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Owners Association

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For Recorder's Use

**2017 AMENDED AND RESTATED
DECLARATION OF RESTRICTIONS
FOR
FIRST LA COSTA
*A Residential Condominium Community***

**NOTICE
(Gov. Code § 12956.1)**

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

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**2017 AMENDED AND RESTATED
DECLARATION OF RESTRICTIONS
FOR
FIRST LA COSTA CONDOMINIUM OWNERS ASSOCIATION**

THIS 2017 AMENDED AND RESTATED DECLARATION OF RESTRICTIONS is made on the day and year hereinafter written, by First La Costa Condominium Owners Association, a California nonprofit mutual benefit corporation (“the Association”), with reference to the following Recitals.

RECITALS

A. The Association is a corporation whose Members are the Owners of all the Condominium Units within that certain real property in the City of Carlsbad, County of San Diego, State of California, more particularly described in Exhibit “A” attached hereto and made a part hereof (“Community”).

B. The Community was developed as a Condominium Project, as defined in section 4125 of the California Civil Code, and consists of forty (40) Condominium Units and related Common Areas.

C. Ownership of the Units is currently subject to the covenants, conditions, restrictions, rights, reservations, easements, equitable servitudes, liens and charges set forth in the Declaration of Covenants and Restrictions recorded August 10, 1965, as File/Page No. 143200, in the Official Records of the County Recorder of San Diego County, and is hereinafter referred to together as “Original Declaration,” unless the context clearly indicates otherwise.

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

E. The Original Declaration, in Article XI, Section 1, provides that it may be amended by the affirmative vote or written consent of seventy-five percent of the Voting Power of the Association. The undersigned President and Secretary of the Association certify that, to the best of their knowledge, the affirmative vote or written consent of at least the required percentage of the Voting Power has been obtained.

F. The Original Declaration, in Article XI, Section 1, also provides that the proposed amendment must be sent to all lenders and the written consent of seventy-

five percent (75%) of lenders of record with valid liens against any Condominium must be obtained. The needed consents were obtained following procedures allowed by Applicable Law.

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

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

DECLARATION

ARTICLE 1 - DEFINITIONS

1.1 ***In General.*** Unless otherwise defined herein, capitalized terms or words used in this Restated Declaration shall have the definitions in this Article, or in the Davis-Stirling Common Interest Development Act (California Civil Code section 4000 et seq., hereafter "Act") or in the California Nonprofit Corporation Law (California Corporations Code section 5002 et seq.). Words not defined in this Restated Declaration, the Act or in the Corporations Code shall be understood in their ordinary and popular sense, as determined by the context in which they are used, unless the context indicates that the term or word is a defined term which was inadvertently not capitalized.

1.2 ***"Applicable Law"*** means statutes, public laws, ordinances, regulations and rulings of administrative agencies, court rulings having value as precedent and any other requirements having the force of law that are in effect at the time a provision of the Governing Documents is applied, and pertaining to the subject matter of the Governing Documents provision in question. Statutes and ordinances specifically referenced in the Governing Documents are "Applicable Law" on the date of the Governing Document,

and are not intended to apply to the Community if they cease to be applicable by operation of law, or if they are replaced or superseded by one or more statutes or ordinances.

1.3 **“Architectural Committee”** means the committee, if any, appointed by the Board to assist the Board in reviewing architectural submittals from the Owners.

1.4 **“Architectural Rules”** means the Rules regulating modifications and alterations to the Units and Common Area adopted by the Board.

1.5 **“Articles”** [Corp. Code § 5035] means the Articles of Incorporation of First La Costa Condominium Owners Association, filed in the Office of the Secretary of State of the State of California on August 17, 1965, as File No. 495708, and any amendments thereto now existing or hereafter adopted.

1.6 **“Assessment” or “Assessments”** means one or all of the Regular, Special, Utility, Individual, and Monetary Penalty Assessments described herein.

1.7 **“Association”** [Civ. Code § 4080] means First La Costa Condominium Owners Association, a California nonprofit mutual benefit corporation created for the purpose of managing a common interest development.

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

1.9 **“Budgeted Gross Expenses”** means all expenses identified on the annual operating budget for the fiscal year, including all operating expenses and amounts to be deposited into the reserve accounts, but excluding any amounts budgeted to be expended from the reserve accounts for that fiscal year.

1.10 **“Bylaws” or “Restated Bylaws”**[Corp. Code § 5037] means the Bylaws of the Association and any duly adopted amendments thereto, which are incorporated herein by reference.

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

1.12 **“Common Area”** [Civ. Code § 4095] means the entire Community except all Units as defined in this Restated Declaration and as shown on the Condominium Plan. “Common Area” shall mean all land and improvements, and all portions of the divided property not located within the Unit. Refer to Exhibit “B” for repair, maintenance and replacement responsibilities.

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

1.14 **“Community”** means the common interest development which is a condominium project as described herein and on the Condominium Plan, including all Improvements thereon.

1.15 **“Condominium”** [Civ. Code § 4125] means an estate in real property consisting of a separate interest in a Unit, the boundaries of which are shown and described on the Condominium Plan, a fractional undivided interest as a tenant-in-common in the Common Area, a membership in the Association, and the exclusive right to use any Exclusive Use Common Area appurtenant to the Unit as shown on the Condominium Plan, deed of conveyance or as described herein.

1.16 **“Condominium Plan”** [Civ. Code § 4120] means the Condominium Plan for First La Costa Condominium Owners Association, recorded August 10, 1965, as File/Page No. 143199 of Official Records of the County Recorder of San Diego County. Condominium Plan shall include any amendments to the above documents.

1.17 **“Director” or “Directors”** [Corp. Code § 5047] means one or more members of the Board of Directors.

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

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

1.20 **“Exclusive Use Common Area”** [Civ. Code § 4145] means those portions of the Common Area designated herein for the exclusive use of the Owners of one Unit and which is appurtenant to a Unit as shown on the Condominium Plan or deed of conveyance and pursuant to the provisions herein. “Exclusive Use Common Areas” and “Restricted Common Areas” shall consist of the following which are designed to serve a Unit but located outside the boundaries of the Unit: patios, entries, and carports and carports converted to garages, the lower boundaries of which is the ground as shown and described on the Condominium Plan.

1.21 **“Governing Documents”** [Civ. Code § 4150] means this Restated Declaration and any other documents such as the Articles, Bylaws, Condominium Plan, Rules, or Architectural Rules which govern the operation of the Association.

1.22 **“Improvement”** means any structure or appurtenances thereto of every type and kind, including but not limited to, buildings, walkways, sprinkler pipes, swimming pools, roads, driveways, parking areas, fences, screening walls, block walls, retaining walls, awnings, stairs, decks, landscaping, hedges, windbreaks, planted trees and shrubs, poles, and signs.

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

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

1.25 **“Mortgage”** means a mortgage or deed of trust encumbering a Condominium or any other portion of the Community. **“First Mortgage”** means a mortgage that has priority over all other mortgages encumbering the same Condominium or other portions of the Community.

1.26 **“Notice and Hearing”** [Civ. Code § 5855 & Corp. Code § 7341] means notice to an Owner and an opportunity for the Owner to be heard, prior to the imposition of any fine, penalty or other disciplinary measure, in the manner set forth in the Bylaws or other Governing Documents and in compliance with any Applicable Law.

1.27 **“Officers”** means the Officers of the Association appointed by the Board of Directors pursuant to the Bylaws.

1.28 **“Owner”** means any natural person, firm, corporation, partnership, trust or other entity which owns a fee simple interest in any Unit, as evidenced by a deed recorded in the San Diego County Recorder’s Office, including the Association, and any contract sellers under recorded contracts of sale. “Owner” shall not include any persons or entities that hold an interest in a Condominium merely as security for performance of an obligation. For purposes of exercising membership rights, including the right to serve as a Director, and incurring membership obligations when an Owner is a corporation, firm, limited liability company or other legal entity, any Director, Officer,

employee or agent designated in writing by the Owner may exercise the membership rights attributable to the Owner. When an Owner is a trust, the trustee may exercise the membership rights attributable to the trust unless otherwise designated in writing by the trustee. A person or entity is not an Owner due to: (1) community property or other marital rights where the person asserting such rights is not shown on the recorded title as an Owner; (2) rights of adverse possession not adjudicated and shown on the recorded title as an Owner; or (3) other equitable rights where the person asserting such rights is not shown on the recorded title as an Owner.

1.29 **“Restated Declaration”** [Civ. Code § 4135] means this Amended and Restated Declaration of Restrictions and any amendments thereto.

1.30 **“Rules”** [Civ. Code § 4340] means any Rules, including the Architectural Rules, for the Association regulating the use of the Units, Exclusive Use Common Areas, Common Areas, the Community and any facilities located thereon adopted by the Board pursuant to Subsection 3.5.2 and Section 7.5 herein.

1.31 **“Unit”** [Civ. Code § 4185] means that portion of a Condominium that consists of a separate interest. “Unit” does not include the other elements of the Community. Each Unit shall be a separate freehold estate, as separately shown, numbered, and designated on the Condominium Plan. Each Unit consists of a living area space or spaces bounded by and contained within the interior finished surfaces of the perimeter walls, floors, ceilings, windows, and doors, the boundaries of which are described on the Condominium Plan. The Unit includes floor and wall coverings, the outlets of utility installations located within the boundaries of the Unit, and the paint, paper, wax, tile, enamel or other finishes of the walls, floors, ceilings, windows and doors.

1.32 **“Voting Power”** [Corp. Code § 5078] means the total number of votes eligible to be cast in the Association based on one vote per Unit, less the votes of any Unit where voting rights have been suspended.

ARTICLE 2 - THE COMMUNITY

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

2.2 **Description of Land and Improvements; Ownership of Common Area.** The Community shall consist of the real property described in Exhibit “A,” and is divided between the Common Area and the Units. Each of the Units is owned by the individual Owners as separate property. The Common Area is owned by Owners of Units as tenants-in-common, in equal one-fortieth fractional interests. The Owners of Units shall have appurtenant nonexclusive rights for ingress, egress and support through the Common Area subject to the rights and restrictions contained in the Governing Documents.

2.3 ***The Association Easement in Common Area.*** The Association shall have an easement in, to, and throughout the Common Area and the Improvements thereon to perform its duties and exercise its powers.

2.4 ***Owners' Nonexclusive Rights Over Common Area.*** Subject to the provisions of this Restated Declaration, each Owner has nonexclusive rights of ingress, egress, and support through the Common Area. These rights shall be appurtenant to any deed of conveyance. However, these rights shall not interfere with, and shall be subordinate to, any exclusive right to use a portion of the Common Area.

2.5 ***Equitable Servitudes.*** [Civ. Code § 5975] The covenants and restrictions set forth in this Restated Declaration shall be enforceable equitable servitudes and shall inure to the benefit of and bind all Owners. These servitudes may be enforced by any Owner or by the Association or by both.

2.6 ***Prohibition Against Partition.*** [Civ. Code § 4610] There shall be no judicial partition of the Community or any part of it, nor shall the Association or any person acquiring an interest in the Community or any part of it seek any judicial partition, except upon showing that such partition is consistent with the requirements of any Applicable Law.

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

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

ARTICLE 3 - THE ASSOCIATION

3.1 ***Organization of the Association.*** The Association is incorporated as a nonprofit corporation organized under the California Nonprofit Mutual Benefit

Corporation Law. The Association is created for the purpose of managing the Community and is charged with the duties and granted the powers prescribed by Applicable Law and set forth in the Governing Documents.

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

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

3.4 **Membership Class; Voting Rights.** The Association shall have one class of membership and the rights, duties, obligations and privileges of the Members shall be as set forth in the Governing Documents. On matters presented to the membership for a vote, each Unit shall be assigned one vote, subject to the provisions of the Bylaws.

3.5 **General Powers and Authority.** [Civ. Code § 4800] The Association shall have all the powers of a nonprofit corporation organized under the California Nonprofit Mutual Benefit Corporation Law, subject to any limitations set forth in the Governing Documents. It may perform all acts that may be necessary for or incidental to the performance of the obligations and duties imposed upon it. Its powers shall include, but are not limited to:

3.5.1 The power to establish, fix, levy, collect, and enforce the payment of Assessments against the Owners in accordance with the procedures set forth herein.

3.5.2 [Civ. Code § 4360] The power to adopt reasonable Rules governing the use of the Units, the Common Area, any common facilities and the Association-owned property, and the conduct at Board and Members' meetings, in accordance with the following:

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

(i) Reasonable restrictions on use of the Common Area, Units and Exclusive Use Common Areas by the Owners and their families, guests, employees, tenants and invitees.

- (ii) Reasonable restrictions on the conduct of Owners and their families, guests, employees, tenants and invitees as to activities on the Common Area, Units and Exclusive Use Common Areas.
 - (iii) The establishment of Notice and Hearing procedures and a schedule of monetary penalties and other disciplinary measures which may be imposed for violations of any provisions of the Governing Documents.
 - (iv) Campaign, election and voting information for membership votes.
- (b) [Civ. Code § 4340 et seq.] The Board must comply with any Applicable Law when adopting any Rules.
 - (c) A copy of any modifications, revisions and updates of the Rules shall be given to each Owner within fifteen days of adoption by the Board.
 - (d) If any provision of the Rules conflicts with any provision of this Restated Declaration, the Articles, or the Bylaws, the Restated Declaration, Articles, or Bylaws shall control to the extent of the inconsistency.
 - (e) The Rules shall have the same force and effect as if they were set forth in and were part of this Restated Declaration and shall be binding on the Owners and their successors in interest whether or not actually received by them.
- 3.5.3 [Civ. Code § 5980] The right to institute, defend, settle, or intervene in litigation, arbitration, mediation, or administrative proceedings in its own name as the real party in interest and without joining with it the Owners, as provided in any Applicable Law.
- 3.5.4 [Civ. Code §§ 5850 & 5855; Corp. Code § 7341] Subject to Notice and Hearing requirements, the right to discipline a Member for violation of any of the provisions of the Governing Documents by (1) suspending the Member's membership rights, including the Member's voting rights, the right to run as a candidate for election to the Board of Directors, and the rights and privileges to use the Common Area recreational facilities, (2) imposing monetary fines, and (3) recording a notice of noncompliance in the Office of the County Recorder of San

Diego County encumbering the Unit of the Owner, if allowed by Applicable Law.

- 3.5.5 The right for its agents and employees to enter any Unit when necessary in connection with any maintenance, landscaping, or construction work for which the Association is or may be responsible or to reduce the likelihood of or prevent damage to the Common Areas or another Unit. This entry shall be made only upon reasonable notice to the Owner (except in the case of an emergency) and with as little inconvenience to the Owner as is practicable. Any entry by the Association to investigate a reported or suspected water intrusion shall be deemed an emergency. Such persons shall not be deemed guilty of trespass by reason of such entry.
- 3.5.6 The right for its agents and employees to enter any Unit when necessary in connection with any inspection, maintenance, or repair of the fire alarm and any fire sprinkler system. This entry shall be made only upon reasonable notice to the Owner (except in the case of an emergency) and with as little inconvenience to the Owner as is practicable.
- 3.5.7 The power to separately meter and charge Owners for use of utilities by such means as may be determined in the sole discretion of the Board.

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

- 3.6.1 The Association, acting through the Board, shall operate, maintain, repair, and replace those Improvements assigned to the Association by Section 6.2 and Exhibit "B," or contract for the performance of that work, subject to the provisions of the Governing Documents.
- 3.6.2 The Association shall use the operating fund described in ARTICLE 4 -herein to, among other things, acquire and pay for goods and services for the Community.

ARTICLE 4 - ASSESSMENTS AND COLLECTION PROCEDURES

4.1 ***Covenant to Pay.*** [Civ. Code § 5650] Each Owner by acceptance of the deed to the Owner's Condominium is deemed to covenant and agree to pay to the Association all Assessments described in this Article, and all other charges duly levied by the Association pursuant to the provisions of this Restated Declaration. An Assessment and any late charges, reasonable costs of collection, and interest, as

assessed in accordance with the provisions of this Article, shall also be a personal debt of each Owner of the Condominium at the time the Assessment or other sums are levied. Co-owners of a Unit shall be jointly and severally liable for all charges levied by the Association on that Unit. No Owner may waive or otherwise escape liability for these Assessments by non-use of the Common Area or abandonment of the Owner's Condominium.

4.2 Purpose of Assessments. [Civ. Code § 5600] Except as provided herein, the Association shall levy Assessments sufficient to perform its obligations. The Assessments levied by the Association shall be used exclusively to promote the recreation and welfare of the Owners, for the operation, replacement, improvement, and maintenance of the Community, and to discharge any other obligations of the Association under this Restated Declaration. All Assessment payments shall be put into general operating and reserve funds to be used for the foregoing purposes.

4.3 Regular Assessments. [Civ. Code §§ 5300 & 5600 et seq.] Concurrently with preparation of the financial documents and budget for each fiscal year, the Board shall estimate the net charges to be paid during that next fiscal year, including a reasonable provision for contingencies, replacements and reserves, with adjustments made for any expected income and surplus from the prior year's fund. The resulting amount shall constitute the Regular Assessments for the budgeted year. In the event the Board shall determine that the estimate of total charges for the current year is, or will become, inadequate to meet all Common Expenses for any reason, it shall then immediately determine the approximate amount of such inadequacy and issue a supplemental estimate of the Common Expenses and determine the revised amount of Regular Assessments against each Member, and the date or dates when due. Failure of the Board to estimate the net charges within the time period stated herein shall not void any Assessment imposed by the Board. Regular Assessments for fractions of any month shall be prorated. Each Owner is obligated to pay Assessments to the Association in equal monthly installments on or before the first day of each month unless the Board adopts an alternative method for payment.

4.4 Special Assessments. If the Board determines that the amount to be collected from Regular Assessments will be inadequate to defray the Common Expenses for the year due to the cost of any construction, unexpected repairs or replacements of Capital Improvements upon the Common Area, or any other reason, it shall make a Special Assessment for the additional amount needed, subject to any limitations imposed by Applicable Law or the Governing Documents. Special Assessments shall be levied and collected in the same manner as Regular Assessments. The Board may levy a Special Assessment in one lump sum or in installments over a period of time the Board determines appropriate.

4.5 Limitations on Regular and Special Assessments. [Civ. Code § 5605] Except in emergency situations, the Board may not, without the approval of Members constituting a majority of the votes when a quorum of the Owners is established, impose a Regular Assessment per Unit that is more than twenty percent greater than the Regular Assessment for the preceding fiscal year, or levy Special Assessments that in

the aggregate exceed five percent of the Budgeted Gross Expenses of the Association for that fiscal year. For purposes of this Section only, a “quorum” means more than fifty percent of the Owners of the Association. These limitations shall not apply to Assessment increases that are necessary for emergency situations. An emergency situation is an extraordinary expense defined by Applicable Law.

4.6 **Allocation of Regular and Special Assessments.** Regular and Special Assessments shall be divided equally among the Units.

4.7 **Owner Notice of Increase in Regular and Imposition of Special Assessments.** [Civ. Code § 5615] The Association shall provide notice by first-class mail to the Owners of any increase in the Regular Assessments or the imposition of a Special Assessment not less than thirty nor more than sixty days prior to the increase in the Regular Assessment or Special Assessment becoming due.

4.8 **Individual Assessments.** Subject to the limitations of the Governing Documents and in addition to Regular and Special Assessments, the Board may levy Individual Assessments against Owners and Condominiums whenever the Association (1) performs any service or accomplishes any item of repair or maintenance which is the duty of any Owner to accomplish, but which has not been accomplished by such Owner, or (2) incurs any costs which by Applicable Law or as required by the Governing Documents must be reimbursed by an Owner. Such Individual Assessment shall include the cost thereof, together with any financing costs and administrative costs incurred by the Association. Prior to levying an Individual Assessment, the Board shall provide the Owner with a Notice and Hearing. The Notice and Hearing regarding the levy of an Individual Assessment may be combined with the Notice and Hearing regarding any underlying violation. Duly levied Individual Assessments shall be subject to the provisions in the Governing Documents regarding costs, late charges and interest for delinquent payment, and may become a lien on the Condominium, in the same manner as Regular and Special Assessments.

4.9 **Monetary Penalty Assessments.** [Civ. Code §§ 5650 & 5725] The Board of Directors may levy, subject to the limitations of the Governing Documents, Monetary Penalty Assessments (fines) against an Owner and his or her Condominium. In the event the Board of Directors imposes a Monetary Penalty Assessment, that Monetary Penalty Assessment shall be subject to costs, late charges and interest as described in this Article for delinquent payment, and may become a lien on the Condominium, collectible by the Association through judicial foreclosure as allowed in this Article. In no event may the Association collect a Monetary Penalty Assessment through nonjudicial foreclosure.

4.10 **Costs, Late Charges and Interest.** [Civ. Code § 5650] Late charges may be levied by the Association against an Owner for the delinquent payment of Assessments, including Monetary Penalty Assessments. An Assessment, including any installment payment, is delinquent fifteen days after its due date. If an Assessment is delinquent, the Association may recover all of the following from the Owner:

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

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

4.11 Priority of Payments. The Board, in its sole discretion, may enact policies, not in violation of Applicable Law, regarding how payments received from Owners will be applied to any outstanding balances due the Association from that Owner.

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

4.13 Enforcement of Assessments and Late Charges. [Civ. Code §§ 5650 et seq., 5700 & 2924b]

- 4.13.1 A delinquent Assessment, and any related late charges, reasonable costs of collection (including actual attorneys' fees), and interest assessed in accordance with this Article, shall become a lien upon the Condominium when a Notice of Assessment Lien is duly recorded as provided in Applicable Law.
- 4.13.2 Unless otherwise provided by statute, the Notice of Assessment Lien shall describe the amount of the delinquent Assessment or installment, the related charges authorized by this Restated Declaration, the legal description of the Unit, the name of the purported Owner, and, if the lien is to be enforced by power of sale under nonjudicial foreclosure proceedings, the name and address of the trustee authorized by the Association to enforce the lien by sale. The Notice may be signed by any Officer or Director of the Association, or any employee or agent of the Association authorized to do so by the Board. The Notice shall be mailed by certified mail to every person whose name is

shown as an Owner of the Unit in the Association's records, and the notice shall be mailed no later than 10 calendar days after recordation.

- 4.13.3 Unless otherwise allowed by Applicable Law, the Notice of Assessment Lien may not be recorded until after the Association has mailed, via certified mail, a written demand for payment to the delinquent Owner. The written demand shall comply with the requirements of any Applicable Law.
- 4.13.4 If not paid in full within thirty days after recordation of the Notice of Assessment Lien, any lien described herein may be enforced in any manner permitted by Applicable Law, including judicial foreclosure or nonjudicial foreclosure. Any nonjudicial foreclosure shall be conducted by the trustee named in the Notice or by a trustee substituted pursuant to Applicable Law.
- 4.13.5 If all sums specified in the Notice of Assessment Lien are paid before the completion of any judicial or nonjudicial foreclosure, the Association shall (1) record a notice of satisfaction and release of lien, and (2) upon receipt of a written request by the Owner, shall also record a notice of rescission of any recorded notice of default and demand for sale.
- 4.13.6 The Notice of Assessment Lien is not required to be amended by the Association or Trustee to reflect any partial payments made on the account of the delinquent Owner after its recordation, and any such partial payments received shall not be construed to invalidate the Notice of Assessment Lien. The Notice of Assessment Lien may be foreclosed upon as set forth herein even though the delinquent Owner has made one or more partial payments.
- 4.13.7 Notwithstanding any other provision herein, a Monetary Penalty Assessment may not become a lien on a Unit enforceable by the sale of the Unit through nonjudicial foreclosure. Any Notice of Assessment Lien recorded to enforce a Monetary Penalty Assessment must specifically state that such lien may not be enforceable by sale of the Unit through nonjudicial foreclosure.

4.14 **Assignment of Rent.** [Civ. Code § 2938]

- 4.14.1 This assignment is for the purpose of collecting all Assessments, late charges, interest, fines, monetary penalties, and costs of collection, including attorneys' fees due to the Association pursuant to this Restated Declaration which are in

default. This assignment applies to any lease or rental agreement now existing or hereinafter made.

- 4.14.2 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 rental agreement or otherwise for the use or occupation of any or all parts of any Unit owned by the Owner. The Association hereby confers on each Owner the authority to collect and retain the rents and other monies derived from any such lease or rental agreement as they become due and payable, provided that the Association, at its sole discretion, may revoke such authority at any time, upon written notice to the Owner of a default in the payment of any Assessments due. Upon revocation of such authority, the Association may collect and retain such rental monies, whether past due and unpaid or current.
- 4.14.3 The Association's rights under this Section are in addition to and not in place of, the rights described above to file a lien and foreclose upon a lien. The Association's rights shall be subordinate to the rights of any First Lender.
- 4.14.4 The Association shall only exercise its rights to collect rental monies in compliance with California Civil Code section 2938, as amended from time to time, or any successor statute. Further, the Association shall only exercise this right after filing the lien described above and after providing the Owner with Notice and a Hearing pursuant to any Applicable Laws and the Bylaws.
- 4.14.5 By recordation of this Restated Declaration, each Owner expressly consents to and is bound by this assignment of rents to the Association.

4.15 *Priority of Assessment Lien.* [Civ. Code § 5680] As set forth hereinbelow, the Assessment lien referred to in this Article shall be superior to all other liens, except (1) all taxes, bonds and governmental Assessments which, by Applicable Law, would be superior thereto, and (2) the lien or charge of any First Mortgage of record. Notwithstanding any other provision to the contrary, the following provisions shall govern the priority and obligation for payment of the Assessment lien:

- 4.15.1 Only the judicial or nonjudicial foreclosure of the First Mortgage shall operate to transfer title free of the Assessment lien or obligation for any Assessment lien, and then only as to payments which became due prior to the date of sale, and

excluding those Assessment liens recorded prior to the recording of the First Mortgage.

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

4.16 **Statement of Delinquent Assessment.** [Civ. Code § 4525] The Association shall provide any Owner, upon written request, with a statement specifying the amounts of any delinquent Assessments and related late charges, interest, and costs levied against the Owner's Condominium.

ARTICLE 5 - USE RESTRICTIONS AND COVENANTS

5.1 **General.** [Civ. Code § 5975] The use and enjoyment of the Community by Owners and their tenants, guests, invitees or any other person deriving rights from such Owner, shall be subject to the covenants and restrictions contained in the Governing Documents. Each such person shall comply with the provisions in the Governing Documents and be subject to any enforcement actions in the event of violations. As more fully set forth in this Restated Declaration, both the Association, through the Board of Directors, and each Owner shall be entitled to enforce the Governing Documents.

5.2 **Alter Common Area.** No one may alter, attach, construct, or remove anything on or from the Common Area, except upon the written consent of the Board.

5.3 **Altering a Unit.** [Civ. Code § 4760] No Unit may be modified, altered or otherwise changed except as provided in the Governing Documents and Applicable Law.

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

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

5.6 **Common Area Use.** The Owners' rights of use and enjoyment of the Common Area shall be subject to the restrictions set forth in the Governing Documents, and the right of the Association, subject to the limitations of any Applicable Laws or the Governing Documents, to:

- 5.6.1 Adopt and enforce reasonable Rules for the use of the Community.
- 5.6.2 Reasonably limit the number of persons using all or any portion of the Common Area.
- 5.6.3 Charge a fee or deposit for any private parties, special or extraordinary use of any Common Area recreational facilities and Improvements.
- 5.6.4 Set fees and deposits for supplying and replacing access devices to Common Areas, including charges calculated to limit distribution and deter loss of access devices.
- 5.6.5 Establish speed limits and other traffic regulations within the Community.
- 5.6.6 Establish fire lanes within the Common Area.

- 5.6.7 Assign, rent, lease or otherwise control the use of any unassigned parking spaces within the Common Area.
- 5.6.8 Remove any vehicle within the Community parked in violation of this Restated Declaration or the Rules of the Board in accordance with the provisions of Applicable Law.
- 5.6.9 Suspend the voting rights of any Owner, and the rights of any Owner, and the persons deriving rights from any Owner, to use and enjoy the Common Area recreational facilities for any period during which the Owner is delinquent in the payment of any Assessment or as otherwise provided in the Governing Documents.
- 5.6.10 Cause the construction of additional Improvements in the Common Area, or cause the alteration or removal of existing Improvements on the Common Area, subject to any applicable limitations on the Board's powers.
- 5.6.11 Dedicate, grant, or join in the grant or conveyance of permits, easements, licenses or rights-of-way in, on and over the Common Area as may be determined by the Board to be in the best interests of the Association; provided that no such permit, easement, license or right-of-way may be granted if it would unreasonably interfere with any exclusive easement, or with any Owner's use, occupancy, or enjoyment of the Owner's Unit without the approval of the affected Owner.
- 5.6.12 Reasonably restrict access to roofs, maintenance facilities or areas, landscaped areas, and similar areas of the Community.
- 5.6.13 Approve any proposed alteration of or modification to the Common Area, subject to any applicable limitations of the Board's powers.
- 5.6.14 [Civ. Code § 4600] Notwithstanding any nonexclusive easement rights to the Common Area granted herein or by any deed or other conveyance, the right to allow one or more Owners to exclusively use portions of the Common Area, provided that such portions of the Common Area are nominal in area and adjacent to the Owner's Unit, and, provided further, that such use does not unreasonably interfere with any other Owner's use or enjoyment of the Community unless that Owner consents to the use.

5.7 Complying with Restrictions on Use. In exercising the right to occupy or use a Unit or the Common Area and its Improvements, the Owner and the Owner's

family, guests, employees, tenants, and invitees must comply with the Governing Documents.

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

5.9 **Electric Vehicle Charging Stations.** [Civ. Code § 4745]

- 5.9.1 No electronic vehicle charging station shall be installed by any person in any part of the Community without the prior written approval of the Board.
- 5.9.2 All electronic vehicle charging stations, including standard alternating current power plugs, shall be installed, maintained, repaired, replaced and removed in strict accordance with all Rules and Applicable Law.
- 5.9.3 Owners who install an electric vehicle charging station or install or use an existing standard alternating current power plug shall be solely responsible for all costs associated with the installation, existence, use, maintenance, repair, replacement and removal of the station or plug, as well as any damage caused to any other property as a result of the installation, use, existence, maintenance, repair, replacement or removal of that station or plug.
- 5.9.4 Owners who install an electric vehicle charging station or use an existing standard alternating current power plug shall be solely responsible for cost of electricity used to charge the electric vehicle. A sub-meter to measure the electricity used must be installed with any electric vehicle charging station or existing standard alternating current power plug.
- 5.9.5 The Owner of the charging station shall maintain an umbrella liability coverage policy in the amount of One Million Dollars covering the obligations of the Owner for the station unless the station is an existing National Electrical Manufacturers Association standard alternating current power plug. The Association shall be named as an additional insured under this policy with a right to notice of cancellation.

5.10 **Emissions.** No one may discharge or cause the emission of any dust, sweepings, dirt, cinders, odors, gases, mold spores, or other substances into the atmosphere other than those caused by normal residential use.

5.11 **Flammable Substances.** No one may store gasoline, kerosene, cleaning solvents, or other flammable liquids or substances, or any toxic or hazardous materials on the Common Area or in any Unit, provided, however, that amounts of these liquids, substances or materials which are reasonable for household use may be placed in appropriate containers and properly stored.

5.12 **Garage Conversion.** No one may convert or use any garage for purposes other than parking of the number of vehicles such garage was designed to contain and storage of reasonable amounts of household goods that do not interfere with the ability to park the number of vehicles such garage was designed to accommodate or create a fire or safety hazard.

5.13 **Garage Doors.** No garage door shall be permitted to remain open except for a temporary purpose nor shall animals be kept stored, housed or allowed to remain in any garage. The Board may adopt Rules governing the opening of garage doors.

5.14 **Garage Use.** No operating appliances equipment or other electrical devices may be powered in garages from Community electrical outlets. The cost of any unauthorized electrical usage of devices powered from Community electrical outlets in garages shall be charged to the Owner.

5.15 **Harassment.** No one may engage in any type of harassment, illegal, noxious or offensive activity toward any Owners, residents, Association representatives, management representatives, Board members and/or vendors working in the Community. No person shall attempt to engage Association or management representatives or vendors on any private business of such person, or to otherwise direct, supervise or in any manner attempt to assert control over such Association or management representative or vendor during the hours that such Association or management representative or vendor is working on behalf of the Association.

5.16 **Increase Rate of Insurance.** No one may perform any act or keep anything on or in any Unit or in the Common Area that will increase the rate of insurance on the Common Area without the Board's prior written consent. Further, no Owner shall permit anything to be done or kept in his or her Unit or in the Common Area that would result in the cancellation of insurance on any Unit or on any part of the Common Area or that would violate any law.

5.17 **Leasing Units.** Owners may not lease or rent a Unit in violation of the following:

5.17.1 All leases and rental agreements must be in writing.

5.17.2 All leases and rental agreements must be for the entire Unit and not merely parts thereof, unless the Owner remains in

occupancy. A carport, garage or parking space may not be leased or rented separate and apart from the Unit to which it is appurtenant.

- 5.17.3 No lease or rental shall be for a period of less than thirty days or for hotel, transient, fractionalized ownership interest or time-share purposes.
- 5.17.4 Owners who lease or rent their Unit shall promptly notify the Association in writing of the names of all tenants and members of a tenant's family occupying such Unit, provide the make, model and license number of all residents' vehicles, a telephone number for the tenant, the number and type of pets kept by the tenants, keep all information current, and provide the Association with a complete copy of the lease or rental agreement and any other information reasonably needed and requested by the Association.
- 5.17.5 All Owners leasing or renting their Unit shall promptly notify the Association of the address and telephone number where such Owner can be reached.
- 5.17.6 Each Owner-lessor shall provide any tenant or lessee with a current copy of all Governing Documents and shall be responsible for compliance by the tenant or lessee with all of the provisions of the Governing Documents during the tenant's/lessee's occupancy and use of the Unit.
- 5.17.7 All leases and rental agreements shall be subject in all respects to the Governing Documents, and shall provide that failure to comply with the requirements of the Governing Documents shall constitute a default under the lease which may be cured by eviction of the tenant either by the Owner or the Association.
- 5.17.8 All leases and rental agreements shall provide that any failure of a lessee or tenant to comply with the terms of any Governing Document relating to residential leases, property use restrictions, or the use and enjoyment of any portion of the Common Area shall constitute a default under the lease or rental agreement and shall entitle the Owner to terminate the tenancy on thirty days' written notice.
- 5.17.9 If any tenant or lessee fails to honor the provisions of any Governing Document, the Association shall be entitled to take such corrective action as it deems necessary or appropriate under the circumstances to preserve the quiet enjoyment of other Owners and residents of the Community. Without

limitation, the Association's actions in response to a tenant's violation of the Governing Documents may include the imposition of fines and penalties against the Owner-lessor of the Unit.

- 5.17.10 In the event a tenant or lessee of a Unit fails to comply with the provisions of the Governing Documents then, in addition to all other remedies which it may have, the Association may notify the Owner of such violation(s) and demand that it be remedied through the Owner's efforts within thirty days of such notice. If such violation(s) is not remedied within that thirty day period, then the Owner shall immediately, at his or her own cost and expense, institute and diligently prosecute an eviction action (unlawful detainer) against his tenant or lessee on account of such violation(s). Such eviction action shall not be compromised or settled without the prior written consent of the Association. In the event the Owner fails to commence the foregoing obligation within fifteen days of being required to do so, or commences the action but fails to diligently prosecute the action, then the Board shall have the right, but not the duty, to notify the Owner that the Association will prosecute such action as attorney-in-fact for the Owner and at the Owner's sole cost and expense, including all legal fees incurred. Upon notification to Owner of the Association's intent to prosecute the action, the right to possession of Owner's Unit shall pass to the Association until such time as the tenant or lessee has vacated the Unit. The Owner shall cooperate with the Association in the prosecution of the eviction action. All costs and attorneys' fees not collected from the tenant or lessee shall be paid by the Owner and failure to pay may be the basis for imposing an Individual Assessment for the fees and costs.

5.18 ***Mechanic's Liens.*** [Civ. Code § 4615] No labor performed or services or materials furnished with the consent of, or at the request of, an Owner, the Owner's agents or contractors shall be the basis for the filing of a lien against any other Unit or Common Area or any other Owner in the Community unless that other Owner has expressly consented to or requested the performance of the labor or furnishings of the materials or services. However, express consent shall be deemed to have been given by the Owner of any Condominium in the case of emergency repairs thereto. Labor performed or services or materials furnished for the Common Areas, if duly authorized by the Association, shall be deemed to be performed or furnished with the express consent of each Owner. The Owner of any Condominium may remove his or her Condominium from a lien against two or more Condominiums or any part thereof by payment to the holder of the lien of the fraction of the total sum secured by the lien which is attributable to the Owner's Condominium.

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

5.20 **Offensive Activity.** [Civ. Code § 3479] No one may engage in any illegal, noxious, nuisance as defined in Civil Code section 3479, or offensive activity in any part of the Community, or do any act which unreasonably threatens the health, safety and welfare of other residents of the Community.

5.21 **Outside Drying and Laundering.** No exterior clothesline shall be erected or maintained and there shall be no exterior drying or laundering of clothes.

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

5.23 **Patios and Balconies.** No fixture, personal property or other object may be kept upon any patio or balcony which interferes with the enjoyment of adjacent Units, patios or balconies or which may be in violation of the Rules. Only usual and customary patio furniture, potted plants with saucers, and decorations may be kept on the patios and balconies. No clothing or linens of any kind may be hung from patios or balconies.

5.24 **Pets.** [Civ. Code § 4715] Pets or other animals may not be kept in violation of the following:

- 5.24.1 Owners or residents of the Community may keep up to two (2) usual and ordinary domestic pets in the Units subject to the provisions of the Rules; provided, however, that no Owner or other occupant of a Unit may keep any pet which interferes with, or has a reasonable likelihood of interfering with, the rights of any Owner or other occupant of a Unit to the peaceful and quiet enjoyment of the Unit. In the event the Board determines that any pet or other animal creates an unreasonable annoyance or nuisance to any Owner or other occupant of a Unit, the keeping thereof shall be discontinued within a reasonable time after such determination.
- 5.24.2 No pets or other animals shall be permitted in the Common Area except as specifically permitted by the Rules, and then only when on a leash held by a person capable of controlling the animal.
- 5.24.3 No Owners may keep animals for commercial purposes.
- 5.24.4 The following breeds of dogs shall not be allowed in the Community: Akita, Bull Mastiff, Bull Terrier, Chow (Chow Chow), Doberman Pinscher, Pit Bull (American Pit Bull Terrier),

Rottweiler, Staffordshire Terrier (Staffordshire Bull Terrier, American Staffordshire Terrier), Wolf or Wolf breed, or dog being predominantly one or more of these breeds .

- 5.24.5 The Association, its Board, Officers, employees and agents shall have no liability to any Owner, their family members, guests, invitees, tenants and contract purchasers, or any other person in the Community, for any damage or injury to persons or property caused by any pet, absent any willful or wanton negligence on the part of the Association, or its Board, Officers, employees and agents.

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

5.26 **Protection Systems.** No one may disconnect, damage, tamper with or otherwise modify any protection system, including, but not limited to fire sprinklers, fire alarms and fuse boxes.

5.27 **Residential Use of Unit.** Units shall be used for residential purposes only. No Unit may be used for time share purposes, or any other similar transitory use through fractionalized ownership or any other similar arrangement. Units are intended to be used as a primary residence. A Unit may be used for in-home professional or administrative occupations or similar home office use so long as only minimal external evidence is observable, and if: (1) such occupations are merely incidental to the use of the Unit as a residence, (2) employees or business invitees do not regularly visit or conduct business in the Community, and (3) the occupation is conducted in conformity with any Applicable Law and the Rules.

5.28 **Signs.** [Civ. Code §§ 712, 713 & 4710] No signs may be erected or displayed on or from any Unit except as allowed by Applicable Law and the Rules. No signs may be erected or displayed on the Common Area except with the prior written approval of the Board.

5.29 **Smoking.**

- 5.29.1 Due to the scientific evidence of the dangers of secondhand tobacco smoke and the offensive odor and nuisance created by vaping and marijuana smoke, smoking of tobacco or marijuana products and vaping of any kind are prohibited within the Community, including, but not limited to Units, Exclusive Use Common Areas and all other Common Area.

- 5.29.2 Notwithstanding this prohibition on smoking and vaping, any resident who smokes or vapes on the date of the recordation of this Restated Declaration may continue to smoke or vape within the Unit but not within the Exclusive Use Common Areas or any

other portion of the Common Area. To determine the residents subject to this limited exception from the complete prohibition, all residents who smoke or vape must be registered with the Association within forty-five (45) days after the adoption of this Restated Declaration. Residents who register to be able to smoke within their Unit pursuant to this Section must ensure that tobacco or marijuana smoke or vapor is not transferred into the Common Area, including Exclusive Use Common Areas, or into other Units.

5.30 **Subdividing or Combining Units.** No Unit may be subdivided or combined with another Unit without obtaining the prior written approval of the Association.

5.31 **Trash.** Rubbish, trash, and garbage may not be allowed to accumulate within the Unit or Common Area.

5.32 **Vacating Unit; Costs.**

5.32.1 The Association shall have the power to temporarily remove any Unit resident for such periods and at such times as may be necessary in connection with any maintenance or repair work performed by the Association. The Owner shall provide the Association access as needed for maintenance or repair work by the Association.

5.32.2 [Civ. Code § 4785] The costs of any temporary relocation, including loss of rental income, during such maintenance or repair work shall be paid by the Unit Owner affected unless another Owner is responsible for the damages pursuant to the Governing Documents. If another Owner is responsible for the damages, the responsible Owner shall pay the relocation costs.

5.32.3 Except in case of emergency, the Association shall give notice of the need to temporarily vacate a Unit to the Owners and occupants not less than fifteen days or more than thirty days prior to the date of the temporary relocation. The notice shall state the reason for the relocation, the date and time of the beginning of work, the anticipated date and time of termination of work and that the occupants will be responsible for all necessary accommodations during the relocation.

5.33 **Vehicle Maintenance.** Except for minor maintenance and repair, no one may perform any vehicle overhaul, repair, oil change, brake and mechanical repair, or non-emergency maintenance within the Community.

5.34 **Vehicle Use and Parking.** Parking in the Community is limited and all Owners and residents are encouraged to park vehicles within their carport/garage and parking in the Community is subject to the following:

- 5.34.1 The following vehicles are Authorized Vehicles: standard passenger vehicles, including automobiles, passenger vans designed to accommodate ten or fewer people, motorcycles and pick-up trucks having a manufacturer's rating or payload capacity of one ton or less. The Association has the power to identify additional vehicles as Authorized Vehicles in the Rules to adapt this restriction to all types of vehicles produced by manufacturers.
- 5.34.2 Authorized Vehicles may be parked in any portion of the Community intended for parking of motorized vehicles, subject to the Rules.
- 5.34.3 No Owner may park any vehicle in a manner so that the Association determines that the vehicle unreasonably extends beyond the boundaries of a parking space or into streets or sidewalks within the Community.
- 5.34.4 The following vehicles are Restricted Vehicles:
 - (a) Recreational vehicles (e.g., motorhomes, travel trailers, camper vans, jet skis and boats),
 - (b) Commercial-type vehicles (e.g., stake bed trucks, tank trucks, dump trucks, step vans, concrete trucks and limousines). Commercial vehicles shall not include sedans or standard size pickup trucks which are used both for business and personal use, provided that any signs or markings of a commercial nature on such vehicles shall be unobtrusive and inoffensive as determined by the Board of Directors,
 - (c) Buses or vans designed to accommodate more than ten people,
 - (d) Vehicles having more than two axles,
 - (e) Trailers,
 - (f) Inoperable vehicles or parts of vehicles,
 - (g) Unregistered vehicles,
 - (h) Aircraft,

- (i) Noisy or smoky vehicles, or
- (j) Any vehicle or vehicular equipment deemed a nuisance by the Board.

5.34.5 Restricted Vehicles may not be parked, stored or kept on any private street within the Community unless they are parked for brief periods defined in the Rules or they are parked within an Owner's fully enclosed garage with the door closed.

5.34.6 If a vehicle qualifies as both an Authorized Vehicle and a Restricted Vehicle, then the vehicle is presumed to be a Restricted Vehicle, unless the vehicle is expressly classified as an Authorized Vehicle in writing by the Board. The Association has the power to identify additional vehicles as Restricted Vehicles in the Rules to adapt this restriction to all types of vehicles produced by manufacturers.

5.34.7 The Board, in its discretion, may adopt reasonable Rules in compliance with this Section governing the operation, maintenance, storage and parking of any vehicle, including trucks, campers, trailers, boats or commercial vehicles in the Community, including the streets, garages, driveways, and Common Area.

5.35 **Water Discharge.** No one may discharge anything other than water and residue allowed by applicable water quality ordinances into the streets, gutters and drains of the Association or into the Common Area.

5.36 **Window Covers.** Only curtains, drapes, shutters or blinds may be installed as interior window covers. No window in any Unit shall be covered with aluminum foil, papers, sheets, paint or similar material.

5.37 **Wiring Access.** [Civ. Code §§ 4145 & 4790] All internal and external telephone, cable television and internet access wiring designed to serve a single Unit, but located outside the boundaries of the Unit, is allocated exclusively to that Unit. The Owner of the Unit shall be entitled to reasonable access to the Common Area for the purpose of maintaining this wiring, subject to the consent of the Association and to any other conditions reasonably imposed by the Association. The Association's consent shall not be unreasonably withheld.

ARTICLE 6 - REPAIR AND MAINTENANCE

6.1 **General; Standards of Maintenance.** [Civ. Code § 4775] The Association and all Owners are required to fulfill the maintenance requirements imposed by the Governing Documents. For purposes of this Article "maintenance" shall include, without limitation, painting, weatherproofing and cleaning to keep Improvements in a

clean, safe, properly ventilated, watertight, dry and sanitary condition necessary to preserve the attractive appearance of each Condominium and the Community and protect the values thereof, and to ensure that there is no threat to the health, safety or welfare of any resident. The Board shall have the power to determine the standards of such maintenance. The replacement of exterior items by Owners shall be subject to the architectural review requirements of the Governing Documents.

6.2 *Division of Responsibility.*

6.2.1 Attached hereto as Exhibit "B," and incorporated herein by reference, is a listing of the allocation of responsibility for various components in the Community.

6.2.2 [Civ. Code § 4775] Generally, each Owner shall be responsible for the maintenance, repair and replacement of his or her Unit, Exclusive Use Common Areas appurtenant to the Unit, and those items located anywhere within the Community which are used exclusively by that Owner, and the Association shall be responsible for the maintenance, repair and replacement of any other area of the Common Area.

6.2.3 In the event of any inconsistency between the above general provisions and the specific provisions of Exhibit "B," the provisions of Exhibit "B" shall prevail. In the event of any inconsistency among the provisions of Exhibit "B," the most specific provision shall prevail. Provided any item is not listed in Exhibit "B," the responsibility for its maintenance shall be determined in accordance with the above general provisions or as otherwise provided by statute or Applicable Law.

6.2.4 Except as otherwise provided in the Governing Documents, the costs of maintenance, repair and replacement shall be borne by the party responsible for the maintenance, repair and replacement.

6.3 *Owner Improvements.*

6.3.1 Each Owner shall be responsible for the maintenance, repair, and replacement of any Improvements installed or planted by the Owner, any resident in the Owner's Unit, or the Owner's predecessor in interest, within the Unit, the Exclusive Use Common Areas, or upon the Common Area. The Owner is also responsible for damages to the Common Area caused by such installation, maintenance, use, or repair.

6.3.2 Installation of any Improvement within the Common Area is subject to the architectural review provisions.

6.3.3 Any unauthorized Improvement in the Common Area shall be considered a trespass on the Common Area and shall give the Board the right to remove the unauthorized Improvement summarily and without compensation to the party who installed it. Any cost of removal of an Owner's unauthorized Improvement shall be the sole responsibility of the Owner. See also Section 7.11 herein.

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

6.5 **Failure to Maintain.** If an Owner fails to maintain the areas described herein pursuant to the standards set by the Board, the Board may notify the Owner of the work required and request that the same be done within a reasonable time from the giving of such notice. If the Owner fails to complete maintenance within said time period, the Board may, following a Notice and Hearing, cause such work to be done and the cost thereof shall immediately be paid by such Owner to the Association and until paid shall bear interest at the rate of twelve percent per annum (but no greater than the maximum rate authorized by Applicable Law). The Association shall have an easement to enter the Units and Exclusive Use Common Area for the purpose of performing the work described herein.

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

6.7 **Termite Control.** [Civ. Code § 4780] The responsibility for control of wood destroying pests or organisms shall be as follows:

6.7.1 The party responsible for the maintenance and repair of a component shall control the presence of or repair damage caused by wood-destroying pests or organisms in that component.

6.7.2 The Board shall determine the method and timing of any treatment for which it is responsible in its sole discretion.

- 6.7.3 The Association shall have the power to temporarily remove any Unit resident for such periods and at such times as may be necessary for prompt, effective treatment of such pests or organisms. The costs of any temporary relocation, including loss of rental income, during such maintenance or repair shall be paid by the Unit Owner affected. Except in an emergency, the Association shall give notice of the need to temporarily vacate a Unit to the Owners and occupants not less than forty-five days prior to the date of the temporary relocation. The notice shall state the reason for the relocation, the date and time of the beginning of treatment, the anticipated date and time of termination of treatment and that the occupants will be responsible for all necessary accommodations during the relocation.
- 6.7.4 Neither the Association, the Board, Officers, agents nor employees shall have any liability, absent willful or wanton negligence, to any Owner, family member, guest, invitee or tenant for any damage caused by the treatment.
- 6.7.5 Notwithstanding anything else herein, in the event that an Owner wishes to obtain a termite clearance certificate for any purpose, the responsibilities for maintenance and repair shall be as set forth in Section 6.7.1 above. The Owner shall be responsible for any other costs associated with obtaining the certificate.

6.8 ***Damage Caused by Owner*** . [Civ. Code § 5725]

- 6.8.1 Should any damage to the Common Area or any Unit result from the willful or negligent act or neglect of any Owner, or such Owner's tenants, guests, invitees, pets or other person or entity deriving any interest through such Owner, the cost of all repairs shall be borne solely by the responsible Owner.
- 6.8.2 The Association shall be responsible for performing the repair of any damage to the Common Area or Improvements over which the Association has control at the responsible Owner's expense. The responsible Owner shall perform the repair of any damage to his or her Unit for which such Owner has control. The Owner of any other Unit which sustained damage shall perform the repair of any such damage, and may charge the cost of repairs and any relocation costs to the responsible Owner.
- 6.8.3 If the responsible Owner disputes or refuses to pay any repair costs incurred by the Association or the Owner of any other Unit which sustained damage, the Association, after Notice and

Hearing, may charge the cost of those repairs to such Owner as an Individual Assessment, with the full authority to lien on such amount in the event of non-payment. If the damage is such as may be covered by any insurance carried by the 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.

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

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

6.10 ***Damages to Unit; Water Intrusion Damage.***

- 6.10.1 Owners shall cause notice to be given to the Association of any water within, or water intrusion into, their Unit immediately upon discovery of such leak or water intrusion.
- 6.10.2 Unless the Association is responsible for the damages as set forth in this Section, within twenty-four hours or sooner of the discovery of a leak or water intrusion, Owner shall cause all water to be extracted, and the Unit cleaned. If Owner has not had water extraction and cleaning performed within forty-eight hours of discovery of the leak or water intrusion, the Association may cause such work to be done and assess the cost of the work to the Owner as an Individual Assessment. The Association is authorized by Section 3.5.5 to enter the Unit to perform water extraction and related repairs on an emergency basis. If repairs are required to a Unit following a leak or water intrusion, Owner shall cause all work to be performed by a licensed contractor experienced in water extraction and mold remediation. Containment procedures designed to prevent contamination of the affected Units, other Units and the Common Areas shall be utilized. If the Owner or occupants are

required to vacate the Unit during the water extraction or repairs, Section 5.32 shall apply. Owner and his or her tenants, guests, invitees, agents and employees shall hold the Association harmless for any claim for property damage or personal injury alleged to arise from the presence of mold or fungi in his or her Unit unless the damages or injuries were caused by the gross negligence of the Association, its Board, Officers, agents or employees.

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

6.11 **Owner Notification to The Association.** If, at any time, an Owner discovers or otherwise becomes aware of any condition within the Common Area or in any Unit, including, but not limited to, water entry, water damage or mold, that may constitute a risk to the health, safety or welfare of the Owners, their family members, tenants, and any other persons entering the Community, the Owner shall notify the Association representatives of the condition as soon as possible.

ARTICLE 7 - ARCHITECTURAL AND DESIGN CONTROL

7.1 **General.** [Civ. Code § 4760] Any change or Improvement to the exterior of a Unit, or to the interior which affects the exterior of Unit, any wall, or any mechanical or utility systems (HVAC systems, gas, water or electrical pipes or wires, etc.), or the structural integrity of any building, shall be governed by this Article. Changes or Improvements to the Common Area by the Association do not need to comply with the requirements of this Article. The powers and duties set forth in this Article shall be vested in, and exercised by, the Board. The Board may establish an Architectural Committee as provided herein to assist the Board in reviewing architectural submittals,

and to provide recommendations to the Board with regard to approval or disapproval of any submittal. The foregoing notwithstanding, the Board shall be solely responsible for approving or rejecting any architectural submittal.

7.2 General Changes Requiring Prior Approval. Nothing may be erected, placed, planted, altered, demolished, or modified on the exterior of any Unit, or on the Common Area without the prior written approval of the Board. Modifications to the interior of Units which involve alterations to the floor plan, or removal of a wall or have the potential to affect the Common Area, including the walls, roofs and mechanical or utility systems shall require prior approval.

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

- 7.3.1 Modifications or alterations of the exterior of any Unit or any other portion of the Common Area to facilitate handicapped access as provided by Applicable Law must have the prior written consent of the Board. Any approval of such handicapped access modification may be conditioned on such modification's removal, by the Owner at his or her sole expense, once the handicapped access is no longer necessary for the Unit.
- 7.3.2 Alterations to the floor plan of a Unit, removal of walls, or any portion thereof, may not be made within a Unit without the prior written approval of the Board of Directors.
- 7.3.3 No Owner may enclose any patio, balcony, entry area or deck without the prior written consent of the Board.
- 7.3.4 Except as provided by the Governing Documents, Owners shall not have the right to paint, remodel or alter any Exclusive Use Common Area or the Common Area without the prior written consent of the Board.
- 7.3.5 The Board may condition its approval on obtaining and recording a signed license and indemnity, hold harmless, or other similar agreement from the Owner if the Improvements affect the Common Area.
- 7.3.6 Owners may landscape the Common Area with prior written Board approval.

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

- 7.4.1 Complete plans and specifications in the form of an Architectural Improvement Request Form (the "AIRF") as set

forth in the Rules showing the nature, kind, shape, color, size, height, materials to be used and location of any proposed Improvements, alterations or landscaping, as well as the proposed licensed contractor and any other information as required by the Board, shall be prepared by the requesting Owner and submitted to the Association, along with any fee or deposit established in the Architectural Rules. The Board may establish a construction deposit and require that it be paid with the plans and specifications.

- 7.4.2 If the AIRF is for alterations and/or Improvements or modifications to the Exclusive Use Common Area, a maintenance agreement is required to be recorded.
- 7.4.3 The completed AIRF form shall state, in detail, the location and nature of the proposed alterations and shall include two (2) sets of architectural drawings showing all the particulars of the proposed alterations, along with start and completion dates.
- 7.4.4 In the event the proposed alterations present the possibility or likelihood of affecting the integrity of the existing structure, the Owner must complete and submit, along with the completed AIRF form, a notarized maintenance agreement, to be submitted as part of the AIRF form package together with a check for recording fees to made out to the "San Diego County Recorder." The amount of the current fee shall be set forth in the Rules.
- (a) The signed executed maintenance agreement includes acknowledgment that the Owner releases the Association from any obligation whatsoever, legal or contractual, implied or express, to maintain or repair said Improvements. By executing the maintenance agreement, Owner agrees, promises and covenants (1) that Owner shall hold the Association harmless from any and all liability, whatsoever, arising out of the construction and existence of said Improvement; (2) that Association is not, and shall not be treated by Owner as, a guarantor of the structural integrity of the Owner's alterations and (3) Owner shall indemnify Association, in the event of injury to any person, property or both arising from the Owner's alterations that were approved and authorized by the Association.
- (b) Owner's signature on the maintenance agreement acknowledges (1) Owner's agreement to the terms and conditions of the maintenance agreement is in

consideration for the Association's approval of the proposed Improvement(s)/alteration(s)/modifications to the Exclusive Use Common Area and (2) Owner releases Association from any obligation to maintain and/or repair the Improvement(s)/alteration(s)/modification(s) and (3) Owner holds and shall hold Association harmless from any and all liability, direct or indirect, arising out of Owner's Improvement(s)/alteration(s)/modification(s) to the Exclusive Use Common Area.

(c) The completed AIRF form, accompanied by copies of all necessary construction permits, shall be submitted in person or by mail to the location designated in the Rules. These forms must be fully completed and accompanied by the required attachments or the submission will be rejected.

7.4.5 The Architectural Committee, if any, shall review and consider the submitted AIRF form and, if necessary, the submitted maintenance agreement and provide a written recommendation as to approval or disapproval of any such submission, including the reasons for any decision, to the Board and the requesting Owner.

7.4.6 The Board shall review such recommendation within thirty days after receipt of the Architectural Committee's written recommendation, if any, or within sixty days after receipt of the submission, whichever is earlier, and provide a written response to the requesting Owner to approve or disapprove or require additional conditions for approval, including an explanation of the reasons for any disapproval.

7.4.7 In the event the Board fails to provide a written response to the requesting Owner within sixty days after receipt of the request from the Owner, the Owner may notify the Board in writing that a response has not been received. If the Board fails to respond within thirty days of the receipt of the notice, approval will not be required and the related covenants shall be deemed to have been fully satisfied, so long as the proposed Improvement does not violate any requirements of the Governing Documents or Applicable Law.

7.4.8 Once an Owner has obtained approval for an architectural submittal, the Owner must obtain all applicable governmental permits and work on such approved submittal shall promptly commence and shall be completed within a reasonable time.

7.5 **Architectural Rules.** [Civ. Code § 4360] The Board may, in its sole discretion, adopt, amend and repeal, as it deems necessary, Architectural Rules. The Architectural Rules shall interpret and implement the provisions of this Article by setting forth the standards for review by the Board and Architectural Committee and guidelines for architectural design, placement of buildings, landscaping, color schemes, exterior finishes and materials and similar features which are recommended for use in the Community, provided, however, that said Architectural Rules shall not be in violation of the standards required by this Restated Declaration. The Architectural Rules may also address the information which is required to be presented in connection with an architectural submittal. Unless any such Architectural Rules are complied with, an Owner's plans and specifications shall be deemed incomplete and not submitted.

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

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

- 7.7.1 The Board shall have the right to appoint all of the members of the Committee.
- 7.7.2 Members appointed to the Committee by the Board need not be Members of the Board.
- 7.7.3 Members shall be appointed for terms as prescribed by the Board. All members of the Committee may be removed by the Board at any time with or without cause.
- 7.7.4 The Committee shall meet as often as it deems necessary to properly carry out the obligations imposed upon it, unless otherwise directed by the Board.
- 7.7.5 The vote or written consent of the majority of the Committee shall be required for any recommendation.

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

7.9 **Compensation.** The members of the Board and Architectural Committee shall receive no compensation for services rendered, other than reimbursement by the

Association for expenses incurred by them in the performance of their duties hereunder. However, the Board may hire an architect or other professional to consult with the Committee and Board, and the Association may compensate the architect or professional for services rendered to the Association.

7.10 **Liability.** Neither the Board, the Architectural Committee nor any member thereof shall be liable to the Association or to any Owner for any damage, loss or prejudice suffered or claimed on account of: (1) the approval or disapproval of any plans, drawings and specifications, whether or not defective, (2) the construction or performance of any work, whether or not pursuant to approved plans, drawings, and specifications, or (3) the development of any property within the neighborhood; provided, however, that such member has acted in good faith on the basis of such information as may be possessed by him or her.

7.11 **Effect of Owner-Installed Improvements.**

7.11.1 This Section shall apply to all Improvements installed on any Unit or elsewhere in the Community, either by a current or former Owner or by that Owner's family members, agents, tenants, or anyone exercising the Owner's powers, and without regard to whether the Owner first complied with the requirements of this Article, including without limitation, the requirement for seeking and obtaining prior written approval before installing any such Improvements.

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

7.11.3 Each Owner covenants and agrees that any such Improvements shall be constructed in strict compliance with the plans and specifications and in the exact location approved by the Association, if so approved, and shall be maintained in good condition and repair in accordance with generally accepted construction, maintenance and repair practices, and shall comply with all Applicable Laws. Owner shall be obligated to obtain any necessary building permits and inspections and to

verify compliance with all requirements imposed by Applicable Law. The Association's approval of any such Improvements, if given, is limited to an approval based solely on the criteria contained in the Governing Documents and does not include a review for compliance with Applicable Laws.

- 7.11.4 All such Improvements shall be subject to the jurisdiction of the Association, acting through the Board, and to the Governing Documents; and shall be subject to an easement in favor of the Association to perform its duties under the Governing Documents. As such, each Owner shall pay all costs and expenses incurred in removing and replacing the Improvements, if such removal is required by the Association, in its sole discretion, to perform its maintenance and repair responsibilities under the Governing Documents. The Association shall exercise such discretion reasonably and not arbitrarily.
- 7.11.5 Owner shall defend, indemnify and hold harmless the Association, its Members, Board, Officers, agents and employees from and against any and all injuries, damages, causes of action or claims which may exist or be instituted against any or all of said parties because of, or in any manner arising from or connected with, the granting of written confirmation of approval for any Improvements, the power to grant and confirm such approval in writing, or the construction, maintenance, repair, replacement, existence or use of any such Improvements.
- 7.11.6 Each Owner releases the Association, its Members, Board, Officers, agents and employees from any duty or obligation to pay, or otherwise be responsible, for the cost of construction, maintenance, repair or replacement of any such Improvements, and releases said parties from any and all claims, injuries, damages and causes of action which may arise as a result of the construction, maintenance, repair or replacement of the Improvements or the continued existence or use of the Improvements.
- 7.11.7 If any Owner fails to construct, maintain or use such Improvements in accordance with any architectural approval granted by the Association and according to the terms of this Article, the Association shall have the power, at Owner's expense, either to maintain, repair or replace the Improvements or to remove the Improvements, in the Association's sole discretion.

- 7.11.8 The Association shall have the power unilaterally to record a document against the title to Owner's Unit identifying the nature, description and location of any Improvements installed by Owner, whether installed with or without the Association's approval, to put subsequent Owners on notice of their duties and obligations with respect to such Improvements under this Article.

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

- 7.12.1 No work for which approval is required shall be deemed to be approved simply because it has been completed without a complaint, notice of violation or commencement of a suit to enjoin such work.
- 7.12.2 The Board shall have the authority to order an abatement of any construction, alteration or other matter for which approval is required, to the extent that it has not been approved by the Board, or if it does not conform to the plans and specifications submitted to the Board.
- 7.12.3 If the Owner fails to remedy any noticed noncompliance within the time specified by the Board, the Board shall provide Notice and Hearing regarding the alleged noncompliance.
- 7.12.4 At the hearing, the Owner, any representative(s) of the Architectural Committee and, in the Board's discretion, any other interested person may present information relevant to the question of the alleged noncompliance. After considering all such information, the Board shall determine whether there is a noncompliance.
- 7.12.5 If a noncompliance is determined to exist, the Board shall require the Owner to remedy or remove the same within such period or within any extension of such period as the Board, at its discretion, may grant.
- 7.12.6 If the Owner fails to take corrective action after having a reasonable opportunity to do so, the Board at its option, may pursue all legal and equitable remedies available to remedy or remove the non-complying Improvement, and the Owner shall reimburse the Association for all expenses incurred in connection therewith upon demand, including costs of

remediation of any damage to the Exclusive Use Common Area caused by such unauthorized alteration(s) and/or Improvements or modifications to the Exclusive Use Common Area. If such expenses are not properly repaid by the Owner to the Association, the Board may recover such expenses through the levy of an Individual Assessment against such Owner.

- 7.12.7 The approval by the Board of any plans, drawings or specifications for any work or Improvement done or proposed, or for any other matter requiring the approval of the Board under this Restated Declaration, or any waiver thereof, shall not be deemed to constitute a waiver of any right to withhold approval of any similar plan, drawing, specification or matter subsequently submitted for approval by the same or some other Owner. Different location for Improvements, the size of the Improvement, proximity to other Units or the Common Area and other factors may be taken into consideration by the Board and Architectural Committee in reviewing a particular submittal.
- 7.12.8 Notwithstanding any other provisions herein, the Board of Directors shall have the authority to obtain a restraining order or injunction at any time after discovery that work is proceeding without approval of the Board or in a manner that is different than that approved by the Board if the Board deems such action necessary to protect the Association's interests.

7.13 *Noncompliance with Applicable Laws.* Neither the Association, the Board, nor the Architectural Committee shall be responsible for any noncompliance with any Applicable Law of any Improvement erected, constructed, installed, placed, altered or maintained in accordance with or pursuant to any plans and specifications approved by the Board or any defect in any conditions or requirements they may have imposed with respect thereto.

7.14 *Governmental Permits and Approvals.* Prior to commencing any alteration or Improvements approved by the Board, the Owner shall comply with all Applicable Laws. The Association shall not be obligated to enforce the provisions of this Section. Approval by the Board shall not be considered to satisfy any Applicable Law, nor shall the approval of any governmental entity be considered to completely satisfy the requirement of Board approval. An Owner's failure to comply with any Applicable Law may subject such Owner to certain penalties imposed by the governmental entity, notwithstanding the approval of the Board, which penalties shall be the responsibility of such Owner. Each Owner, by accepting a deed to his or her Unit, agrees to reimburse the Association for any loss resulting from the violation of any Applicable Laws.

7.15 *Conflicts Between Applicable Law and The Association.* In the event of any conflict between any Applicable Law and the Association's Governing

Documents or other requirements, the more restrictive of such conditions shall be controlling. Further, nothing herein shall limit the Association from imposing conditions of approval of any proposed Improvements which are more restrictive than any Applicable Law.

ARTICLE 8 - INSURANCE

8.1 **Fire and Casualty Insurance.** At a minimum, the Association shall obtain and maintain a policy or policies of fire and casualty insurance for the full insurable replacement cost of the Improvements located in the Common Area, including the Exclusive Use Common Area, and for which the Association is responsible pursuant to the Governing Documents. The Association may obtain, but is not required to obtain, insurance that will insure components that this Section does not require. The Association shall have no obligation to insure Improvements or fixtures such as cabinets, built-in appliances or floor or wall coverings, within the Unit or Exclusive Use Common Area. The amount of any deductible shall be determined by the Board. This insurance shall be maintained for the benefit of the Association, the Owners, and their Lenders, as their interests may appear as named insured, subject, however, to any loss payment requirements set forth in this Restated Declaration. If required by any First Lender who notifies the Association of its requirement, and if economically feasible and available, such policies shall contain an inflation guard endorsement and a construction code endorsement.

8.2 **General Liability Insurance.** [Civ. Code § 5805] The Association shall obtain and maintain a policy or policies insuring the Association, its Officers, Directors, agents and employees, and the Owners against any liability for bodily injury, death, and property damage arising from the activities of the Association and its Members, with respect to the Common Area and any Units owned by the Association. Limits of liability under the insurance shall not be less than Three Million Dollars covering all claims for wrongful death, bodily injury, and property damage arising out of a single occurrence. If the minimum amount necessary to comply with Civil Code section 5805 or any successor statute is a larger amount, the statute shall control.

8.3 **Directors and Officers Liability Insurance.** [Civ. Code § 5800] The Association shall obtain and maintain one or more policies of insurance which include coverage for individual liability of Officers and Directors of the Association for negligent acts or omissions of those persons acting in their capacity as Officers and Directors or at the direction of Officers and Directors. Limits of liability under this insurance shall be determined by the Board at its sole discretion. If the minimum amount necessary to comply with Civil Code section 5800 or any successor statute is a larger amount, the statute shall control.

8.4 **Fidelity Coverage.** The Association shall purchase and maintain fidelity coverage for any person or entity handling funds of the Association, whether or not such persons or entities are compensated for their services. If an agent handles Association funds, such agent shall be covered by the Association's coverage, unless such agent

provides similar coverage. The Association's coverage may be in the form of a separate bond, a separate policy (e.g., crime policy), or may be added by endorsement to the general policies carried by the Association. The Board shall have the discretion to determine the amount of coverage. The fidelity coverage must contain a provision that it may not be cancelled or substantially modified without at least ten days' prior written notice to the Association.

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

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

8.7 Qualifications of Insurance Carriers. The Association shall use generally acceptable insurance carriers from which to purchase and maintain the coverage required herein, preferably from carriers that are admitted to sell insurance in the State of California to the extent such insurance is available at a reasonable premium cost.

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

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

8.9 Trustee for Policies. The Association, acting through its Board, is appointed and shall be deemed trustee of the interests of all named insureds under all

insurance policies purchased and maintained by the Association. All insurance proceeds under any of those policies shall be paid to the Board as trustee. The Board shall use the proceeds for the repair or replacement of the property for which the insurance was carried. The Board also is authorized to negotiate loss settlements with the appropriate insurance carriers, to compromise and settle any claim or enforce any claim by any lawful action, and to execute loss claim forms and release forms in connection with such settlements.

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

8.11 Insurance Policy Deductibles. [Civ. Code § 5300] The Board of Directors shall have the power, in its sole discretion, to determine the amount of any deductible applicable to any insurance policy carried by the Association. In the event of a covered claim under the Association's property policy, the responsibility for payment of any deductible shall be as follows:

- 8.11.1 Owners shall be responsible for the deductible, if the covered loss occurs only to the Owners' real or personal property, or other property the Owner is responsible for repairing or replacing ("Owner Property").
- 8.11.2 Association shall be responsible for the deductible if the covered loss occurs only to any real or personal property owned by Association, or other property the Association is responsible for repairing or replacing ("Association Property").
- 8.11.3 If the covered loss occurs to any Owner Property and any Association Property, or to more than one Owner's Property, the responsibility for the payment of any deductible shall be apportioned among the affected parties on the basis of the ratio of each party's insured loss to the total insured loss under that policy.
- 8.11.4 The foregoing notwithstanding, if the Board determines the damage or loss is caused by the negligence or misconduct of any Owner, or resident, guest, tenant or invitee of an Owner or is the Owner's responsibility pursuant to Section 6.8 herein, such Owner shall be liable for the full amount of the deductible.

8.12 Insurance Disclosures. [Civil Code §§ 5300 & 5810] The Association shall disclose such information regarding insurance coverage as and when required by any Applicable Law. Failure to disclose such information shall not impose any liability upon the Association or Board other than that provided for in such Applicable Law.

8.13 Individual Property Insurance. All Owners shall obtain and maintain insurance, at their sole expense, to protect against any damage to, or loss of the Owner's real or personal property, and the cost of repair or replacement of damaged

items, including, but not limited to, any Improvements made by an Owner, any personal property, decorations, floor and wall coverings, appliances, cabinets, fixtures or other items therein, or any exterior items for which the Owner is responsible for maintenance, repair and replacement by the terms of this Restated Declaration, or any exterior items for which such Owner is responsible such as landscaping. Owner and his or her tenants, guests, invitees, agents and employees shall hold the Association, its Officers, Directors, agents and employees harmless for any claim for property damage or personal injury alleged to arise from the failure of the Association, its Officers, Directors, agents or employees to verify and ensure that every Owner has complied with this requirement to obtain and maintain insurance.

8.14 **Individual Liability Insurance.** An Owner may carry personal liability and property damage liability insurance with respect to his or her ownership of a Unit that he or she desires.

ARTICLE 9 - DAMAGE OR DESTRUCTION

9.1 **Duty to Restore.** [Civ. Code § 4775] Any portion of the Common Area that is damaged or destroyed must be repaired or replaced promptly by the Association unless:

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

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

9.3 **Repair Plans.** The Common Area must be repaired and restored in accordance with either (1) the original plans and specifications, updated as required to reflect applicable building codes, or (2) other plans and specifications which have been approved in writing by the Board, a majority of Owners, and at least fifty-one percent of Eligible Lenders holding Mortgages on Units subject to the repair.

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

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

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

- (a) Any insurance proceeds attributable to a Unit and Exclusive Use Common Area that are not rebuilt must be distributed to the Owner of that Unit and the Owner of the Unit to which the Exclusive Use Common Area is appurtenant, or to Lenders, as their interests may appear.
- (b) The remainder of any proceeds must be distributed equally to the Owners of each Unit which will remain or to Lenders, as their interests may appear.

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

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

9.6 **Separation of Insureds.** Any liability policy obtained by the Association shall provide for a separation of insureds such that the insurance will apply as if each insured were the only insured.

9.7 **Waiver of Subrogation.** The Association and the Owners covenant and agree that all casualty insurance carried by the Association or the Owners shall contain provisions whereby the insurer waives rights of subrogation as to the Association, Directors, Officers and Owners and their respective family members.

9.8 **Disbursements to Owners and Lenders.** If the Community is terminated, any insurance proceeds distributed to Owners and Lenders of Units shall be distributed in proportion to the amount of the insured loss on each Owner's Unit as determined by an independent insurance adjuster. That determination shall be performed by an independent insurance adjuster who shall be selected by the Board and who shall either be a member of, and apply the standards of, a nationally recognized insurance adjusting organization or shall have at least fifteen years of experience in adjusting residential insurance claims.

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

9.9.1 Whether or not damaged or destroyed property is to be repaired or restored.

9.9.2 The amount or amounts to be paid for repairs or restoration and the names and addresses of the parties to whom such amounts are to be paid.

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

9.11 **Casualty Destruction of Unit.** In the event of damage or destruction to any Unit, and unless the Owners vote not to rebuild the Common Area surrounding the Unit, the Owner thereof shall reconstruct the Unit as soon as reasonably practicable and substantially in accord with the original plans and specifications therefor; provided, however, that any such Owner may, with the written consent of the Board pursuant to the architectural review requirements of the Governing Documents, reconstruct or repair the same pursuant to new or changed plans and specifications.

ARTICLE 10 - PARTY WALLS

The rights and duties of the Owners of Units with respect to party walls shall be governed by the following:

10.1 **General Rules of Law to Apply.** Each wall which is located on the dividing line between separate Units shall constitute a party wall, and with respect to such wall, each of the adjoining Owners shall assume the burdens, and be subject to an easement for that portion of a party wall on his Unit, and be entitled to the benefits of these restrictive covenants and, to the extent not inconsistent herewith, the general rules of law regarding party walls shall be applied thereto.

10.2 **Sharing of Repair and Maintenance.** In the event any such party wall is damaged or destroyed through the act of one adjoining Owner or any of his agents or guests, tenants or members of his family members (whether or not such act is negligent or otherwise culpable) so as to deprive the other adjoining Owner of the full use and enjoyment of such wall, then the first of such Owners shall forthwith proceed to rebuild and repair the same to as good condition as formerly without cost to the adjoining Owner.

10.3 **Destruction by Fire or Other Casualty.** In the event any such party wall is damaged or destroyed by some cause other than the act of one of the adjoining Owners, his agents, guests, tenants or family members (including the ordinary wear and

tear and deterioration from lapse of time), then in such event, the Association shall proceed forthwith to rebuild or repair the same to as good condition as formerly at their joint and equal expense.

10.4 **Dispute.** In the event of a dispute between Owners with respect to the repair or rebuilding of a party wall or with respect to the sharing of the cost thereof, then upon written request of one of such Owners addressed to the Association, the matter shall be submitted to the Board of Directors who shall decide the dispute and impose an Individual Assessment against any or all of the Owners involved which shall constitute an assessment within the meaning of Article 4 hereof.

ARTICLE 11 - EMINENT DOMAIN

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

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

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

11.4 **Substantial Taking.** [Civ. Code § 4610] If there is a substantial taking of the Community (more than fifty percent), the Owners may terminate the legal status of the Community and, if necessary, bring a partition action under any Applicable Law, on the election to terminate by fifty-one percent of the Voting Power. The proceeds from

the partition sale, less any costs or fees incurred in collection thereof, shall be distributed to the Owners and their respective Lenders in proportion to the fair market values of the Condominiums.

ARTICLE 12 - RIGHTS OF LENDERS

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

12.2 **No Right of First Refusal.** This Restated Declaration neither contains nor shall be amended to contain any provision creating a "right of first refusal" to the Association before a Unit can be sold. Should any such rights nevertheless be created in the future, such rights shall not impair the rights of any First Lender to: (1) foreclose or take title to a Unit pursuant to the remedies provided in the mortgage, (2) accept a deed (or assignment) in lieu of foreclosure in the event of a default by a mortgagor, or (3) sell or lease a Unit acquired by the Lender.

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

12.4 **Action Requiring Lender Approval.** Except as provided by statute in case of condemnation or substantial loss to the Condominiums and Common Area, approval by at least fifty-one percent of the Eligible Lenders (based upon one vote for each Mortgage owned), is needed to:

12.4.1 Abandon or terminate the Community as a condominium community (except for abandonment or termination provided by Applicable Law in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain).

12.4.2 Change the pro rata interest or obligations of any individual Condominium for the purpose of (1) levying Assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards, or (2) determining the pro rata share of ownership of each Condominium in the Common Area, provided that no Owner's undivided interest in the Common Area may be changed without the consent of that Owner.

- 12.4.3 Partition or subdivide any Condominium.
- 12.4.4 Abandon, partition, subdivide, encumber, sell or transfer the Common Area, or any property owned, directly or indirectly, by the Association. (The granting of easements for public utilities or other public purposes consistent with the intended use of the Common Area by the Association is not a transfer in the meaning of this clause.)
- 12.4.5 Use hazard insurance proceeds for losses to any of the Community (whether to Condominiums or to Common Area) for other than the repair, replacement or reconstruction of such property.

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

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

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

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

12.8 **Termination of Professional Management.** Provided professional management has previously been required by any Eligible Lender, any decision to establish self-management by the Association shall require the consent of at least sixty-

seven percent of the Voting Power and at least fifty-one percent of Eligible Lenders; provided that so long as any Mortgage which is a lien on a Unit is insured or guaranteed by the Federal Housing Administration, any termination and failure to replace professional management shall require the prior written approval of the Federal Housing Administration.

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

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

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

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

12.13 **Financial Statement.** Any first lender shall be entitled, on written request therefor, to have an audited financial statement for the immediately preceding fiscal year prepared at its expense if one is not otherwise available.

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

ARTICLE 13 - ENFORCEMENT

13.1 **Right to Enforce; Remedies.** [Civ. Code §§ 5850 et seq., 5900 et seq., 5925 et seq. & 5975; Corp. Code § 7231] The Association or any Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the Governing Documents. Each remedy provided in this Article, this Restated Declaration and under Applicable Law shall be considered cumulative and not exclusive.

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

13.3 **Nuisance.** [Civ. Code § 3479] The result of every act or omission, whereby any provision, condition, restriction, covenant, easement, or reservation contained in the Governing Documents is violated in whole or in part, is declared to be and constitute a nuisance, and every remedy allowed by Applicable Law or equity against a nuisance, either public or private, shall be applicable against every act or omission or incident resulting in a nuisance and may be exercised by any Owner and the Association.

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

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

13.6 **Violation of Applicable Law.** Any violation of any Applicable Law pertaining to the ownership, occupancy or use of any Condominium within the Community is declared to be a violation of the Governing Documents and subject to any or all of the enforcement procedures herein set forth.

13.7 **Compliance with Applicable Law.** [Civ. Code §§ 5850 et seq., 5900 et seq., 5925 et seq. & 5975; Corp. Code § 7231] All activities to enforce the provisions of the Governing Documents shall be conducted in accordance with all Applicable Laws. This Section shall apply to both the Association and to all Owners.

13.8 **Attorneys' Fees.** [Civ. Code § 5975] In the event an attorney is engaged by the Board to enforce the Governing Documents, the Association shall be entitled to recover from the adverse party to the controversy its actual attorneys' fees and costs so incurred, whether or not such controversy proceeds to litigation. In the event litigation is commenced to enforce the Governing Documents, the prevailing party shall be entitled to its attorneys' fees and costs. Said costs and attorneys' fees shall constitute a lien on the Unit which is enforceable as an Assessment pursuant to the Governing Documents. This Section shall also apply to actual attorneys' fees incurred to collect any post-judgment costs.

ARTICLE 14 - AMENDMENTS

14.1 **Owner Approval of Amendments.** [Civ. Code §§ 4260, 4270, 4275 & 5100 et seq.]

- 14.1.1 Subject to this Article, this Restated Declaration may be amended with the approval of seventy-five percent (75%) of the Voting Power.
- 14.1.2 An amendment becomes effective after (1) the approval of the required percentage of Owners has been given, (2) that fact has been certified in the form of a written document executed and acknowledged by an Officer designated by the Association for that purpose or, if no such designation is made, by the President of the Association and (3) the document has been recorded in San Diego County.
- 14.1.3 An amendment may change this Restated Declaration in any manner, including adding or deleting restrictions or increasing or decreasing the burdens on the Units as long as the amendment is approved as specified in this Article or pursuant to the Civil Code.

14.2 Approval of Specified Amendments. In addition to the approval required by Section 14.1 above, the approval of fifty-one percent of Eligible Lenders shall be required to add or amend (1) any provision of this Restated Declaration which is for the express benefit of holders or insurers of First Mortgages, or (2) any material provisions of this Restated Declaration which establish, provide for, govern or regulate:

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

14.2.11 Imposition of any restrictions on an Owner's right to sell or transfer his or her Unit.

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

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

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

If the Board approves an amendment using the procedure in this Section, the amendment shall not be recorded or filed until the following procedure is implemented. The Board shall first send notice of such action to the Owners, which notice shall include the text of the proposed amendment and an opinion from legal counsel that the proposed change in the Governing Documents falls within one of the purposes listed above.

An amendment shall be considered ratified, unless within thirty days after the date such notice is sent to the Owners, the Owners entitled to cast twenty percent of the votes in the Association sign a written petition to reconsider the Board's action and file it with the Board. If such a petition is filed, the Board shall call a special meeting of the Members to reconsider the Board's action. At the meeting, unless a majority of the Voting Power of the Association rejects the proposed amendment, the amendment shall be considered ratified, whether or not a quorum is present at the special meeting.

This Section shall not restrict the powers of the Owners to amend this Restated Declaration or the Bylaws by any other method, but is intended to authorize a simple process for amendment where the property rights of Owners are not materially or adversely affected.

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

ARTICLE 15 - GENERAL PROVISIONS

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

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

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

15.4 **Interpretation.** [Civ. Code § 4215] The provisions of this Restated Declaration shall be liberally construed and interpreted to effectuate its purpose of creating a uniform plan for the development and operation of a condominium community. All questions of interpretation of construction of any of the terms or conditions herein shall be resolved by the Board, and its decision shall be final, binding and conclusive on all of the parties affected.

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

15.6 **Fair Housing.** [Gov. Code § 12956.1] Neither the Association nor any Owner shall, either directly or indirectly, forbid the conveyance, encumbrance, renting, leasing, or occupancy of the Owner's Unit to any person on the basis of race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, familial status, marital status, disability, genetic information, national origin, source of income as defined in subdivision (p) of section 12955, or ancestry or any other classification prohibited by Applicable Law.

15.7 **Number and Headings.** As used in this Restated Declaration, the singular shall include the plural, unless the context requires the contrary. The headings

are not a part of this Restated Declaration, and shall not affect the interpretation of any provision.

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

- 15.8.1 Variances may be granted, without limitation, to restrictions upon use, restrictions on repair and maintenance, and architectural restrictions, when circumstances such as topography, location, engineering, economy, hardship, aesthetic or environmental considerations warrant.
- 15.8.2 Variances shall be in writing and shall become effective upon final approval by the Board.
- 15.8.3 When a variance is granted, no violation of the Restated Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of a variance shall not operate to waive any of the terms and provisions of this Restated Declaration for any purpose except as to the particular Unit and particular provision covered by the variance, nor shall it affect in any way the Owner's obligation to comply with all Applicable Laws affecting the use of the premises, including, but not limited to, zoning ordinances and lot setback lines or requirements imposed by the County of San Diego or any other governmental authority.
- 15.8.4 The Association may charge a reasonable fee to cover any costs associated with the variance approval process, or for issuance of a variance.
- 15.8.5 The Board may enact additional Rules regarding the variance approval process, the circumstances under which a variance may be granted, and the execution of indemnity or other agreements by the Owner as a condition to issuance of a variance.

15.9 **Governing Document Priorities.** [Civ. Code § 4205] In the event of a conflict among the Governing Documents, or any provision thereof, the following documents shall take precedence in the order given: (1) the Condominium Plan, (2) this Restated Declaration, (3) the Articles, (4) the Bylaws, and (5) the Rules.

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

15.11 **References to Code Sections.** Statutes or administrative regulations that are shown in brackets at the beginning of a section or paragraph in this Restated Declaration are intended to show that the respective section or paragraph is based on the particular statute or administrative regulation referred to in the brackets. Unless otherwise noted, all references are to statutes and administrative regulations of the State of California. Any issues not addressed expressly by the Governing Documents shall be controlled by relevant provisions of the Davis-Stirling Common Interest Development Act (Civil Code section 4000 et seq.) and the California Corporations Code and by judicial interpretations of these statutes, whether the Association is incorporated or not. In the event any of the statutes or laws referenced herein are amended, modified, or otherwise changed, the references herein shall be deemed to refer to the statutes or laws as amended, modified or otherwise changed. If a statute or law is deleted, any reference herein shall be deemed to refer to any successor statute or law.

IN WITNESS WHEREOF, the undersigned has executed this Amended and Restated Declaration of Restrictions this _____ day of _____, 20__.

DECLARANT:

FIRST LA COSTA CONDOMINIUM OWNERS ASSOCIATION
a California nonprofit mutual benefit corporation

By: _____
President

By: _____
Secretary

EXHIBIT "A" - COMMUNITY LEGAL DESCRIPTION

Lot 1 of La Costa Condominium No. 1, Unit No. 1 in the County of San Diego, State of California, according to Map thereof No. 5544 filed in the Office of the County Recorder of San Diego County. Said Lot 1 consists of an irregular plot of land approximately 1,000 feet by 400 feet, fronting and abutting El Camino Real on the West, the centerline of a 100 foot wide utility easement on the northeast and Estrella del Mar Road on the East, southeast and South.

EXHIBIT "B" - MAINTENANCE LIST

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

COMPONENT(S)	OWNER	ASSOC.
Air Conditioning System - Each Unit	√	
Appliances - Built-in	√	
Appliances - Free Standing	√	
Atrium (Enclosed)	√	
Atrium (Open)		√
Cabinets - in Units	√	
Carpeting - in Units	√	
Carport/Driveway/Parking Space - Concrete and Asphalt Surfaces		√
Caulking – Exterior		√
Caulking – Interior	√	
Ceiling Coverings	√	
Common Area Improvements		√
Crawl Spaces in Attic (excluding personal contents)		√
Doorbell - Exterior Components/Button Switch	√	
Doorbell - Interior Components; Wiring	√	
Doors - Entry - Frame & Door	√	
Doors - Entry - Locks and Hardware	√	
Doors - Entry - Painting - Exterior Surface	√	
Doors - Entry - Painting - Interior Surface	√	
Doors - Entry - Weather Stripping/Waterproofing	√	
Doors - Interior	√	

COMPONENT(S)	OWNER	ASSOC.
Doors, Screen/Storm/Security	√	
Doors, Sliding Glass	√	
Doors, Sliding Glass - Frame and Tracks	√	
Doors, Sliding Glass - Screen	√	
Drainage Systems (e.g., ditches, catch basins)		√
Drains - Bathtubs, Showers, Sinks	√	
Drains – Curbs and Sidewalks		√
Drains – Landscape		√
Driveways and Parking Lots		√
Dryer Vents – Cleaning, Repair and Replacement, in Units	√	
Dryer Vents – Repair and Replacement, in Common Area		√
Drywall - Damage Repairs (e.g., cracks, inside minor localized water damage, dents, holes, etc.) and Replacement	√	
Electrical Panel/Circuit Breakers/Interior	√	
Electrical Switches, Sockets, Wall Plates - Interior	√	
Electrical Wiring – Interior	√	
Exhaust Fans – Interior	√	
Exterior Building Surfaces		√
Exterior Faucets, Handles, Washers, Hose Bibs (in Common Area)		√
Exterior Faucets, Handles, Washers, Hose Bibs (in Enclosed Areas)	√	
Exterior Lighting Fixtures (Common Area)		√
Fences - Common Area		√
Fences – Individual	√	
Fireplace - Chimney - Exterior		√
Fireplace - Chimney Flue and Spark Arrestor	√	

COMPONENT(S)	OWNER	ASSOC.
Fireplace - Chimney - Interior – Cleaning and Sweeping	√	
Fireplace - Fire Brick (fire box) ^{1/}	√	
Fireplace - Mantelpiece, Trim and Facing	√	
Floor – Structural (i.e., Slab)		√
Floor Coverings - Carpet, Vinyl, Tile and Wood (including replacement of materials removed to enable Association to make repairs, if needed)	√	
Front Entry Landings		√
Furnace - Unit Systems	√	
Garage Door Openers	√	
Garage Doors - Replacement	√	
Garbage Disposal	√	
Gas Lines - Below Ground or Outside of Unit		√
Glass - Common Area		√
Glass - Unit Windows/Doors	√	
Gutters & Downspouts (if Owner installed)	√	
Improvements Made by an Owner	√	
Insulation	√	
Landscaping - Balconies	√	
Landscaping - Common Area; Greenbelt		√
Landscaping - Patios/Backyards (if enclosed)	√	
Lighting Fixtures - Common Areas		√
Lighting Fixtures - Inside Units	√	
Lighting Fixtures - Outside – Post Only		√
Lighting Fixtures - Outside – Attached to Home	√	
Mailboxes	√	
Mold Issues	√	

^{1/} Ceramic brick walls of fireplace.

COMPONENT(S)	OWNER	ASSOC.
Painting – Interior of Unit	√	
Patio – Exterior of Building		√
Patio/Balcony Deck Membranes/Waterproofing		√
Patio/Balcony Deck Railings – Maintenance and Painting		√
Planter Boxes - Units	√	
Plumbing Fixtures - Interior (Toilets/Tubs/Sinks/Faucets, etc.)	√	
Plumbing Lines – (Hot and Cold) – Located Inside Unit, within Floors, behind or within Walls, or above or within Ceilings	√	
Plumbing Lines – (Hot and Cold) – Located Below Slab and within Common Area, other than as Assigned to Owner Above		√
Pool, Pool Building, Equipment		√
Pressure Regulators		√
Roof Lines and Vents		√
Sewer Lines and Back- Ups		√
Sewer Lines and Back-Ups - Blockage Caused by Owner's Unit	√	
Sidewalks - Common Areas		√
Slab and Foundations		√
Satellite Dishes and Wiring	√	
Skylights	√	
Smoke Alarm and CO ₂ Alarm	√	
Spraying for Household Pests (Ants, Fleas, etc.) within Unit	√	
Spraying for Landscaping Pests		√
Stucco Painting/Coloring		√
Stucco Repair & Replacement		√
Termite Treatment - Common Area Components		√
Termite Inspection		√
Toilet - Wax Ring, Fixture and Connecting Components	√	

COMPONENT(S)	OWNER	ASSOC.
Trim - Wood - Exterior - Maintenance & Replacement		√
Trim - Wood - Exterior - Painting		√
Walls - Bearing, Studs, Frames, Tiedowns, Other Structural Items – Unless Damage is Caused by an Owner or his agents, guests, tenants or family members		√
Walls - Non-bearing, Non-structural within the Unit	√	
Wall Coverings	√	
Water Heater - Common Area		√
Water Heater – Individual	√	
Water Intrusion into Unit – Clean up, Repairs and Replacement to Components Assigned to Owner in this Declaration – See Section 6.10	√	
Water Softeners (in Units)	√	
Window and Slider Screens	√	
Window Flashing/Waterproofing – Structural		√
Window Frames	√	
Window Hardware	√	
Wiring - Cable TV and Satellite Dish	√	
Wiring - Electrical - From Unit Breaker to Breaker in Unit	√	
Wiring - Electrical - From Main Breaker Outside to Breaker in Unit		√
Wiring - Telephone	√	