and/or pursuant to *Business and Professions Code* Section 11212 is prohibited.

(B) For the purpose of this Section, the term "timeshare program" shall include and not be limited to any arrangement, plan, scheme, or similar device, whether by membership, agreement, tenancy in common, sale, lease, deed, rental agreement, license, right-to-use agreement, or by any other means, whereby a timeshare interval is created and whereby the use, occupancy or possession of an accommodation, Lot, Improvement or Residence circulates among purchasers of the timeshare interval according to a fixed or floating time schedule on a periodic basis occurring annually over any period of time in excess of one (1) year in duration.

(C) For the purpose of this Section, the term “timeshare use” includes, but is not limited to, any contractual right of exclusive occupancy, whether fixed for a specific time period or not, which does not fall within the definition of a “timeshare estate,” including, without limitation, a vacation license, prepaid hotel reservations, club membership, limited partnership, trust agreement, or vacation bond.

(D) Ownership of a Lot as tenants in common, joint tenants or any other form of multiple ownership by more than four (4) persons or entities is prohibited unless otherwise approved by the Board.

Section 6.18. Exterior Clotheslines. Exterior clotheslines and drying racks shall only be allowed in the backyard of the Lot, subject to Rules and Regulations adopted by the Board. There shall be no outside drying of clothes or other items on any balcony, railing, awning, or other exterior portion of the Residence.

Section 6.19. Machinery and Equipment. No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Lot except such machinery or equipment as is usual or customary in connection with the use, maintenance or repair of a private Residence or appurtenant structures within the Development, or the reasonable pursuit of hobbies.

Section 6.20. Diseases and Pests. No Owner shall permit any thing or condition to exist on his or her Lot which shall induce, breed, or harbor infectious plant diseases, rodents or noxious insects.

Section 6.21. Oil Drilling/Water Wells. No oil drilling, oil development operations, oil refining, quarrying, or mining operations of any kind, shall be permitted upon any separate interest Lot in the Development, nor shall oil wells, tanks, tunnels or mineral excavations or shafts be permitted upon the surface of the Development. No derrick or other structures designed for use in boring for water, oil or natural gas shall be erected, maintained or permitted anywhere upon the Development. No well for the production of or from which there is produced water shall be operated on any Lot. No private residence can connect to Association controlled and maintained wells.

Section 6.22. No Interference With Established Drainage Patterns. There shall be no interference with the established drainage pattern over any Lot so as to affect any other Residence, unless an adequate alternative provision is made for proper drainage which is first approved in writing by the Architectural Committee. For the purpose of this Section, “established drainage” is defined as the drainage which existed at the time the overall final grading of any Lot was completed or any later grading changes that are shown on plans approved by the Architectural Committee, which may include drainage from the Common Area over any Lot. The Owner of each Lot will be responsible for reasonably maintaining any drainage control facilities located on his or her Lot and shall otherwise be responsible for effecting proper drainage controls on his or her Lot.

Section 6.23. Exterior Lighting. All exterior lighting shall be either (i) low-sodium lighting or (ii) shaded downward.

Section 6.24. Code of Conduct. All Owners and their family members, guests, tenants, invitees or occupants shall adhere to a code of conduct as may be adopted by the Board in connection with their treatment, actions, language and behavior towards other Owners, Directors, Association staff,

employees, agents, and vendors. Abusive and/or harassing behavior will not be tolerated. Violations of this Section shall also constitute violations of the Governing Documents.

ARTICLE 7

ARCHITECTURAL CONTROL

Section 7.1. Architectural Committee. The Board shall appoint an Architectural Committee which consists of at least three (3) members, none of whom shall be required to meet any particular qualifications, except that members appointed to the Architectural Committee by the Board shall be from the membership of the Association. Members of the Architectural Committee shall be considered subordinate Officers of the Association. The Architectural Committee's authority is as set forth in this Declaration. In the absence of an appointed Architectural Committee, the Board may act as the Architectural Committee and shall have the authority of the Architectural Committee as set forth in this Declaration. The Board has the sole discretion to appoint and remove members of the Architectural Committee.

Section 7.2. Duties of the Architectural Committee. It shall be the duty of the Architectural Committee to consider and act upon any and all proposals or plans submitted to it pursuant to the terms of the Governing Documents, to ensure that any Improvements constructed on the property conform to plans approved by the Architectural Committee, to recommend the Board adopt or amend the Architectural Guidelines, and to perform other duties imposed upon it by the Governing Documents.

Section 7.3. Architectural Committee Approval of Improvements.

(A) Notwithstanding anything contained in the Governing Documents expressly or impliedly to the contrary, no building, fence, wall or other structure or Improvement shall be constructed or maintained upon the Lots, nor shall any interior change or addition to any garage, shed or portion thereof, nor shall any exterior addition, change or alteration be made in, on or to the Lots or Residences including without limitation painting, repainting and landscaping and all Improvements, until the plans and specifications, locating plat and color scheme showing the nature, shape, dimensions, materials and location of the same shall have been submitted to and approved in writing by the Architectural Committee.

(B) Approval shall be based, among other things, on conformity and harmony of design and location in relation to surrounding Improvements, effect on location and use of Improvements and landscaping on neighboring property, aesthetic beauty, and conformity with Rules and Regulations and/or Architectural Guidelines. The Architectural Committee shall recommend to the Board whether or not the prevention or removal of any unauthorized and unapproved constructions of Improvements should be undertaken. The Board, on behalf of the Association, may then exercise all available legal and equitable remedies to prevent or remove any unauthorized and unapproved construction of Improvements on the Development. The Board shall have the right to establish a fee for the review of plans and specifications. Owners shall be responsible for the Association's costs incurred for review of their plans.

(C) For purposes of the Governing Documents, the term “Improvement” includes, without limitation, the construction, installation, alteration, or remodeling of any buildings, outbuildings, cages, storage sheds, mailboxes, walkways, sprinkler pipes, irrigation systems, garages, walls, patios, gates, garage doors, skylights, lighting and lighting fixtures, fences, swimming pools, spas, recreation facilities, roads, driveways, alleys, ditches, culverts, bridges, parking areas, screening walls, retaining walls, stairs, decks, landscaping, landscape structures, hedges, windbreaks, plantings, planted trees and shrubs, poles, ornamental lighting, drainage facilities, utility lines, air conditioners or air conditioning systems, or any structure of any kind. The term “Improvement” shall not be interpreted to include projects which are restricted to the interior of any Residence.

(D) The Architectural Committee shall, in writing, approve or disapprove plans (including landscaping plans) submitted to it within forty-five (45) days. The Architectural Committee can condition its approval of an Improvement subject to certain conditions being met, including, but not limited to, requiring the Owner to enter into a separate agreement for an easement, license, maintenance and/or indemnification. In the case of such “conditional” approval, the Improvement will not be considered approved unless or until all stated conditions have been met. If a plan is disapproved, the disapproval must include a description of why the plan was disapproved and a description of the procedure for reconsideration of the decision by the Board. In the event the Architectural Committee fails to approve the submitted plans within forty-five (45) days, the applicant may send written notice to the Architectural Committee advising the Architectural Committee that the plans will be deemed approved if not disapproved forty-five (45) days from the receipt of such notice if such Improvements conform and are in harmony with the overall design and style of the Association. Notwithstanding the provisions of Article 17, Section 17.3 of this Declaration, such notice to the Architectural Committee must be made by personal delivery or certified mail, return receipt requested.

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

(F) Prior to an Owner submitting plans, specifications, plats and/or schemes to the Architectural Committee pursuant to this Article, such Owner shall consult the City’s staff to identify and determine all regulations, standards, guidelines and other criteria that will be applicable to such Owner and the approval which such Owner intends to request of the Architectural Committee. Prior to commencing any alteration or Improvements approved by the Architectural Committee, the Owner shall comply with all appropriate governmental laws and regulations. The Association shall not be obligated to enforce the provisions of this Section. Approval by the Architectural Committee shall not be considered to satisfy the approvals that may be required by any governmental entity with appropriate jurisdiction, nor shall the approval of any governmental entity be considered to satisfy the requirement of Architectural Committee approval. An Owner's failure to obtain any required governmental approval may subject such Owner to certain penalties imposed by

the governmental entity, notwithstanding the approval of the Architectural Committee, which penalties shall be the responsibility of such Owner.

(G) No approval by the Architectural Committee shall be deemed to excuse an Owner from compliance with any and all applicable laws, ordinances, rules, codes or regulations of all governmental agencies having jurisdiction. Approval by the Architectural Committee shall not constitute a representation that the proposed Improvements comply with laws, ordinances, rules, codes or regulations and it shall be the responsibility of each Owner to determine such compliance and to take all steps and acquire all permits at the Owner's sole expense as may be required to properly and legally complete such Improvements.

Section 7.4. Architectural Changes Not Requiring Prior Approval. Notwithstanding Section 7.3 above, the Architectural Guidelines can set forth specifications for certain exterior modifications that are deemed approved without submission of an application including, without limitation, repainting the Residence the same color, or a previously approved color. Nothing contained in this Article shall be construed to limit the right of an Owner to paint the interior of his or her Residence any color desired, or to improve or alter any improvements within the interior of the Residence except the interior of the garage; provided such improvement or alteration does not impair or alter the Common Area, any utilities, or other systems servicing the Common Area or other Lots.

Section 7.5. Meetings. The Architectural Committee shall meet from time to time as necessary to perform its duties hereunder. The vote or written consent of a majority of the Architectural Committee members, at a meeting or otherwise, shall constitute the act of the Architectural Committee unless the unanimous decision of the Architectural Committee is required by any other provision of the Governing Documents. The Architectural Committee shall keep and maintain a written record of all actions taken by it at such meetings or otherwise. Members of the Architectural Committee shall not receive any compensation for services rendered.

Section 7.6. Architectural Guidelines. The Architectural Committee may, from time to time, recommend that the Board, in its sole and absolute discretion, adopt, amend and repeal guidelines, to be known as "Architectural Guidelines." The Board's approval, amendment or repeal of Architectural Guidelines shall be made subject to *Civil Code* Sections 4340 - 4370. The Architectural Guidelines shall interpret and implement the Governing Documents by setting forth the standards and procedures for Architectural Committee review and the guidelines for design and placement of Improvements and/or alterations. The Governing Documents may not prohibit, or include conditions that have the effect of prohibiting, the use of low water-using plants as a group. The Board is prohibited from adopting regulations that would prohibit or restrict compliance with water efficient landscape ordinances and regulations or restrictions on use of water adopted pursuant to the *Water Code*.

Section 7.7. Variances. The Board shall be entitled to allow reasonable variances with respect to this Article in order to overcome practical difficulties, avoid unnecessary hardships, provided that the following conditions are met:

(A) If the requested variance will necessitate deviation from, or modification of, a property use restriction that would otherwise apply under the Governing Documents, the Board must conduct a hearing on the proposed variance after giving at prior written notice to the Architectural

Committee and to all Owners of Residences by Individual Delivery within one hundred (100) feet of the property for which the variance applies. The Owners receiving notice of the proposed variance shall have thirty (30) days in which to submit to the Board written comments or objections with respect to the variance. No decision shall be made with respect to the proposed variance until the thirty (30) day comment period has expired.

(B) The Board must make a good faith determination that:

(1) The requested variance does not constitute a material deviation from the overall plan and scheme of development within the Development or from any restriction contained in the Governing Documents or that the proposal allows the objectives of the violated requirements to be substantially achieved despite noncompliance; or

(2) The variance relates to a requirement hereunder, that it is unnecessary or burdensome under the circumstances; and

(3) The variance, if granted, will not result in a material detriment, or create an unreasonable nuisance, with respect to any other Residence, Lot, Common Area or Owner within the Development.

Section 7.8. Waiver. The approval by the Architectural Committee of any plans, drawings, or specifications for any work done or proposed, or for any other matter requiring the approval of the Architectural Committee 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.

Section 7.9. Liability. Neither the Association, nor the Board, Architectural Committee nor any member of such entity shall be liable to the Association, any Owner, or to any other party, for any damage, loss or prejudice suffered or claimed on account of (a) the approval or disapproval of any plans, drawings, or specifications, or (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications; provided that with respect to the liability of a Committee member, such member has acted in good faith on the basis of actual knowledge possessed by him or her.

Section 7.10. Appeal. In the event plans and specifications submitted to the Architectural Committee are disapproved, then the Owner may appeal in writing to the Board. The written request must be received by the Board not more than forty-five (45) days following the final decision of the Architectural Committee. Within forty-five (45) days following receipt of the request for appeal, the Board shall hold an open meeting to consider the appeal and make a decision regarding the appeal. Failure of the Board to render a decision within the forty-five (45) day period shall be deemed a decision in favor of the Owner.

Section 7.11. No Approval by Individual Architectural Committee Member. There shall be no approval of plans and specifications by any individual Architectural Committee member. In the event an individual Architectural Committee member approves architectural plans and specifications, such approval should not be relied upon and shall not be deemed approval by the Architectural Committee.

Section 7.12. Completion of Improvements. Unless expressly extended in writing by the Board or Architectural Committee, all Improvements must be completed within one (1) year from the commencement of construction of any approved Improvement upon a Lot. Notwithstanding the foregoing, the Architectural Committee or Board can specify a shorter time period in which any Improvement needs to be completed, depending on the scope of the construction.

Section 7.13. Inspection. Any member or agent of the Architectural Committee or Board may, from time to time, at any reasonable hour or hours and upon reasonable Individual Notice, enter and inspect any Lot for the purpose of carrying out its duties.

ARTICLE 8

LEASING OF LOTS

Section 8.1. Definition. “Renting” or “Leasing” for purposes of the Governing Documents, is defined as regular occupancy of a Residence by any person or persons other than the Owner for which the Owner receives any consideration or benefit, including, but not limited to, a fee, service or gratuity.

Section 8.2. Leasing Provisions. All leasing of Lots within the Development shall be in writing and shall be governed by the following provisions:

(A) **Leases Subject to Governing Documents; Owners to Provide Copies.** All leases shall be subject in all respects to the provisions of this Declaration, the Bylaws and the Rules and Regulations and any failure by the tenant to comply with the terms of such documents shall be a default under the lease. The lease shall contain a provision stating that tenants are bound by, and will need to comply with, the terms of the Governing Documents. The Owner must make available to the tenant copies of the Declaration, Bylaws, and the Rules and Regulations. However, the failure of the Owner to provide his or her tenant with current copies of the Governing Documents, or to include a provision in the lease advising the tenants that they are bound by the Governing Documents, shall not be a defense to any violation of the Governing Documents by the tenant.

(B) **No Severability.** ~~A~~Unless otherwise required by law, all leases must be for the entire Lot, and not merely parts of the Lot, unless the Owner remains in occupancy.

(C) **Tenant/Owner Contact Information.** Within fourteen (14) days after entering into a lease of a Lot, the Owner shall provide the Board with the name, telephone number and address of the lessee, the name, address and phone number of the Owner, and such other information as the Board may reasonably require.

(D) **No Subleasing; Minimum Lease Term.** There shall be no subleasing of Lots or assignment of leases unless approved in writing by the Board. All leases, including those where the Owner remains in occupancy, must be for a term of no less than thirty (30) consecutive days. The thirty (30) day minimum lease requirement is declaratory of the Association Governing Documents that were in effect prior to January 1, 2012. No lease, including where the Owner remains in occupancy, shall be for hotel or transient use and shall comply with all other provisions of the Governing Documents pertaining to leasing. Any lease which is either for a period of less than thirty

(30) 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.

(E) Liability for Delinquent Assessments. In the event any Owner is delinquent in the payment of any Assessment, upon written request by the Board, the tenant shall pay to the Association the rental payments due to the Owner, but not to exceed the total amount of delinquent Assessments, late fees, interest, costs of collection and attorneys' fees and costs unpaid at the time of the Association's request. All such payments thus made shall reduce the tenant's obligation to the Owner by like amount. Payment of Assessments shall be deemed necessary for maintenance of the habitability of the Lot. Prior to informing the tenant of his or her obligation to remit rental payments to the Association, the Owner shall be given at least ten (10) days written Individual Notice and an opportunity to be heard by the Board in compliance with the provisions of this Declaration and current California law.

(F) Compliance with Governing Documents. All tenants and their guests shall abide by and comply with all provisions of the Governing Documents, as they may be amended from time to time, and the violation of the same shall constitute the tenant's default under the lease. Each Lot Owner shall be liable to the Association for damages arising from all actions, including without limitation, tortious acts, of his or her lessees, their guests and invitees. The residency limitations governing all other leases shall be set forth by the policy of the Board. If a tenant or an occupant violates the Governing Documents for which a Reimbursement Assessment is imposed, such Reimbursement Assessment shall be the joint responsibility of the Owner and/or tenant. Unpaid Reimbursement Assessments may result in a lien against the Lot, where allowed by law.

(G) Enforcement Against Tenant by Association. Notwithstanding any language in this paragraph to the contrary, the Owner is responsible for any acts or omissions of the tenant that violate California law and/or the Governing Documents. The Owner hereby provides the Association with the right, but not the obligation, to proceed directly against the tenant(s) and the Owner for any violation of the Governing Documents. This authority includes, but is not limited to, the right to evict the tenant on behalf of and for the benefit of the Owner. In the event the Association proceeds to take legal action against and/or to evict the tenant, any costs, including attorneys' fees and court costs, associated with the action/eviction shall be assessed against the Lot and the Owner(s) as a Reimbursement Assessment, such being an expense required to bring the Owner(s) into compliance and an expense which benefits the leased Lot.

(H) Use of Common Area. The Owner transfers and assigns to the tenant, for the term of the lease, any and all rights and privileges that the Owner has to use the Common Area, including, but not limited to, the use of any and all Common Facilities and other amenities.

(I) Existing Leases. Leases existing on the effective date of this Declaration shall be permitted to continue in accordance with the terms of the Governing Documents as they existed prior to the effective date of this Declaration. However, any assignment, extension, renewal, or modification of any lease agreement, including, but not limited to, changes in the terms or duration of occupancy, shall be considered a termination of the old lease and commencement of a new lease which must comply with this Article.

ARTICLE 9

MAINTENANCE RESPONSIBILITIES

Section 9.1. Maintenance Matrix. A listing of the items within the Development, the routine maintenance, repair and replacement duty for which the Owners and Association are responsible is contained in the “Maintenance Matrix” attached as Exhibit B to this Declaration. If an item is not specifically addressed in the Maintenance Matrix, the principles in the Sections below will be used to determine maintenance, repair, and replacement responsibility.

Section 9.2. Association Maintenance Responsibilities.

(A) Common Area. Subject to the provisions of Section 9.3 below, the Association shall be solely responsible for all maintenance, repair, upkeep and replacement within the Common Area, including, but not limited to the following: private streets; gutters; storm drains; curbs; street lights; sewers. No person other than the Association or its duly authorized agents shall construct, reconstruct, refinish, alter or maintain any Improvement upon, or shall create any excavation or fill or change the natural or existing drainage of any portion of the Common Area. In addition, no person shall remove any tree, shrub or other vegetation from, or plant any tree, shrub, or other vegetation upon the Common Area or the Common Facilities without express written approval of the Board or Architectural Committee.

The Association shall maintain, repair and replace any landscaped slope areas within the Common Area in a neat, orderly and safe condition and in such a manner as to prevent erosion or sliding problems and to facilitate the orderly discharge of water through established drainage facilities and systems. Any natural slope areas within the Common Area shall be maintained in a natural condition and in such a manner as to prevent noxious or dangerous weeds, sagebrush, chaparral or any other brush or weeds from attaining such growth as to become a fire menace or public nuisance.

The Association shall be responsible for the maintenance of all open space lots within the Development.

Section 9.3. Owner Maintenance Responsibilities.

(A) Each Owner shall be responsible for the maintenance, repair and replacement of his or her Lot and Residence and shall maintain the same in a neat, orderly and attractive condition and in such a manner as to enhance its appearance. This obligation shall include, without limitation, the maintenance and repair of the foundation, roof, exterior building surfaces, doors, windows, and all plumbing, gas, electrical, heating, air conditioning and other utility systems serving the Lot no matter where it is located.

(B) Each Owner shall plant, keep, maintain, water and replant all slope banks located on his or her Lot, so as to prevent erosion and create an attractive appearance. No structure, planting or other material shall be placed or permitted to remain, and no activities shall be undertaken, on any of the slope banks, which may damage or interfere with established slope banks, create erosion or sliding problems, or which may change the direction or flow of drainage channels or obstruct or retard the flow of water through drainage channels.

(C) Each Owner shall keep his or her Lot free and clear of all weeds and rubbish and do all other things necessary or desirable to keep such Lot neat, in good order and condition, and properly planted and landscaped.

(D) Each Owner shall be responsible for any interior damage to the Residence and his or her personal property resulting from water which may leak or flow from outside of any Residence or Lot, or from any pipes, drains, conduits, appliances or equipment from any other place or cause, unless caused by the gross negligence of the Association, its Board, Officers, or designated agents.

Section 9.4. Party Walls/Fences.

(A) General Rules of Law to Apply. Each wall (including retaining walls) or fence which is built as a part of the original construction of the homes upon the Development and placed on the dividing line between the separate interest Lots shall constitute a “Party Wall”, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply.

(B) Repair and Maintenance. The cost of reasonable repair and maintenance of a Party Wall or fence shall be shared by the Owners who make use of the wall or fence in proportion to such use. A Party Wall or fence located between a Lot and an Association maintained open space Common Area are the responsibility of the Owner of the Lot to maintain, repair, and replace including periodic repainting.

(C) Destruction by Fire or Other Casualty. If a Party Wall is destroyed or damaged by fire or other casualty, the Owners thereafter that make use of the wall, shall contribute to the cost of restoration in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

(D) Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his or her negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

(E) Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner’s successors in title.

(F) Arbitration. In the event any dispute arises concerning a party wall, or under the provisions of this Section 9.3, each party shall choose one arbitrator, and such arbitrators shall jointly choose one (1) additional arbitrator, and the decisions shall be by a majority of the three (3) arbitrators.

Section 9.5. Failure of Owner to Carry Out Maintenance Responsibilities. In the event the Owner of a Lot fails to perform his or her maintenance responsibilities, the Board shall have the right, but not the obligation, through itself or its agents, to perform appropriate maintenance and/or repairs at the expense of the Owner. In such event, in addition to other penalties and disciplinary measures imposed by the Board, the Board may levy a Reimbursement Assessment against such

Owner in the amount equal to all direct and indirect costs and expenses incurred by the Board in its performance of such maintenance and/or repairs. Any claim against the Board shall not constitute a defense or offset in any action of the Board for nonpayment of any amounts which may have been assessed hereunder.

Section 9.6. Liability for Damage.

(A) Should any damage to the Common Area, any Lot or Residence result from the willful or negligent act or neglect of any Owner, or such Owner's family members, guests, tenants, invitees, occupants, pets or other person or entity deriving any interest through such Owner, or from any item the maintenance, repair or replacement of which an Owner is responsible, the cost of all repairs shall be borne solely by the responsible Owner.

(B) The Association shall be responsible for performing the repair of any damage to the Common Area or items over which the Association has control at the responsible Owner's expense. The responsible Owner shall perform the repair of any damage to his or her own property. 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.

(C) If the responsible Owner disputes or refuses to pay any costs incurred by the Association, the Association, after providing the Owner with Individual Notice of an opportunity for a hearing, may charge the cost of those repairs to such Owner as a Reimbursement Assessment, with the full authority to lien on such amount in the event of non-payment.

(D) If the damage is such as may be covered by insurance carried by the Association, the Board may, in its sole discretion, elect to submit the claim for the cost of repairs to its insurance carrier. Provided the submitted claim is covered by the Association's insurance, the responsible Owner shall pay the cost of any deductible applicable to the covered claim. If the submitted claim is not covered by the Association's insurance, or the Board elects not to submit the claim, the responsible Owner shall be responsible for the total cost of repair.

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

Section 9.7. Cooperative Maintenance Obligations. To the extent necessary or desirable to accomplish the Association's maintenance obligations hereunder, individual Owners shall cooperate with other Owners, and the Association, its agents and maintenance personnel, in the prosecution of its work. Each Owner and the Association is granted a right to enter the Lots, where necessary, to perform their respective maintenance obligations.

Section 9.8. No Liability. The Association shall not be liable to any Owner or his or her family members, guests, tenants, invitees, occupants 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 gross negligence of the Association, its Board, Officers, agents or employees.

Section 9.9. Owner Notification to Association. If, at any time, an Owner discovers or otherwise becomes aware of any condition within the Common Area that may constitute a risk to the health, safety or welfare of the Owners, their family members, guests, tenants, invitees, occupants and any other persons entering the Development, the Owner shall notify Association representatives of the condition as soon as possible.

ARTICLE 10

INSURANCE

Section 10.1. Types of Insurance Coverage. The Association shall obtain and continue in effect the following:

(A) **Fire and Casualty Insurance.** A policy of fire and casualty insurance naming as parties insured the Association and any Mortgagee of the Common Area, and containing the standard extended coverage and replacement cost endorsements and such other or special endorsements as will afford protection and insure, for the full insurable, current replacement cost (excluding foundations and excavation, but without deduction for depreciation) as determined annually by the insurance carrier, for all Common Area, Common Facilities and the personal property of the Association for or against the following:

- (1) Loss or damage by fire or other risks covered by the standard coverage endorsement;
- (2) Loss or damage from theft, vandalism or malicious mischief;
- (3) Loss or damage caused by sprinkler leakage, windstorm, water damage and covering the cost of demolition and debris removal; and
- (4) Such other risks, perils or coverage as the Board may determine.

Such policy or the endorsement shall, to the extent available, provide that the insurer issuing the policy agrees to abide by the decision of the Association made in accordance with the provisions of Article 11 of this Declaration as to whether or not to repair, reconstruct or restore all or any damaged or destroyed portion of the Common Area.

~~Unless at least two-thirds of the First Mortgagees (based upon one vote for each first Mortgage owned) or Owners have given their prior written approval, the Association shall not be entitled to fail to maintain the extended coverage fire and casualty insurance required by this Article on less than a one hundred percent (100%) current replacement cost basis.~~

(B) **General Liability for Full Extended Coverage.** A policy of general liability for full extended coverage, including, but not limited to, vandalism, malicious mischief, public liability with a cross-liability endorsement, such coverage to include protection against water damage, liability for non-owned and hired automobiles and liability for property of others, and such other risks as are customarily covered with respect to similar real estate developments in the Area of the Development and as shall customarily be required by private institutional mortgage investors for projects similar in

construction, location and use to the Development. The policy shall contain a “severability of interest” endorsement or the equivalent which shall preclude the insurer from denying the claim of an Owner because of negligent acts or omissions of the Association or other Owners. The limits of such insurance shall not be less than \$~~32~~,000,000.00 or any amount greater as determined by the Board from time to time.

(C) Fidelity Bond. A fidelity bond covering against dishonest acts on the part of Directors, Officers, employees, volunteers, trustees, managers or any other persons who handle the funds of the Association. Such fidelity bond shall name the Association as obligee and shall be written in an amount equal to at least one hundred fifty percent (150%) of the estimated annual operating expenses of the Development, including reserves in the custody of the Association or a management agent at any given time during the term of the bond. The bond shall contain waivers of any defense based on the exclusion of persons who serve without compensation from any definition of “employee” or similar expression.

(D) Directors and Officers Insurance. Directors and Officers insurance covering errors and omissions for Officers and Directors, and if desirable, committee members of the Association in an amount of at least \$~~1,050~~,000.00 per occurrence.

(E) Other Insurance. The Board may purchase and maintain in force demolition insurance in adequate amounts to cover demolition in the event of total or partial destruction and a decision not to rebuild. The Board shall also purchase and maintain worker’s compensation insurance, to the extent that the same shall be required by law, for all employees of the Development. The Board may also purchase and maintain insurance on personal property owned by the Association, and such other insurance. The Board shall annually determine whether the amounts and types of insurance it has obtained provide adequate coverage for the Common Area in light of increased construction costs, inflation, practice in the area in which the Development is located or any other factor which tends to indicate that either additional insurance policies or increased coverage under existing policies are necessary or desirable to protect the interests of the Association and the Owners. If the Board determines that increased coverage or additional insurance is appropriate, it shall obtain the same.

All insurance obtained by the Association shall be in the name of the Association and shall be maintained at least for the benefit of the Association, the Owners and the Mortgagees as their interests may appear. Each Owner appoints the Board to act on behalf of the Owners in connection with all insurance matters arising from any insurance policy maintained by the Association, including, without limitation, representing the Owners in any proceeding, negotiation, settlement or agreement.

As to each of the policies provided for in this Article, which will not be voided or impaired by the requirements of this Section, the Owners hereby waive and release all claims against the Association, the Board and their agents and employees, with respect to any loss covered by such insurance, whether or not caused by negligence of or breach of any agreement by such persons, but only to the extent of insurance proceeds received in compensation for such loss.

Section 10.2. Premiums, Proceeds and Settlement. Insurance premiums for any insurance coverage obtained by the Association pursuant to this Article shall be a Common Expense to be included in the monthly Assessments levied by the Association. Insurance proceeds shall be used by

the Association for the repair or replacement of the property for which the insurance was carried. The Association is hereby granted the authority to negotiate loss settlements with the appropriate insurance carriers. Any two (2) Directors of the Association may sign a loss claim form and release form in connection with the settlement of a loss claim and such signatures shall be binding on the Association and the Owners.

Section 10.3. Owner's Insurance. Each Owner shall obtain and maintain personal liability and property damages liability insurance with respect to his or her Lot and any other item that the Association is not obligated to maintain or repair. Each Owner shall also obtain fire and casualty insurance for his or her Lot and any Improvements, including the Residence, located thereon. However, any policies maintained by an Owner shall include a waiver of subrogation clause acceptable by the Board and to any institutional first Mortgagee. No Owner can separately insure his or her Lot or any part of it against loss by fire or other casualty if covered by the Association's blanket insurance carried under this Article. If any Owner violates this provision, any diminution in insurance proceeds otherwise payable pursuant to the provisions of this Section that results from the existence of such other insurance will be chargeable to the Owner who acquired such insurance, and the Owner will be liable to the Association to the extent of any diminution.

The Board shall have the right, but not the duty, to require each Owner to provide the Board, within fifteen (15) days of the Board's request, reasonable evidence that the Owner has complied with the requirements of this Section.

Section 10.4. Making Claims to the Association's Insurance. Only the Association, acting through its Board, or designated agent, is authorized to present claims to any of the Association's insurance agents. Owners shall not make claims directly to any of the Association's insurance agents, insurers or policies. In the event the Association incurs any cost or damage by an Owner's violation of this Section, the Association will levy a Reimbursement Assessment against such Owner in the amount equal to all direct and indirect costs and expenses incurred by the Association.

Section 10.5. Insurance Policy Deductibles. The Board shall have the power, in its sole discretion, to determine the amount of any deductible applicable to any insurance policy carried by the Association. In the event of a loss for which Association coverage is used, the following shall apply:

(A) If the damage or loss is caused by the negligence or misconduct of any Owner, his or her family members, guests, tenants, invitees or occupants, the responsible Owner shall be liable for all costs not covered due to the deductible.

(B) If the damage or loss originates from an item or element for which an Owner is responsible to maintain, the Owner shall be responsible for all costs not covered due to the deductible.

(C) If the damage or loss originates from an item or element for which the Association is responsible to maintain, the Association shall be responsible for all costs not covered due to the deductible.

(D) If the damage or loss originates from an item or element that is within another Owner's Lot, any affected parties shall be responsible for the portion of costs not covered due to the deductible on the basis of the ratio of each party's cost of repair to the total costs of repair.

(E) If the damage or loss is caused by an act of God and is not due to any negligence or misconduct of any Owner, or resident, guest, tenant or invitee of an Owner, any affected parties shall be responsible for the portion of costs not covered due to the deductible on the basis of the ratio of each party's cost of repair to the total costs of repair.

Section 10.6. Board's Authority to Revise Insurance Coverage. Subject to the provisions of Section 10.1, the Board shall have the power and right to deviate from the insurance requirements contained in this Article in any manner that the Board, in its reasonable business discretion, considers to be in the best interests of the Association. If the Board elects to materially reduce the coverage from the coverage required in this Article, the Board shall make all reasonable efforts to notify the Owners of the reduction in coverage and the reasons therefor at least thirty (30) days prior to the effective date of the reduction. The Association, and its directors and officers, shall have no liability to any Owner or Mortgagee if, after a good faith effort, the Association is unable to obtain any insurance required hereunder because the insurance is no longer available, or, if available, the insurance can be obtained only at a cost that the Board, in its sole discretion, determines is unreasonable under the circumstances, or the Owners fail to approve any Assessment increase needed to fund the insurance premiums.

Section 10.7. Notification of Lapse, Cancellation or Change. Notwithstanding the provisions of Section 10.6, the Association shall, as soon as reasonably practicable, provide Individual Notice to all Owners if any of the Association's insurance policies described in Section 10.1 or the Annual Budget Report have lapsed, been canceled, and are not immediately renewed, restored, or replaced, or if there is a significant change, such as a reduction in coverage or limits or an increase in the deductible, as to any of those policies. If the Association receives any notice of non-renewal of a policy described in the Annual Budget Report, the Association shall immediately notify the Owners if replacement coverage will not be in effect by the date the existing coverage will lapse.

ARTICLE 11

DESTRUCTION OF COMMON AREA IMPROVEMENTS

Section 11.1. Insurance Proceeds Sufficient. In the event of damage to or the partial destruction of the improvements in the Common Area, and if the available proceeds of the insurance are sufficient to cover not less than ninety percent (90%) of the cost of repair or reconstruction, the damaged or destroyed improvements shall be promptly repaired and rebuilt unless, within sixty (60) days from the date of such damage or destruction, at a duly constituted meeting of the Association, Owners representing seventy-five percent (75%) of the Voting Power of the Association determine that such repair and reconstruction shall not take place.

Section 11.2. Insurance Proceeds Insufficient. If the available proceeds of such insurance are less than ninety percent (90%) of the cost of repair or reconstruction, such repair or reconstruction may nevertheless take place if Owners representing a majority of the Voting Power of the Association so elect at a duly constituted meeting of the Association. If the Board is unable to obtain sufficient participation at such meeting, the Board shall have the right to petition the Superior Court of San Diego County to allow it to rebuild without a majority approval of the Owners.

Section 11.3. Assessments. If the Owners determine to rebuild, each Owner shall be obligated to contribute such funds as may be necessary to pay his or her proportionate share of the cost of construction, over and above the insurance proceeds, and the proportionate share of each Owner shall be the same as his or her proportionate share of Regular and Special Assessments. In the event of the failure or refusal of any Owner to make his or her proportionate contribution, the Board may levy a Special Assessment against such Owner, and enforce such Assessment as provided in Article 5.

Section 11.4. Failure to Rebuild. If a majority of the Owners do not agree to the repair or rebuilding of the Common Area, then each Owner (and his or her Mortgagee(s) as their respective interests shall then appear) shall be entitled to receive that portion of insurance proceeds equal to the proportion of the decrease in fair market value of his or her Lot as compared to the aggregate decrease in fair market values of all the Lots caused by such damage or destruction. For purposes of this Article, fair market value shall be determined by a qualified real estate appraiser selected by the Board and hired by and at the expense of the Association. Should a dispute arise as to the distribution of insurance proceeds, the dispute shall be decided by arbitration ~~by the American Arbitration Association pursuant to its Commercial Rules of Arbitrations.~~

Section 11.5. Contract For Rebuilding. If rebuilding of the Common Area is to take place, the Board or its authorized representative shall obtain bids from at least two (2) reputable contractors. The Board shall have the authority to enter into a written contract with the contractor for such repair and reconstruction, and the insurance proceeds held by the trustee or the Association shall be disbursed to the contractor according to the terms of the agreement. It shall be the obligation of the Board to take all steps necessary to assure the commencement and completion of such repair and reconstruction at the earliest possible date if the same is authorized.

ARTICLE 12

DESTRUCTION OF LOT IMPROVEMENTS

Section 12.1. Destruction. If all or any portion of a Lot or Residence is damaged by fire or other casualty, the Owner of the Residence shall (1) within sixty (60) days of such casualty, remove all damaged portions of the Residence, structures and Improvements, including foundations, and leave the Lot in a clean and safe condition; and (2) restore the damaged Residence, structures and Improvements so that they are in substantially the same condition in which they existed prior to the damage. Unless extended by the Board, the Owner must commence such work within one hundred

twenty (120) days after the damage occurs and must complete the work within one (1) year after the work has commenced.

Section 12.2. Variation. Prior to commencing reconstruction, the Owner of any damaged Residence and Improvements needs to submit plans and specifications to and obtain approval of the Architectural Committee in accordance with the requirements of Article 7 of this Declaration. However, if the Residence and Improvements will be the same in size, appearance and location as they existed prior to such damage and destruction, the Architectural Committee may expedite the approval process.

ARTICLE 13

CONDEMNATION

Section 13.1. Taking of a Lot. In the event of any taking of a Lot, by condemnation, eminent domain or any other proceeding, the Owner (and his or her Mortgagees as their interests may appear) of the Lot shall be entitled to receive the award for such taking and after acceptance, such Owner and his or her Mortgagee shall be divested of all further interests in the Lot if such Owner shall vacate his or her Lot as a result of such taking. In such event, the Owner shall grant his or her interest in the Common Area, if any, to the other Owners owning a fractional interest in the same Common Area, such grant to be in proportion to the fractional interest in the Common Area then owned by each.

Section 13.2. Taking of Common Area If any portion of the Common Area is taken by condemnation, eminent domain or any other proceeding, then the Owners of the Common Area, and their Mortgagees, shall be entitled to receive the award for such taking in proportion to the interest of each in the Common Area; provided, however, that should it be determined to repair or rebuild any portion of the Common Area, such proceeds shall be paid to the Association for that purpose in the same manner and subject to the same terms, conditions and limitations as are set forth above in Article 11 for repairing damaged or destroyed portions of the Common Area. A decision to repair or rebuild shall be made in the same manner and subject to the same conditions and limitations as provided above in Article 11 for determining whether to rebuild or repair following damage or destruction.

Section 13.3. Disbursement of Any Award. If the compensation for a taking affecting all or a portion of the Common Area is not apportioned among the Owners by court judgment or by agreement between the taking entity and the Board, then as soon as practicable after the receipt by the Association of any compensation for a taking, the Board will disburse the same as follows:

(A) First, to contractors, subcontractors, materialmen and others for the costs of the repair or restoration of damage or destruction to the Common Area caused by a taking, or to the Association in reimbursement for such costs; the balance of the award is referred to as “Award Balance.”

(B) Second, the Award Balance to the Association. In the event the entire Common Area is so appropriated, the Award Balance shall be distributed to the Owners so that each Owner receives one equal share of such Award Balance for each Lot owned by such Owner. In the event that only a

part of the Common Area is so appropriated, the Award Balance shall be retained by the Association or disbursed to the Owners in whole or in part as determined by the Board.

Section 13.4. Priority of Mortgagee Rights. In the event there shall be any express or implied conflict between any provision of this Article and any provision of a note or Mortgagee held by a Mortgagee, the provisions of the note or Mortgage shall govern and prevail.

ARTICLE 14

PROTECTION OF MORTGAGEES

Section 14.1. Rights of Owners to Mortgage. Any Owner may voluntarily or involuntarily encumber its Lot with or by a Mortgage or other instrument of hypothecation.

Section 14.2. Effect of Breach of this Declaration. A breach of any of the foregoing limitations, restrictions, conditions or covenants (except as provided in this article with respect to a breach by failure to pay any assessment) shall not defeat or render invalid the lien of any first Mortgage made in good faith and for value as to a Lot or any undivided interest therein; provided, however, such limitations, restrictions, conditions and covenants shall be binding upon and effective against any person whose title to said Lot is acquired by foreclosure, trustee's sale or otherwise.

Section 14.3. Subordination of Assessment Liens to First Mortgages. Each and every lien created by or pursuant to this Declaration, including but not limited to, the assessment liens described in the Article entitled "Assessments" is and shall be subordinate, inferior and subject to the lien and charge of any (i) first Mortgage of record given for value and (ii) blanket construction (including acquisition) mortgage(s) or deed(s) of trust encumbering all or any part of the Project which mortgage(s) or deed(s) of trust may have been subordinated to this Declaration.

(A) Any person who acquires title to any Lot by purchasing the same at a foreclosure or trustee's sale of a first Mortgage, shall take title to such Lot free of any (i) claims by or on behalf of the Association for unpaid assessments, charges and/or fines (if any) levied by the Association which accrue prior to the time such purchaser takes title to such Lot and (ii) assessment lien and/or other lien of the Association then encumbering any such Lot. Such unpaid assessments shall be reallocated among the Owners (other than said purchaser).

(B) In the event any Mortgagee (i) shall acquire title to any Lot by judicial foreclosure, exercise of power of sale contained in any Mortgage or deed in lieu of foreclosure and (ii) shall thereafter sell and convey such Lot, any Mortgage received by such lender as security for all or a portion of the purchase price of such Lot shall be incontrovertibly deemed "given for value." Notwithstanding the provisions of Paragraph 14.3 above, any lien created by or pursuant to this Declaration, which lien arises from failure to pay assessment(s) accruing during the period of such Mortgagee's holding of title to said Lot, shall be a lien superior to the lien of said Mortgage received to secure a portion of said purchase price.

~~**Section 14.4. Eligible Mortgage's Rights to Notice.** In the event of any breach or default hereunder by any Owner, and in the further event such breach or default is not cured within 60 days after its occurrence, the Board of Directors shall immediately notify, in writing, any Eligible~~

~~Mortgagee holding a first Mortgage on such Owner's Lot of said default; provided, however, failure to give such notice shall in no wise affect any right or remedy of any Enforcing Person under Article 15 of this Declaration.~~

~~(A) — Any Eligible Mortgagee who requests in writing, shall be notified by the Association of (i) any action to be taken by the Association which requires the prior approval of the first Mortgagees and (ii) any and all meetings of the Association so it may designate a representative to attend such meetings on its behalf.~~

~~(B) — Any Eligible Mortgagee, Eligible Insurer or Eligible Guarantor shall be given timely written notice by the Association of (i) any condemnation or casualty loss that affects either a material portion of the Project or the Lot securing its Mortgage, (ii) any 60-day delinquency in the payment of assessments or charges owed by the Owner of any Lot on which it holds the Mortgage, (iii) a lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association, and (iv) any proposed action that requires the consent of a specified percentage of Mortgagees.~~

~~*Note: Discuss notice requirement in provisions above. Current Section 12.4 page 35*~~

Section 14.45. Agreement between Association and First Mortgagees. The Association shall, upon the request of any first Mortgagee, enter into an agreement with such first Mortgagee which agreement shall include the substance of the following provisions and/or any other reasonable requirements of the Federal Home Loan Mortgage Corporation, the VA (if applicable) or the FHA: (i) that the Association will pay when due, all premiums on all insurance policies insuring the Common Area, taxes and assessments, or other charges which may become a lien on the Common Area, (ii) that if the Association should fail to make a payment as described in clause (1) above that such Mortgagee by itself or in combination of other holders of mortgages encumbering Lots within the Project may, but shall not be required to, pay such insurance premiums, taxes and assessments, or charges, (iii) that should any policies of insurance insuring the Common Area lapse because of the Association's failure to pay such premium, that such Mortgagee may, but shall not be required to, by itself or in combination with any other holders of mortgages encumbering Lots within the Project, secure new policies of insurance as it deems necessary, and (iv) that the Association shall promptly reimburse such Mortgagee for any and all payments made by such Mortgagee(s) pursuant to clauses (ii) and (iii) above.

Section 14.56. Conflicting Provisions. In the event there shall be any express or implied conflict between any provision of this article and any other provision of this Declaration, the provisions of this article shall govern and prevail.

~~*Note: Discuss whether to add additional required consent of first mortgagees Section 4.3 Page 12*~~

ARTICLE 15

ENFORCEMENT

Section 15.1. Enforcement. Each Owner, lessee, licensee, guest, resident and occupant of a Lot shall comply with the provisions of this Declaration, the Bylaws, the Rules and Regulations and

decisions and resolutions of the Association or its duly authorized representative. Owners are responsible for the actions of their tenants, guests, family members, invitees, residents and occupants of their Lots. Failure to comply with any such provisions, decisions or resolutions shall be grounds for enforcement action by the Association, or any Owner, which may include but not be limited to the remedies set forth in this Article, in addition to other remedies afforded by law. Nothing in this Declaration shall be construed to obligate the Association, acting through the Board, to enforce the Governing Documents, but rather is a right conferred onto the Association.

(A) Suspension of Rights. The Association may ~~temporarily~~ suspend the Membership voting rights including the and right to use the Common Facilities by an Owner and his or her family members, guests, tenants, invitees, occupants for any period during which any Assessments or other charges (e.g., fines, late fees, etc.) remain unpaid. Additionally, the Association may suspend the Membership voting rights including the and right to use the Common Facilities ~~for up to thirty (30) days~~ due to a violation of the Governing Documents by any Owner, or his or her family members, guests, tenants, invitees and occupants. No suspension shall take place unless the procedures set forth in subsection (D) have been taken.

(B) Fines/Monetary Penalties. The Board may impose fines and/or monetary penalties against an Owner for Owner's or his or her family members', guests', tenants' or agents' violation of the Governing Documents, after due process, as set forth in subsection (D). Prior to imposing any such penalties, the Board shall adopt and distribute to each Owner by Individual Notice in the Annual Policy Statement prepared pursuant to *Civil Code* Section 5310, a schedule of the penalties that may be imposed. New or revised schedules of monetary penalties adopted after distribution of the Annual Policy Statement will be provided to the Members by Individual Notice. A monetary penalty for a violation of the Governing Documents shall not exceed the monetary penalty stated in the schedule in effect at the time of the violation.

(C) Reimbursement Assessments. The Board may levy Reimbursement Assessments, for damage to the Common Area or to reimburse the Association for costs incurred to bring an Owner or his or her family members, guests, tenants, invitees and occupants into compliance with the Governing Documents, as set forth in Article 5, Section 5.6.

(D) Due Process. If the Board decides to impose a fine, penalty, Reimbursement Assessment, suspension or any other disciplinary action, such action shall only be valid after notice has been provided to the Owner by personal delivery or Individual Delivery at least ten (10) days prior to the date of the Board meeting where such action will be considered, in accordance with the provisions of the Governing Documents and *Civil Code* Section 5855. The notice shall contain, at a minimum, the following: the date, time, and place of the meeting, the nature of the alleged violation for which the Owner may be disciplined or the nature of the damage to the Common Area and Common Facilities for which a monetary charge may be imposed, and a statement that the Owner has a right to attend and may address the Board at the meeting.

If the Board decides to impose a penalty or suspension, written notice of the penalty or suspension shall be provided to the Owner by personal delivery or Individual Delivery within fifteen (15) days after the date of the hearing in accordance with *Civil Code* Section 5855.

(E) Internal Dispute Resolution Procedures. Where there is a dispute between the Association and an Owner involving their rights, duties, or liabilities under California law or the Governing Documents, the Association shall provide a fair, reasonable and expeditious procedure for resolving the dispute as set forth in *Civil Code* Sections 5900-5920.

(F) Alternative Dispute Resolution. When required by *Civil Code* Sections 5925 - 5965, prior to the Association or any Owner bringing a civil action for declaratory relief or injunctive relief, or for such claims in conjunction with a claim for damages not in excess of the jurisdictional limits stated in *Code of Civil Procedure* Sections 116.220 and 116.221, related to the enforcement of the Governing Documents, such party shall offer alternative dispute resolution to the other party, as set forth in *Civil Code* Sections 5925 - 5965.

(G) Towing of Vehicles. The Association shall have the power to tow vehicles from the Common Area, including private streets, which are parked in violation of the Association's Governing Documents or California law, pursuant to *Vehicle Code* Section 22658. The Association may also use booting or other legal methods to enforce parking restrictions and Rules and Regulations.

(H) Right of Entry. The Board shall have the right of entry onto a Lot to remedy violations of the Governing Documents, and where necessary to protect, preserve and maintain the Common Area, as set forth in Article 4, Section 4.7.

(I) Legal Action. The Board shall have the power and duty to enforce the Governing Documents by all legal means available, and bring an action in law or in equity, and to utilize any lawful enforcement remedy.

(J) Lien and Foreclosure. The Association shall have the lien and foreclosure rights as set forth in Article 5 to enforce the obligation to pay Assessments and related charges.

(K) Other Remedies. The Association shall have all other remedies provided by law or otherwise to remedy violations, and to enforce the Governing Documents.

Section 15.2. Nuisance. The results of every act or omission that is a breach as set forth in Section 15.1 above is hereby declared to be and constitute a nuisance, and every remedy allowed by law or equity against a nuisance shall be applicable against every such result and may be exercised by any Owner, or the Board.

Section 15.3. Violation of Law. Any violation of any state, municipal or local law, ordinance or regulation, pertaining to the ownership, occupation or use of any part of the Development is hereby declared to be a violation of the Governing Documents and subject to any or all of the enforcement procedures set forth in the Governing Documents.

Section 15.4. No Waiver The failure of the Board, or any Owner to enforce any of the provisions contained in the Governing Documents shall not constitute a waiver of the right to enforce the same thereafter, nor shall such failure result in or impose any liability on the Association or the Board.

Section 15.5. Attorneys' Fees. In the event the Association, or any Owner, shall commence legal proceedings regarding any of the covenants, conditions or restrictions contained in the Association's Governing Documents, the prevailing party in the action shall be entitled to actual attorneys' fees and costs reasonably incurred.

Section 15.6. Cumulative Remedies. Each and all legal or equitable remedies provided for in the Governing Documents shall be deemed to be cumulative.

ARTICLE 16

AMENDMENTS

Section 16.1. General. This Declaration may be amended at any time and from time to time by the vote or written consent of a majority of the Voting Power of the Association. So long as required by California law, the vote will be conducted by a secret ballot in accordance with the requirements of California law. The initial deadline may be extended if an insufficient number of ballots, as determined by the Board, has been received. Thereafter, the deadline to return ballots may be extended for such periods of time as the Board may set. An amendment becomes effective after: (a) the approval of the required percentage of Owners has been given; (b) that fact has been certified in the form of a written document executed and acknowledged by an Officer designated by the Association for that purpose or, if no such designation is made, by the President and Secretary of the Association; and (c) the document has been recorded in the County recorder's office.

Section 16.2. Amendment of Declaration without Membership Approval. A majority of the Board of Directors shall have the authority but not the obligation to amend this Declaration without membership approval for the limited purposes stated below:

(A) To correct any spelling or grammatical omission or error in the Declaration.

(B) To revise the Declaration to comply with applicable law where the Board exercises no discretion as to the substantive effect of the change.

If the Board approves an amendment without membership approval, it shall not be effective until (1) a written document is executed and acknowledged by an Officer designated by the Association for that purpose or, if no such designation is made, by the President and Secretary of the Association, memorializing that the amendment falls within one of the above categories; (2) the amendment and document have been recorded in the Office of the County Recorder; and (3) the amendment and document have been delivered by individual notice to all Members of the Association.

This Section shall not be used to undermine the right of the Owners to vote on amendments to this Declaration. Rather, this is intended to provide a simple procedure for correcting minor errors in the Declaration and/or bringing the Declaration into compliance with applicable law where the Board has no discretion as to the substantive effect of the change.

ARTICLE 17

GENERAL PROVISIONS

Section 17.1. General Delivery/General Notice. Documents or information required to be provided by General Delivery or General Notice from the Association to the Owners shall be provided by one or more of the following methods:

- (A) Any method provided for delivery of an Individual Notice pursuant to Section 17.2;
- (B) Inclusion in a billing statement, newsletter, or other document that is delivered by one of the methods provided in this Section 17.1;
- (C) Posting the printed document in a prominent location that is accessible to all Owners, if the location has been designated for the posting of General Notices by the Association in the Annual Policy Statement, prepared pursuant to Article 10 of the Bylaws and *Civil Code* Section 5310; or
- (D) If the Association broadcasts television programming for the purpose of distributing information on Association business to the Owners, by inclusion in the programming.

Notwithstanding the foregoing, if an Owner requests to receive General Notices by Individual Delivery, all General Notices to that Owner, given under this Section 17.1, shall be delivered pursuant to Section 17.2. The option provided in this Section 17.1 shall be described in the Annual Policy Statement, prepared pursuant to Article 10 of the Bylaws and *Civil Code* Section 5310.

Section 17.2. Individual Delivery/Individual Notice. Documents required to be provided by Individual Delivery or Individual Notice from the Association to the Owners shall be delivered by one of the following methods:

- (A) First-class mail, postage prepaid, registered or certified mail, express mail, or overnight delivery by an express service carrier. The document shall be addressed to the recipient at the address last shown on the books of the Association; or
- (B) E-mail, facsimile, or other electronic means, if the recipient has consented, in writing, to that method of delivery. The consent may be revoked, in writing, by the recipient.

Section 17.3. Delivery of Documents to Association. Any documents that are required by the Governing Documents or California law to be delivered by Owners to the Association shall be delivered to the person designated in the Annual Policy Statement, to receive documents on behalf of the Association. If no person has been designated, the documents shall be delivered to the president or secretary of the Association. A document delivered pursuant to this subsection (A) may be delivered by any of the following methods:

- (A) By e-mail, facsimile, or other electronic means, if the Association has assented to that method of delivery;

(B) By personal delivery, if the Association has assented to that method of delivery. If the Association accepts a document by personal delivery it shall provide a written receipt acknowledging delivery of the document; or

(C) By first class mail, postage prepaid, registered or certified mail, express mail, or overnight delivery by an express service center.

(D) Any of the following requests shall be delivered in writing to the Association, in the manner set forth in this Section 17.3:

(1) A request to change the Owner's information in the Association's membership list;

(2) A request to add or remove a second address for delivery of Individual Notices to the Owner, pursuant to *Civil Code* Section 4040(b);

(3) A request for Individual Delivery of General Notices to the Owner, or a request to cancel a prior request for Individual Delivery of General Notices;

(4) A request to opt out of the membership list pursuant to *Civil Code* Section 5220, or a request to cancel a prior request to opt out of the membership list;

(5) A request to receive a full copy of a specified Annual Budget Report or Annual Policy Statement pursuant to Section 5320; or

(6) A request to receive all reports in full, pursuant to *Civil Code* Section 5320(b), or a request to cancel a prior request to receive all reports in full.

Section 17.4. Extension of Declaration. Each and all of these Covenants, Conditions and Restrictions shall terminate on December 31, 2068, after which date they shall automatically be extended for successive periods of ten (10) years unless an instrument in writing, signed by at least a majority of the Owners of Lots in the Development, has been recorded within the six (6) months immediately preceding the beginning of any such successive period, agreeing to terminate the Declaration.

Section 17.5. Liberal Interpretation of Declaration. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the operation of the Development for the mutual benefit of all Owners.

Section 17.6. Indemnification. Every Director and every Officer past or present of the Association shall be indemnified by the Association against expenses and liabilities, including reasonable attorneys' fees and costs incurred or imposed upon him or her in connection with any proceeding in which such Director or Officer may be a party, or in which such Officer or Director may become involved, by reason of his or her being, or having been, a Director or an Officer of the Association, or any settlement of such proceedings, except in such cases in which the Director or Officer is adjudged guilty of gross negligence or malfeasance in the performance of his or her duties.

Indemnification shall be in addition to and not exclusive of all other rights to which such Director or Officer may be entitled.

Section 17.7. Severability. Invalidation or reformation of any one of these covenants or restrictions by judgment or court order or otherwise shall in no way affect the application of such provision to other circumstance(s) or any other provision(s) which shall remain in full force and effect.

Section 17.8. Number; Gender. The singular shall include the plural and the plural the singular unless the context requires the contrary, and the masculine, feminine and neuter shall each include the masculine, feminine or neuter, as the context requires.

Section 17.9. Successors and Assigns. This Declaration shall be binding upon and shall inure to the benefit of all heirs, personal representatives, successors, assigns, grantees, lessees, licensees and renters of Owners.

Section 17.10. Joint and Several Liability. In the case of joint ownership of a Lot, the liability of each Owner in connection with the liabilities and obligations of the Governing Documents, shall be joint and several.

Section 17.11. Conflicts.

(A) To the extent of any conflict between the Governing Documents and the law, the law shall prevail.

(B) To the extent of any conflict between the Articles and the Declaration, the Declaration shall prevail.

(C) To the extent of any conflict between the Bylaws and the Articles or Declaration, the Articles or Declaration shall prevail.

(D) To the extent of any conflict between the Rules and Regulations and the Bylaws, Articles, or Declaration, the Bylaws, Articles, or Declaration shall prevail.

Section 17.12. References to Code Sections. In the event any of the statutes or laws referenced in the Governing Documents are amended, modified, re-numbered or otherwise changed, the references in such document shall be deemed to refer to the statutes or laws as amended, modified, re-numbered or otherwise changed. If a statute or law is repealed deleted, any reference shall be deemed to refer to any successor statute or law.

ARTICLE 18

THE LAKE

~~**Section 18.1. Applicability of This Article to Declaration.** Lot 291 (as shown on County of San Diego approved Tentative Map No. 4249-3), which map encompasses a portion of the property described in attached Exhibit A, may be developed into a lake (the "Lake") and annexed to the~~

~~Project as Common Area pursuant to the Article herein entitled "Annexation." Declarant does not warrant or guarantee that Lot 291 will be developed as Common Area or annexed into the Project. As long as the Lake is not annexed, this article shall be void and without force or effect. Upon annexation of the Lake (that is, upon the recordation in the office of the San Diego County Recorder of a "Declaration of Annexation and Restrictions" which describes Lot 291, and conveyance of Lot 291 to the Association concurrently with the first conveyance of a Lot described therein, in accordance with the provisions of the Article entitled "Annexation"), this article shall be considered a valid and enforceable portion of the Declaration, all as if this article had been in full force and effect since the original recordation of this Declaration. If the Lake is annexed, the Association shall notify each Owner of such annexation within 30 days after it occurs. Each Owner who takes title to one or more Lots subject to this Declaration acknowledges that annexation of the Lake to the Project may restrict and affect the use of some or all of the Lots and annexable Lots, as set forth in greater detail below, and will result in an increase in total annual assessments (so that the Association can generate funds for the maintenance and repair of the Lake).~~

~~*Note: Confirm with Board whether the Lake was annexed. This Article to be deleted or amended accordingly.*~~

~~**Section 18.2. General Duties and Powers of the Association with Respect to the Lake.** In addition to the duties and powers provided elsewhere in this Declaration, and without limiting the generality thereof, the Association shall have the following powers:-~~

~~(A) — To maintain the Lake as provided in Section 18.3 below.~~

~~(B) — To expend funds, employ legal counsel, commence actions, defend actions and promulgate reasonable rules and regulations regarding the use of the Lake.~~

~~**Section 18.3. Maintenance and Use of the Lake.**~~

~~(A) — The Association shall maintain the Lake according to the standards established herein and by the governmental entity having jurisdiction thereof (hereinafter referred to as the "Lake Standards"), including, without limitation, surface debris, water quality, water level, plant life, animal life, chemical balance and mechanical circulation, and shall allocate sufficient funds from annual assessments so that the Lake can, at all times, be maintained in accordance with the standards and provisions set forth herein. The Association shall maintain in a neat and attractive condition all landscaping and other plant life on the periphery of the Lake. In addition, the Association shall maintain, replace and repair all equipment and other facilities required in complying with the Lake Standards, including without limitation, any facilities for the benefit of the Lake which are located on a Lot or other portion of the Common Area. The Association may fence all or a portion of the Lake.~~

~~(B) — The Association, or its authorized agents, shall have the right at any time, and from time to time, to enter upon the Lake or Lots adjoining the Lake, and the Owners of such Lots hereby grant an easement to the Association, for the purpose of repairing or fortifying the banks and bulkhead of the Lake, and dredging and otherwise maintaining and improving the Lake.~~

~~(C) — The Association shall have the right to regulate and control the water level and to treat the water to maintain its purity and clearness and may take such measures it deems advisable to prevent the growth of algae, plant life, insect life and undesirable animal or fish life.~~

~~(D) — No boat, raft, float or other watercraft or structure shall be used for dwelling purposes or as a dwelling, whether or not such device is on the Lake.~~

~~(E) — Unless the Association adopts rules and regulations to the contrary, no boat or other watercraft, except those owned or leased by the Association, shall be allowed on the Lake. The Association may purchase or lease nonmotorized watercraft, such as paddleboats and small sail boats, which may be used only by Owners and their guests on the Lake. The Association may adopt reasonable rules and regulations regarding the use of such watercraft, and may either charge a reasonable use fee for Owners and/or guests or levy annual assessments for the purpose of providing such watercraft and for related expenses (such as liability insurance). Notwithstanding anything herein to the contrary, the Association may own, lease and operate motorized watercraft for purposes of safety, maintenance, Lake improvements or promotion of the Project, including sales promotion.~~

~~(F) — No dock, float or other dockage or storage facility shall be installed or maintained on or in the Lake, except that the Association may construct one or more docks for the benefit of all Owners.~~

~~(G) — The Association may, but is not required to, procure an "Aguaculturist Permit" for the benefit of all Owners, so that individual fishing licenses shall not be needed to fish on the Lake. The Association may stock the Lake with fish. Only Owners and their guests (provided an Owner is present with its guests at all times) may fish on the Lake or from its shores. No person fishing in or on the Lake shall use any live bait other than earthworms. There shall be no trapping or taking of any wildlife, except fishing by use of hook and line. The Association may adopt reasonable rules and regulations regarding fishing restrictions, and may either charge a reasonable use fee to Owners and/or guests for fishing or levy annual assessments for the costs of providing such services and related expenses (such as liability insurance).~~

~~(H) — Swimming, wading and all other activities involving bodily contact with water are not permitted in and on the Lake; however, pursuant to rules and regulations adopted by the Association, such activities may be permitted.~~

~~**Section 18.4. Lake Manager.** The Association may, in accordance with the provisions of this Declaration, hire an independent contractor or employee to organize and direct the maintenance of the Lake (the "Lake Manager"). The Lake Manager shall be responsible to, and shall hold its position at the pleasure' of, the Board of Directors, which may remove the Lake Manager at any time with or without cause. The compensation or salary, and administrative expenses of the Lake Manager, if any, shall be paid for out of the annual assessments. Nothing contained herein shall prevent the Lake Manager from serving as an employee, consultant, agent, officer or director of the Association or a member of the Architectural Committee.~~

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