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**AMENDED AND RESTATED DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS OF
CASA DEL REY HOA OF SANTA CLARA**

NOTICE

If this document contains any restriction based on race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, familial status, marital status, disability, veteran or military status, 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 California *Government Code*. Lawful restrictions under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status.

**TABLE OF CONTENTS TO
AMENDED AND RESTATED DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS OF
CASA DEL REY HOA OF SANTA CLARA**

		Page Number
RECITALS OF BACKGROUND FACTS, DECLARATIONS.....		1
ARTICLE 1	DEFINITIONS	2
1.1	Additional Charges.....	2
1.2	Annual Assessment	2
1.3	Architectural Committee.....	2
1.4	Articles of Incorporation	2
1.5	Assessments	2
1.6	Association	3
1.7	Board of Directors	3
1.8	Bylaws	3
1.9	City.....	3
1.10	Civil Code	3
1.11	Common Area.....	3
1.12	Contract Purchaser / Contract Seller	3
1.13	Corporations Code.....	3
1.14	County	3
1.15	Declaration.....	3
1.16	Development.....	4
1.17	Dwelling	4
1.18	Enforcement Assessment	4
1.19	Exclusive Use Common Area	4
1.19.1	Private Driveway.....	4
1.20	First Mortgage / First Mortgagee.....	4
1.21	Governing Documents	4
1.22	Individual Delivery / Individual Notice.....	4
1.23	Lot	5
1.24	Maintenance	5
1.25	Member.....	5
1.26	Member in Good Standing	5
1.27	Mortgage / Mortgagee.....	5
1.28	Owner	5
1.29	Party Fence	5
1.30	Party Wall	5
1.31	Reimbursement Assessment	5

1.32	Repair	5
1.33	Replacement.....	6
1.34	Resident.....	6
1.35	Rules.....	6
1.36	Special Assessment.....	6
1.37	Subdivision Map.....	6
1.38	Total Voting Power.....	6
ARTICLE 2	HOMEOWNERS ASSOCIATION.....	6
2.1	Management and Operation; Bylaws	6
2.2	Legal Standing	7
2.3	Membership	7
2.4	Voting.....	7
2.5	Association Rules	7
ARTICLE 3	PROPERTY SUBJECT TO THIS DECLARATION.....	7
3.1	Legal Description	7
3.2	Classification of Property	7
3.3	Ownership Interest; No Separate Conveyance.....	8
3.4	Undivided Interests Cannot Be Changed.....	8
3.5	Limitation on Partition of Common Area	8
3.6	Mergers, Consolidations and Annexations.....	8
3.7	Capital Improvements	8
3.8	Borrow; Mortgage Common Area	9
3.9	Dedication, Sale or Transfer of Common Area to Public Agencies/Utilities.....	9
ARTICLE 4	MECHANIC'S LIENS; EASEMENTS	9
4.1	Mechanic's Lien Against Common Area	9
4.2	Easements in General	9
4.3	Exclusive Use Common Area Easements	10
4.4	Owner's Non-exclusive Easements of Enjoyment	10
4.5	Easement for Vehicular Ingress and Egress.....	11
4.6	Party Wall and Party Fence Easements	11
4.7	Easements of Encroachment.....	11
4.8	Easements in Case of Partial or Total Destruction of Lot.....	11
4.9	Utility Easements	12
4.10	Easements of the Association to Enter Lots	12
4.11	Board's Power to Grant Non-exclusive Easements and Licenses to Owners	12
4.12	Board's Power to Assign Exclusive Use Parking Spaces	12
4.13	Board's Power to Grant Exclusive Easements to Owners	13

ARTICLE 5	USE RESTRICTIONS	13
5.1	Use of Common Area Generally	13
5.2	No Alteration of Common Area	13
5.3	No Obstruction of Common Area	13
5.4	No Smoking in Common Area	13
5.5	Delegation of Use	14
5.6	Residential Use.....	14
5.7	Number of Occupants	14
5.8	Restriction on Businesses.....	14
	5.8.1 Types of Businesses Allowed	14
	5.8.2 Indemnification Regarding Business Activity	15
5.9	Compliance with Laws	15
5.10	Unlawful Conduct; Nuisances; Noise	15
5.11	Conditions Affecting Insurance	15
5.12	Outbuildings.....	16
5.13	Requirement of Architectural Approval	16
5.14	Animals	16
	5.14.1 No Commercial Purposes	16
	5.14.2 Number of Pets	16
	5.14.3 Control of Dogs.....	16
	5.14.4 Responsibility for Pets	16
	5.14.5 Indemnification Regarding Pets	16
	5.14.6 Removal of Nuisance Pets.....	17
	5.14.7 Pet Rules	17
5.15	Trash Disposal.....	17
5.16	Signs, Banners, Flags.....	17
5.17	Vehicles and Parking	18
	5.17.1 Parking Generally	18
	5.17.2 Resident Parking: Garage and Private Driveway.....	18
	5.17.3 Guest Parking: Common Area Parking Spaces	18
	5.17.4 Prohibited and Restricted Vehicles	18
	5.17.5 Vehicle Repairs in the Development.....	19
	5.17.6 Other Parking Space Use Restrictions; Storage Pods.....	19
	5.17.7 Parking Rules	19
	5.17.8 Parking Enforcement and Towing.....	19

ARTICLE 6	RENTING OR LEASING	20
6.1	Requirements for Renting	20
6.1.1	Written Lease.....	20
6.1.2	No Subletting	20
6.1.3	Copy of Lease.....	20
6.1.4	Provide Governing Documents to Tenants	20
6.1.5	Affidavit of Tenants	20
6.1.6	House Sitters	21
6.1.7	Owner's Contact Information	21
6.2	Notice of Non-Owner Occupants	21
6.3	No Transient Rentals	21
6.4	Rental of Entire Lot	21
6.5	No Vacation Clubs; No Time Share Arrangements.....	22
6.6	Private Exchanges Permitted.....	22
6.7	Implementation	22
6.8	Association As Third Party Beneficiary	23
6.9	Indemnification Regarding Tenant's Actions.....	23
ARTICLE 7	ARCHITECTURAL APPROVAL.....	23
7.1	Prior Architectural Approval Required.....	23
7.2	Some Common Architectural Concerns.....	24
7.2.1	Air Conditioner Units.....	24
7.2.2	Disproportionate Burden on Common Utility Service; Separate Metering	24
7.2.3	Exterior Lighting	24
7.2.4	Exterior Wiring	24
7.2.5	Mailboxes.....	25
7.2.6	Masts, Poles, Towers, Other Projections.....	25
7.2.7	No Installations on Roof.....	25
7.2.8	Satellite Dishes and Antennas	25
7.2.9	Skylights	25
7.2.10	Solar Energy Systems	26
7.2.11	Sports Apparatus	26
7.2.12	Storage Units; Temporary Structures.....	26
7.2.13	Structural Integrity of Dwellings; Floors, Walls, Ceilings, or Utility Systems	26
7.2.14	Window Replacement.....	26
7.3	Architectural Rules.....	26
7.3.1	In General.....	26
7.3.2	Solar Energy Systems	27

7.4	Preliminary Consultation Prior to Submitting Application	27
7.5	Written Request for Board's Approval.....	27
7.6	Fees; Professional Consultants	28
7.7	Meetings	28
7.8	Basis for Decisions; Good Faith.....	28
7.9	Decisions in Writing; Timely Decision; Reasonable Conditions.....	28
7.10	Variances.....	29
7.11	Failure of Board to Make Timely Decision	29
7.12	Failure to Obtain Required Approval.....	29
7.13	Compliance with Governmental Requirements.....	29
7.14	Commencement of Approved Work.....	30
7.15	Notice to Association Before Commencement of Work; Bond	30
7.16	Completion; Extension of Deadline	30
7.17	Notice of Completion; Inspection of Completed Work.....	31
7.18	Notice of Non-conformity	31
7.19	Failure to Remedy Non-conformity	31
7.20	Non-waiver.....	31
7.21	Disclaimer of Liability	32
ARTICLE 8	ASSESSMENTS AND LIENS	32
8.1	Covenant of Owner.....	32
8.1.1	Association's Power to Collect.....	32
8.1.2	Assessments Are a Personal Obligation.....	32
8.1.3	Obligation Runs with the Land	32
8.1.4	Owner's Liability After Transfer.....	33
8.2	Creation of Lien.....	33
8.2.1	Lien Is Continuing	33
8.2.2	Priority of Association's Assessment Liens.....	33
8.3	Purpose of Assessments	33
8.4	Funds to Be Held in Association's Name	34
8.5	Funds Held in Trust for Owners	34
8.6	Authority of the Board to Levy Assessments	34
8.7	Annual Assessment	34
8.7.1	Calculation of Estimated Requirement.....	34
8.7.2	Allocation of Annual Assessment.....	34
8.7.3	Payment of Annual Assessment.....	35
8.7.4	Notice of Annual Assessment	35
8.7.5	Permitted Increase in Annual Assessment	35
8.7.6	Revised Annual Assessment	35
8.7.7	Failure to Fix Annual Assessment	35

8.8	Special Assessments	36
8.8.1	Purpose of Special Assessments	36
8.8.2	Permitted Amount of Special Assessments	36
8.8.3	Allocation of Special Assessments	36
8.8.4	Notice of Special Assessment	36
8.8.5	Payment of Special Assessments; Cost of Payment Plans.....	36
8.9	Application of Surplus Funds (IRS Resolution)	37
8.10	Reimbursement Assessments	37
8.11	Enforcement Assessments	38
8.12	No Offsets	38
8.13	Bad Checks	38
8.14	Delinquent Assessments; Acceleration in the Event of Delinquency	38
8.15	Enforcement by Action at Law or Foreclosure	38
8.15.1	Pre-lien Notice	38
8.15.2	Prior to Recording a Lien	39
8.15.3	Owner's Right to Discuss Payment Plan.....	39
8.15.4	Notice of Delinquent Assessment	39
8.15.5	Delinquent Assessments of Less Than \$1,800.....	39
8.15.6	Initiating Foreclosure.....	40
8.15.7	Amount Due and Payable	40
8.15.8	Notice of Initiating Foreclosure	40
8.16	Power of Sale	40
8.17	Right of Redemption	40
8.18	Assignment of Rents As Security for Payment	40
8.19	Remedies Are Cumulative	41
8.20	Partial Payments.....	41
8.21	Certificate of Satisfaction and Release of Lien	41
8.22	Subordination to Lien of First Mortgage	41
8.23	Waiver of Exemptions	42
8.24	Property Exempt from Assessments.....	42
ARTICLE 9	MAINTENANCE OF PROPERTY	42
9.1	Association's Responsibility for Common Area Generally	42
9.1.1	Landscaping; Janitorial; Painting in Common Area	43
9.1.2	Common Area Utilities and Services	43
9.1.3	Common Area Perimeter Fences	43
9.1.4	Shared Fences	43
9.1.5	Employees or Independent Contractors.....	43

9.2	Association's Responsibility for Lots and Exclusive Use Common Area.....	44
9.2.1	Painting.....	44
9.2.2	Exterior Building Surfaces.....	44
9.2.3	Roof Coverings.....	45
9.2.4	Front Balconies.....	45
9.2.5	Gutters and Downspouts.....	45
9.2.6	Skylights and Roof-mounted Appliances; Obligation Runs with the Land.....	45
9.2.7	Landscaping.....	46
9.2.8	Private Driveways.....	46
9.2.9	Certain Portions of Utility Laterals in Lots.....	46
9.2.10	Limitation of Association's Responsibility in Case of Termites.....	47
9.2.11	No Other Responsibility of Association.....	47
9.3	Owner's Responsibility for Lots.....	47
9.3.1	Owner's Responsibility for Improvements on Lots.....	47
9.3.2	Patios.....	47
9.3.3	Owner's Responsibility for Party Walls and Party Fences.....	47
9.3.4	Utility Lateral Lines.....	48
9.3.5	Owner-installed Skylights, Solar Systems, Other Roof-mounted Appliances.....	48
9.3.6	Owner's Responsibility for Upkeep of Private Driveway.....	48
9.3.7	Owner's Cooperation.....	48
9.3.8	Compliance with Architectural Provisions.....	48
9.4	Concealed Damage.....	49
9.5	Wood Destroying Organisms.....	49
9.6	Authority for Entry of Lot or Exclusive Use Common Area.....	49
9.7	Acceptance of Condition of Lot.....	50
9.8	Board's Discretion to Require Maintenance.....	50
9.9	Limitation of Association's Liability.....	50
9.10	Owner's Liability to Association for Negligent Damage.....	50
9.11	Owner's Liability to Other Lot Owners or Residents.....	50
ARTICLE 10	PARTY WALLS AND PARTY FENCES.....	51
10.1	Party Wall and Party Fence Defined.....	51
10.2	General Rules of Law to Apply.....	51
10.3	Changes, Impairments, or Permanent Structural Attachments.....	51
10.4	Sharing of Maintenance, Repair, and Replacement Costs.....	51

10.5	Weatherproofing	52
10.6	Right to Contribution Runs with Land.....	52
10.7	Party Wall or Party Fence Disputes	52
ARTICLE 11	INSURANCE.....	52
11.1	Insurance Coverage to Be Maintained by Association.....	52
11.2	Master Hazard Insurance to Be Maintained by Association.....	52
11.2.1	Scope of Coverage	52
11.2.2	Policy Endorsements	53
11.2.3	General Policy Provisions	54
11.2.4	Earthquake Insurance.....	54
11.3	General Liability Insurance to Be Maintained by Association.....	54
11.3.1	Scope of Coverage	54
11.3.2	Other Provisions	55
11.4	Other Insurance to Be Maintained by Association	56
11.4.1	Directors' and Officers' Insurance.....	56
11.4.2	Workers' Compensation Insurance.....	56
11.4.3	Fidelity Bond.....	56
11.4.4	Other Insurance	56
11.5	Insurance to Be Maintained by Owner.....	56
11.5.1	HO6 Owner's Policy.....	56
11.5.2	No Overlapping Coverage	57
11.5.3	Other Owner-maintained Insurance.....	57
11.5.4	Evidence of Insurance; No Obligation of Association	57
11.6	Insurance Proceeds.....	58
11.7	Responsibility for Payment of Deductible.....	58
11.7.1	Damage to Common Area	58
11.7.2	Damage to Lot	58
11.7.3	Allocation of Deductible	58
11.7.4	Tort Damages.....	58
11.8	Owner's Liability for Conditions Affecting Insurance	59
11.9	Insurance Carriers	59
11.10	Annual Review of Policies.....	59
11.11	Coverage Not Available; Disclaimer.....	59
11.12	Copies of Policies	59

11.13	Adjustment of Losses.....	59
11.14	Premiums.....	60
ARTICLE 12	DAMAGE OR DESTRUCTION; CONDEMNATION.....	60
12.1	Emergency Repairs	60
12.2	Damage to Common Area	60
12.2.1	Amount of Insurance Proceeds.....	60
12.2.2	Bids.....	60
12.2.3	Sufficient Proceeds.....	60
12.2.4	Excess Insurance Proceeds	60
12.2.5	Insufficient Proceeds; Decision Not to Repair.....	60
12.2.6	Alternative Repair Plan	61
12.3	Damage to a Single Lot	61
12.3.1	Owner to Repair.....	61
12.3.2	Commencement and Completion of Repair.....	61
12.3.3	Insufficient Insurance Proceeds.....	61
12.3.4	Failure to Timely Restore.....	62
12.4	Damage to Two or More Lots	62
12.4.1	Restoration by Association	62
12.4.2	Insufficient Insurance Proceeds.....	62
12.4.3	No Obligation of Association to Advance Funds.....	62
12.4.4	Excess Insurance Funds.....	62
12.5	Condemnation of Common Area	63
12.5.1	Association to Represent Owners.....	63
12.5.2	Condemnation Award	63
12.6	Condemnation of Lots.....	63
12.6.1	Total Condemnation of Lot.....	63
12.6.2	Partial Condemnation of Lot	63
12.6.3	Rights of Association	63
12.7	Revision of Documents.....	63
ARTICLE 13	RIGHTS OF MORTGAGEES.....	64
13.1	Mortgages Permitted.....	64
13.2	Intention to Conform to Mortgagees' Requirements.....	64
13.3	Subordination of Assessment Lien.....	64

13.4	Notice of Mortgage Default	64
13.5	Mortgage Protection.....	64
ARTICLE 14	ENFORCEMENT; NOTICE; HEARINGS	65
14.1	Violations As Nuisance	65
14.2	Violation of Law Is a Violation of the Declaration	65
14.3	Owner's Responsibility for Conduct and Damages	65
14.4	No Avoidance	65
14.5	Enforcement Rights Are Cumulative	65
14.6	Injunctions.....	66
14.7	Limitation on Association's Disciplinary Rights	66
14.8	Imposing Sanctions.....	66
14.8.1	Loss of Good Standing	66
14.8.2	Suspension of Other Rights	67
14.8.3	Monetary Penalties (Fines).....	67
14.8.4	Monthly Sanctions for Continuing Violations.....	67
14.8.5	Reimbursement Assessment Not a Sanction.....	67
14.9	Investigation of Complaints.....	67
14.10	Written Notice of Violation.....	67
14.11	Notices: Content, Delivery	68
14.11.1	Content of Notice of Violation	68
14.11.2	Delivery of Notice.....	68
14.11.3	Owner's Address for Notice	68
14.11.4	Notice to Co-Owners or Occupants	69
14.12	Hearing Called by the Board; Executive Session; Open Meeting	69
14.13	Owner's Request for Hearing.....	69
14.14	Notice of Hearing Decisions.....	69
14.15	Enforcement by Association in Emergency Situations.....	70
14.15.1	Definition of Emergency Situation.....	70
14.15.2	Immediate Corrective Action.....	70
14.16	Internal Dispute Resolution.....	70
14.16.1	Fair, Reasonable, and Expedious Procedure.....	70
14.16.2	Statutory Default Procedures.....	70
14.16.3	Alternative Dispute Resolution May Also Apply	71
14.16.4	Annual Description of Internal Dispute Resolution Process.....	71

14.17	Alternative Dispute Resolution Before Initiating Lawsuit.....	71
14.17.1	Annual Disclosure of ADR Process	71
14.17.2	When ADR Applies	72
14.17.3	Statutory ADR Process	72
14.18	Non-waiver of Enforcement	72
14.19	Costs and Attorney Fees	72
ARTICLE 15	AMENDMENT	72
15.1	Required Approval	72
15.2	Review and Optional Veto by City.....	73
15.3	Amendment Must Be Recorded.....	73
15.4	Presumption of Validity	73
ARTICLE 16	GENERAL PROVISIONS.....	73
16.1	Headings.....	73
16.2	Severability	74
16.3	Liberal Construction	74
16.4	Amendment to Referenced Statutes; Time for Performance	74
16.5	Number; Gender	74
16.6	Exhibits	74
16.7	Power of Attorney	74
16.8	Term	74
EXHIBIT A	List of Recorded Documents Superseded by This Amended and Restated Declaration	76

**AMENDED AND RESTATED DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS OF
CASA DEL REY HOA OF SANTA CLARA**

This Amended and Restated Declaration of Covenants, Conditions and Restrictions is made on the date set forth at the end of this document by CASA DEL REY HOA OF SANTA CLARA, a California nonprofit mutual benefit corporation (referred to in this document as the "Association").

RECITALS OF BACKGROUND FACTS; DECLARATIONS

- A. The Association is the successor in interest to CASA DEL REY, a general partnership, which, as Declarant, executed that certain DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS, dated January 4, 1978, and recorded on January 13, 1978, in Book D404, at Page 359, Document No. 5900662, Official Records of Santa Clara County, State of California (referred to in this document as the "1978 Declaration").
- B. Amendments to the 1978 Declaration were recorded on various dates as set forth in Exhibit A. The 1978 Declaration together with all of the instruments enumerated in Exhibit A is referred to herein as the "Original Declaration."
- C. The Original Declaration establishes certain limitations, easements, covenants, restrictions, conditions, liens, and charges which run with, and are binding upon all parties having or acquiring any right, title, or interest in, that certain real property located in the County of Santa Clara, State of California, and more particularly described as follows:

Lots 1 through 40, inclusive, and Common Area Lot 41, as shown on that certain map entitled "Tract No. 6046," filed for record on May 18, 1977, in Book 397 of Maps, at Pages 4 and 5, which as amended by that certain map entitled "Amended Tract No. 6046," filed for record on January 4, 1978, in Book 410 of Maps, at Pages 40 and 41, in the Official Records of Santa Clara County, State of California.

- D. THE MEMBERS, constituting at least fifty-one percent (51%) of the Total Voting Power of the Association, desire to amend, modify, and otherwise change the Original Declaration pursuant to Section 7.03 of the Original Declaration, and DO HEREBY DECLARE that the Original Declaration, as amended, shall be, and is hereby, AMENDED AND RESTATED IN ITS ENTIRETY as set forth in the within

AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF CASA DEL REY HOA OF SANTA CLARA.

- E. IT IS FURTHER HEREBY DECLARED that all of the real property described in Recital Paragraph C, constitutes a planned development within the meaning of Section 4175 of the California *Civil Code*.
- F. IT IS FURTHER HEREBY DECLARED that all of the real property described in Recital Paragraph C, above, is and shall be held, owned, operated, managed, conveyed, hypothecated, encumbered, leased, used, occupied, and improved subject to the following covenants, conditions, and restrictions set forth herein, all of which are declared and agreed to be in furtherance of a plan and purpose of protecting, preserving, and enhancing the value, desirability, and attractiveness of the said real property and every part thereof, and of fostering the development, management, improvement, enjoyment, and sale of the said real property and any part thereof.
- G. IT IS FURTHER HEREBY DECLARED that all of the covenants, conditions, and restrictions set forth herein shall constitute enforceable equitable servitudes as provided in *Civil Code* section 5975, shall constitute covenants that shall run with the said real property, and shall be binding upon and inure to the benefit of each Owner of any portion of the said real property or the owner or holder of any interest or estate therein and their heirs, successors, and assigns.

ARTICLE 1 DEFINITIONS

- 1.1 Additional Charges. "Additional Charges" shall mean all costs, fees, charges, and expenditures including, but not limited to, interest, late charges, attorney fees, recording and filing fees, and all other costs actually incurred by the Association in collecting and/or enforcing payment of Assessments.
- 1.2 Annual Assessment. "Annual Assessment" shall have the meaning set forth in Section 8.7.
- 1.3 Architectural Committee. "Architectural Committee" shall mean the committee, if any, appointed pursuant to Article 7 ("Architectural Approval").
- 1.4 Articles of Incorporation. "Articles of Incorporation" shall mean the Amended and Restated Articles of Incorporation of Casa del Rey HOA of Santa Clara, as they may be amended from time to time, and as filed with the Office of the Secretary of State of California.
- 1.5 Assessments. "Assessments" shall mean any or all of the following: Annual Assessments, Special Assessments, Reimbursement Assessments, and Enforcement Assessments.

- 1.6 Association. "Association" shall mean Casa del Rey HOA of Santa Clara, a California nonprofit mutual benefit corporation, its successors and assigns.
- 1.7 Board of Directors. "Board of Directors" or "Board" shall mean the governing body of the Association.
- 1.8 Bylaws. "Bylaws" shall mean the Amended and Restated Bylaws of the Association as they shall be duly adopted by the Board of Directors and the Members and any duly-adopted amendments thereof.
- 1.9 City. "City" shall mean the City of Santa Clara.
- 1.10 Civil Code. "*Civil Code*" shall mean the California *Civil Code* as amended from time to time.
- 1.11 Common Area. "Common Area" shall mean all real property, together with all improvements and appurtenances thereon, owned or held by the Association from time to time for the common use and enjoyment of the Owners and Residents of the Development. The Common Area consists of Lot 41 as shown on the Subdivision Map of the Development. The Common Area consists of private streets, curbs, gutters and storm drainage system, visitor parking spaces, signs, private driveways serving individual Dwellings, open space, landscaping, including trees, plants and grass, fences, gates, walls, utility boxes, sidewalks, trash service area, fire sprinklers for dumpster area, the clubhouse recreation building and meeting rooms, the swimming pool and related equipment, the gated pool area and poolside restrooms. The Common Area also includes the storm drainage easement and system located within Lots 2 through 6, 14, 15, 18 through 30 and 38 as shown on the Subdivision Map. Some portions of the Common Area constitute "Exclusive Use Common Area" as defined in Section 1.19 ("Exclusive Use Common Area").
- 1.12 Contract Purchaser / Contract Seller. "Contract Purchaser" and "Contract Seller" shall mean the purchaser and the seller, respectively, under an installment land contract in which title to the property is transferred after the final installment payment is made.
- 1.13 Corporations Code. "*Corporations Code*" shall mean the California *Corporations Code* as amended from time to time.
- 1.14 County. "County" shall mean the County of Santa Clara.
- 1.15 Declaration. "Declaration" shall mean this Amended and Restated Declaration of Covenants, Conditions and Restrictions of Casa del Rey HOA of Santa Clara, recorded in the Office of the County Recorder of Santa Clara County, State of California, and any duly-recorded amendments thereof.

- 1.16 Development. "Development" shall mean all the real property described in this Declaration comprising the Casa del Rey planned development and any additional real property as may hereafter be brought within the jurisdiction of the Association.
- 1.17 Dwelling. "Dwelling" shall mean a structure designed for human residential use and occupancy and all improvements thereto which is located upon a Lot.
- 1.18 Enforcement Assessment. "Enforcement Assessment" shall have the meaning set forth in Section 8.11.
- 1.19 Exclusive Use Common Area. "Exclusive Use Common Area" shall mean any portion of the Common Area the exclusive use of which is set aside, allocated, assigned, and restricted to the exclusive use or possession of the Owners and Residents of one (1) or more but less than all of the Lots and which is appurtenant to a Lot or Lots. An exclusive easement to such Exclusive Use Common Area may be specifically granted in each individual grant deed conveying a Lot or may be granted by this Declaration. The Exclusive Use Common Area appurtenant to each Lot consists of the following and no other portions of the Development constitute Exclusive Use Common Area:
- 1.19.1 Private Driveway. "Private Driveway" shall mean the driveway located upon the Common Area between the private street and the front of the garage of a Dwelling.
- 1.20 First Mortgage / First Mortgagee. "First Mortgage" shall mean a Mortgage that has first priority over all other Mortgages. "First Mortgagee" shall mean the beneficiary under a First Mortgage.
- 1.21 Governing Documents. "Governing Documents" shall mean the Articles of Incorporation, Bylaws, Declaration, and Rules.
- 1.22 Individual Delivery / Individual Notice. "Individual Delivery" or "Individual Notice" shall mean delivery to a Member or Members by one (1) of the following methods, as provided in *Civil Code* section 4040:
- (a) By first-class mail with postage prepaid, registered or certified mail, express mail, or overnight delivery by an express service carrier, addressed to the recipient at such recipient's address last shown on the books of the Association; or
- (b) By email, facsimile, or other electronic means if the recipient has consented in writing or by email to that method of delivery. The consent may be revoked, in writing or by email, by the recipient. Delivery by electronic transmission must also comply with *Corporations Code* sections 20 and 21. Among other things, Section 20 of the *Corporations Code* requires the Association to obtain consent from the person to whom the

document is transmitted to receive it by means of electronic transmission as well as other technical requirements.

- 1.23 Lot. "Lot" shall mean any plot of land shown upon any recorded Subdivision Map of the Development upon which a Dwelling has been constructed, but excluding the Common Area. There are forty (40) Lots in the Development.
- 1.24 Maintenance. "Maintenance" or to "maintain" (whether the term is capitalized or not) shall mean the act of caring for property and keeping it in its existing state, preserving it from failure or deterioration, including painting, caulking, cleaning, and minor, non-structural upkeep. In the case of landscaping, "maintenance" or to "maintain" shall mean regular fertilizing, irrigation, pruning, and other garden management practices necessary to promote healthy plant growth free of weeds or dead or dying plants.
- 1.25 Member. "Member" shall mean an Owner.
- 1.26 Member in Good Standing. "Member in Good Standing" shall mean a Member of the Association who is current in the payment of all Annual Assessments and Special Assessments imposed in accordance with the Governing Documents, and who is in compliance with all of the provisions of the Governing Documents. A Member shall be deemed to be in Good Standing unless, after notice and an opportunity for hearing, pursuant to Article 14 ("Enforcement; Notice; Hearings"), the Board has found the Member to be not in Good Standing and has so notified the Member in accordance with *Civil Code* section 5855.
- 1.27 Mortgage / Mortgagee. "Mortgage" shall mean a duly-recorded deed of trust or mortgage in the conventional sense encumbering a Lot. "Mortgagee" shall mean a beneficiary under a Mortgage.
- 1.28 Owner. "Owner" shall mean the record owner, whether one (1) or more persons or entities, of the fee simple title to any Lot, including Contract Sellers but excluding Contract Purchasers, and excluding those persons having such interest merely as security for the performance of an obligation.
- 1.29 Party Fence. See Section 10.1 ("Party Wall and Party Fence Defined").
- 1.30 Party Wall. See Section 10.1 ("Party Wall and Party Fence Defined").
- 1.31 Reimbursement Assessment. "Reimbursement Assessment" shall have the meaning set forth in Section 8.10.
- 1.32 Repair. "Repair" (whether the term is capitalized or not) shall mean the minor restoration of property that is torn, broken, or otherwise damaged, or has sustained wear, tear, or deterioration such that minor restoration is necessary.

- 1.33 Replacement. "Replacement" or to "replace" (whether the term is capitalized or not) shall mean substantial reconstruction, restoration, or substitution of the whole or a substantial part of property that has deteriorated or has been damaged or destroyed through usage or through hazard or catastrophe such that it is no longer useable or serviceable in its current condition. In the case of landscaping, "replacement" or to "replace" shall mean the removal and replanting of trees, shrubs, lawns, and other plants that are dead or dying or otherwise not serviceable or the substitution of plants for hardscape or substitution of hardscape for plants.
- 1.34 Resident. "Resident" shall mean any person who lawfully resides on a Lot within the Development whether or not such person is an Owner.
- 1.35 Rules. "Rules" shall mean the policies, rules, and regulations governing the administration, management, operation, use, and occupancy of the Development, including the use of the Common Area and facilities, the personal conduct of Owners and Residents, members of their household, pets, tenants, invitees, and guests within the Development, enforcement of the Governing Documents, and any other matter that is within the jurisdiction of the Association, as adopted, published, or amended by the Board from time to time and subject to applicable law including *Civil Code* section 4340 and following.
- 1.36 Special Assessment. "Special Assessment" shall have the meaning set forth in Section 8.8.
- 1.37 Subdivision Map. "Subdivision Map" shall mean that certain map entitled "Amended Tract No. 6046" filed for record on January 4, 1978, in Book 410 of Maps, Pages 40 and 41, in the Office of the County Recorder of Santa Clara County, which amended that certain map entitled "Tract No. 6046" filed for record on May 18, 1977, in Book 397 of Maps, Pages 4 and 5.
- 1.38 Total Voting Power. "Total Voting Power" shall mean the total number of votes of all Members entitled to vote at a particular time, calculated on the basis of one (1) vote for each Lot.

ARTICLE 2 HOMEOWNERS ASSOCIATION

- 2.1 Management and Operation; Bylaws. The Association is an "association" as defined in *Civil Code* section 4080 and as such shall have the power and the authority to manage and operate the Development in accordance with the Governing Documents and the provisions of applicable law. The Association shall have all of the powers set forth in the Governing Documents together with general power to do any and all things that a nonprofit mutual benefit corporation may lawfully do under the laws of the State of California, subject only to the limitations upon the exercise of such powers as are expressly set forth in the

Governing Documents. Provisions concerning the operation of the Association as a nonprofit mutual benefit corporation are set forth in the Bylaws.

2.2 Legal Standing. To the fullest extent permitted by law, including *Civil Code* section 5980, the Association shall have standing to institute, defend, settle, or intervene in litigation, arbitration, mediation, or administrative proceedings in its own name as a real party in interest, and without joining with it the Owners, in matters pertaining to the following:

- (a) Enforcement of the Governing Documents,
- (b) Damage to the Common Area,
- (c) Damage to the separate interests that the Association is obligated to maintain, repair, or replace,
- (d) Damage to a separate interest that arises out of, or is integrally related to, damage to the Common Area or separate interests that the Association is obligated to maintain, repair, or replace.

2.3 Membership. Every Owner of a Lot shall be a Member of the Association and shall remain a Member thereof until such time as his or her ownership of such Lot ceases for any reason. Fee ownership of a Lot shall be the sole qualification for membership in the Association. Membership shall be appurtenant to and may not be separated from ownership of a Lot and shall not be transferred, encumbered, pledged, alienated, or otherwise hypothecated in any way, except in connection with the sale or encumbrance of the Lot to which it is appurtenant.

2.4 Voting. Only Members shall be entitled to vote, and only one (1) vote shall be cast for each Lot, as more particularly set forth in the Bylaws.

2.5 Association Rules. Subject to applicable law including *Civil Code* section 4340 and following, regarding notice and procedures, the Board shall have the power and the authority to establish, promulgate, amend, repeal, and enforce Rules.

ARTICLE 3 PROPERTY SUBJECT TO THIS DECLARATION

3.1 Legal Description. The property subject to this Declaration and to the jurisdiction of the Association is described in Recital Paragraph C, above.

3.2 Classification of Property. The property subject to this Declaration is a planned development. All of the property subject to the Declaration is divided into the following categories:

- (a) Common Area,

- (b) Exclusive Use Common Area, and
- (c) Lots.

- 3.3 Ownership Interest; No Separate Conveyance. The ownership interest of each Lot Owner shall include: (i) a designated Lot, (ii) a Membership in the Association, and (iii) any exclusive easements or easements appurtenant to such Lot upon the Exclusive Use Common Area and such other easements as are applicable, all as described in the Declaration or in the deed to the Lot. Membership, and each Owner's undivided interest in the Common Area, and any such easements shall be appurtenant to and may not be separated from ownership of a Lot and shall not be transferred, encumbered, pledged, alienated, or otherwise hypothecated in any way, except in connection with the sale or encumbrance of the Lot to which it is appurtenant.
- 3.4 Undivided Interests Cannot Be Changed. The undivided interests in the Common Area established in the Declaration cannot be changed except with the approval of one hundred percent (100%) of the Owners or as provided in Section 12.7 ("Revision of Documents") following condemnation of a portion of the Development.
- 3.5 Limitation on Partition of Common Area. There shall be no subdivision or partition of the Common Area, nor shall any Owner seek any partition or subdivision of the Common Area. Notwithstanding any provision to the contrary contained in this Declaration and in order to provide for a means of terminating the Development if this should become necessary or desirable, two-thirds (2/3) of the Owners of Lots shall have the right to petition the Superior Court having jurisdiction to alter or vacate the Subdivision Map under California *Government Code* section 66499.21 and following, or any comparable provisions of law, and to vest title to the Common Area in the Owners as tenants in common and order an equitable partition of the Common Area in accordance with the laws of the State of California. If any Lot shall be owned by two (2) or more co-tenants as tenants in common or as joint tenants, nothing contained in this Declaration shall be deemed to prevent a judicial partition by sale as between such co-tenants.
- 3.6 Mergers, Consolidations and Annexations. Upon approval of at least two-thirds (2/3) of the Members, the Board of Directors, acting on behalf of the Association, shall have the power to participate in mergers and consolidations with other nonprofit organizations organized for the same purposes as this Association, or annex additional residential property and Common Area.
- 3.7 Capital Improvements. The Board of Directors shall have the power and authority to provide for the construction, installation, or acquisition of capital improvements upon the Common Area, provided that in any fiscal year expenditures for such capital improvements shall not exceed five percent (5%) of

the budgeted gross expenses of the Association for that fiscal year without the approval of a majority of the Total Voting Power of the Association.

- 3.8 Borrow; Mortgage Common Area. The Board of Directors, acting on behalf of the Association, shall have the power to borrow money and, upon approval of at least two-thirds (2/3) of the Members, mortgage, pledge, deed in trust, or otherwise hypothecate the Common Area and facilities thereon as security for money borrowed by the Association; *provided, however*, that such approval shall not be required in the case of the sale by the Association of a Lot acquired by the Association as the result of foreclosure of the Association's lien.
- 3.9 Dedication, Sale or Transfer of Common Area to Public Agencies/Utilities. Upon approval of at least two-thirds (2/3) of the Members, the Board acting on behalf of the Association shall have the power and authority to dedicate, sell, or transfer any interest in or to all or any part of the Common Area to any public agency, authority, or utility, to be used for such purposes and subject to such conditions as may be agreed to by the Members.

ARTICLE 4 MECHANIC'S LIENS; EASEMENTS

- 4.1 Mechanic's Lien Against Common Area. In the event there shall be filed against the Common Area a notice of mechanic's lien for, or purporting to be for, labor or materials alleged to have been furnished or delivered for any Owner within the Development or his or her Lot, such Owner shall forthwith cause such lien to be discharged by payment, bond, or otherwise. If the Owner fails to cause the lien to be discharged, the Board may send written notice to the Owner specifying that unless the Owner causes the lien to be discharged within five (5) days from the date of such notice, the Board may cause the lien to be discharged. Within such five (5) day period, and notwithstanding any other provisions of the Governing Documents concerning notice or hearing, the Owner shall be permitted a hearing before the Board regarding the validity of such lien and any offsets or defenses thereto. At that time, the Board shall determine whether the lien adversely and improperly affects and encumbers the rights and interests of the Association or the other Owners. If the Board of Directors determines that the lien does adversely and improperly affect and encumber such rights and interests and that adequate protection of such rights and interests has not been provided, the Board may cause the lien to be discharged by payment, bond, or otherwise. The Board shall have the right to levy a Reimbursement Assessment against the Owner responsible for causing the lien to be discharged in an amount equal to all amounts paid by the Association together with interest thereon at the legal rate and all costs and expenses paid or incurred in connection therewith, including reasonable attorney fees.
- 4.2 Easements in General. In addition to all easements reserved and granted on the Subdivision Map, there are hereby specifically reserved and granted for the

benefit of the Lots and Lot Owners in common and for each Lot and Lot Owner severally, and for the Association, as their respective interests shall obtain, the easements, reciprocal negative easements, secondary easements, and rights-of-way as particularly identified in this Article 4.

- 4.3 Exclusive Use Common Area Easements. "Exclusive Use Common Areas" are enumerated in Section 1.19. Exclusive Use Common Areas, if any, are subject, as the servient tenements, to exclusive easements in favor of the Lots to which they are attached or assigned, as the dominant tenements, and such exclusive easements shall be appurtenant to those designated Lots. An exclusive easement to such Exclusive Use Common Area may be specifically granted in each individual grant deed conveying a Lot; however, the failure of any such deed to set forth such grant of easement shall not invalidate the exclusive easement granted in this Declaration.
- 4.4 Owner's Non-exclusive Easements of Enjoyment. Every Owner of a Lot shall have a non-exclusive easement of use of and enjoyment in, to, and throughout the Common Area of the Development; *provided, however*, such non-exclusive easements shall be subordinate to, and shall not interfere in any way with the exclusive easements, if any, appurtenant to Lots over Exclusive Use Common Area. Each such non-exclusive easement shall be appurtenant to and pass with the title to every Lot, subject to the following rights and restrictions:
- (a) The right of the Board to establish and enforce Rules governing the use of the Common Area and facilities thereon;
 - (b) The right of the Board to charge reasonable admission and other fees for the use of any facilities situated upon the Common Area;
 - (c) The right of the Board to suspend an Owner's right to use the recreational facilities as provided in Section 14.8 ("Imposing Sanctions");
 - (d) The right of the Board, as set forth in Section 3.8 ("Borrow; Mortgage Common Area"), to mortgage, pledge, encumber, or otherwise hypothecate the Common Area and facilities thereon as security for money borrowed by the Association;
 - (e) The right of the Board, as set forth in Section 3.9 ("Dedication, Sale or Transfer of Common Area to Public Agencies/Utilities"), to sell or transfer personal property owned by the Association;
 - (f) The right of the Association or its authorized agents, to enter any Lot when reasonably necessary as set forth in Section 4.10 ("Easements of the Association to Enter Lots");
 - (g) The right of the Board, as set forth in Section 4.11 ("Board's Power to Grant Non-exclusive Easements and Licenses to Owners"), to grant

easements, licenses, and rights-of-way upon the Common Area to Owners;

- (h) The right of the Association to establish Annual Assessments or charges and to collect same for the use of any Common Area facility or of any private streets or driveways situated upon the Common Area;
 - (i) The right of the Association to suspend the right to use of any of the Common Area recreational facilities by an Owner or Resident as set forth in Section 14.8 ("Imposing Sanctions") for any period during which any assessment against his Lot remains unpaid, or for any infraction of its published Rules; but only after notice and a hearing before the Board as set forth in Article 14 ("Enforcement; Notice; Hearings"); and
 - (j) The right of the Association or its authorized agents, as provided in this Declaration, to perform its obligations under this Declaration, including obligations with respect to construction, maintenance, repair, or replacement for the benefit of the Common Area or the Owners in common.
- 4.5 Easement for Vehicular Ingress and Egress. An easement for vehicular ingress and egress to and from each Dwelling over the private roads and driveways in the Common Area is reserved for the non-exclusive use of each Lot.
- 4.6 Party Wall and Party Fence Easements. There shall be an easement for reasonable repairs over the areas immediately adjacent to each side of all such walls and fences for the benefit of all persons having an interest therein; *provided however*, that such easement shall allow entry only at reasonable times and shall in no event be deemed to permit entry into the interior portions of any residence. Any damage resulting from use of the easement shall be repaired at the expense of the Owner causing the same.
- 4.7 Easements of Encroachment. If any portion of any way or other part of an improvement as originally constructed upon the Properties, including without limitation eaves or other overhangs of a structure, encroaches upon any part of the Common Area or upon the Lot or Lots used or designated for use by another Owner, an easement for the encroachment and for the maintenance, repair and replacement of the same is granted to and for the benefit of the Owners of such encroaching structure. No such easement shall exist, however, in respect to an encroachment caused by construction of any improvement on any Lot after completion of construction of the original improvements thereon by the Declarant, its successor and assigns.
- 4.8 Easements in Case of Partial or Total Destruction of Lot. In the event a Dwelling constructed on a Lot becomes partially or totally destroyed or in need of repair or replacement, and in full compliance with the provisions within Article 12 ("Damage or Destruction; Condemnation"), mutual and reciprocal easements are

granted to the Owner of the Lot upon which the damaged or destroyed Dwelling is located, the Owner of the abutting Lots and the Association to the extent reasonably necessary to make repairs and replacement to the damaged or destroyed property and protecting the structure on the Lot adjacent thereto. Any dispute as to the extent of such easement shall be submitted to the Board of Directors for arbitration pursuant to Article 14 ("Enforcement; Notice; Hearings").

- 4.9 Utility Easements. There are reserved and there shall exist easements over and under the Development or any portion thereof for the purpose of constructing, erecting, operating, or maintaining thereon, therein, or thereunder overhead or underground lines, cables, wires, conduits, or other devices for electricity, cable television, power, telephone and other purposes, public sewers, storm water drains and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes, and any similar public or quasi-public improvements or facilities, and for any other purposes deemed by the Board to be appropriate and not inconsistent with the purposes and interests of the Association, together with the Association's right and authority to grant and transfer the same to serve the Development. Each purchaser and Owner of a Lot, in accepting a deed to a Lot, expressly consents thereto; *provided, however*, that no such easement or rights-of-way may be granted or transferred if it would unreasonably interfere with the use, occupancy, or enjoyment by an Owner or Resident of any Lot and any existing exclusive easements over Common Area appurtenant thereto, if any, without the consent of the Owner(s) affected.
- 4.10 Easements of the Association to Enter Lots. The Association or its agents may enter any Lot when reasonably necessary for the purpose of carrying out any maintenance, repair, improvement or replacement which the Association is permitted or required to carry out, and the Association shall have and is hereby granted an easement and right of entry for such purpose. Prior to entry, the Association shall give to the Owner twenty-four (24) hours' notice except in case of an emergency. Such entry shall be made with as little inconvenience to the Owner as practicable, and any damage caused thereby shall be the responsibility of the Association.
- 4.11 Board's Power to Grant Non-exclusive Easements and Licenses to Owners. Notwithstanding any other provisions of the Governing Documents, the Board shall have the power in its discretion without approval vote of the Members to grant and convey licenses for use, rights-of-way, and non-exclusive easements in, over, or under the Common Area or any portion thereof to Owners, for such purposes as the Board deems to be appropriate and not inconsistent with the purposes and interests of the Association.
- 4.12 Board's Power to Assign Exclusive Use Parking Spaces. The Association, acting through the Board, shall have the right to assign each Lot the exclusive use of not more than two (2) automobile parking spaces within the Common Area, which parking spaces shall be located upon the Private Driveway nearest and adjacent to the Dwelling located on the Lot. The Association shall have no power

to reassign a Private Driveway parking space without the express written consent of all affected Owners. All other Common Area parking spaces are for guest parking only.

- 4.13 Board's Power to Grant Exclusive Easements to Owners. Notwithstanding any other provisions of the Governing Documents, including but not limited to the provisions in Section 4.12 ("Board's Power To Assign Parking Spaces") or described in *Civil Code* section 4600(b), upon approval of a majority of the Total Voting Power of the Association, the Board shall have the power in its discretion to grant and convey exclusive easements in, over, or under the Common Area or any portion thereof to Owners; *provided, however,* that such grant shall not unreasonably interfere with the use, occupancy, or enjoyment by an Owner or Resident of any Lot and any existing exclusive easements over Common Area appurtenant thereto, if any, without the consent of the Owner(s) affected.

ARTICLE 5 USE RESTRICTIONS

- 5.1 Use of Common Area Generally. All use of Common Area is subject to the Governing Documents. Subject to the provisions of the Governing Documents, the Common Area shall be held, maintained, and used to meet the common interests of the Owners and the Residents, members of their household, tenants, and guests.
- 5.2 No Alteration of Common Area. Except as may be authorized by the Board, no person or entity other than the Association or its duly-authorized agents shall (i) construct, reconstruct, refinish, alter, or maintain any improvement upon the Common Area, (ii) make or create any excavation or fill upon the Common Area, (iii) change the natural or existing drainage of the Common Area, or (iv) plant, remove, or destroy any seed, plant material, tree, shrub, or other vegetation upon the Common Area.
- 5.3 No Obstruction of Common Area. The Common Area shall be kept free of rubbish, debris, and other unsightly or unsanitary materials. There shall be no obstruction of any part of the Common Area nor shall anything impair access to the Common Area. Each Owner shall avoid causing any damage to the Common Area.
- 5.4 No Smoking in Common Area. For the safety of the property and for the health, safety, and security of all Residents of the Development, no smoking of cigarettes, electronic cigarettes or "e-cigarettes," personal vaporizers, electronic nicotine delivery systems, cigars, pipes, or any other tobacco product, marijuana, legal or illegal substance shall be permitted anywhere in the Common Area, whether indoors or outdoors, including Exclusive Use Common Area. "Smoking" shall include the inhaling, exhaling, burning, or carrying of any lighted or electronic cigarettes, cigars, pipe, personal vaporizers, electronic nicotine

delivery systems, or any other tobacco product, marijuana, or legal or illegal substance, and shall include smoke or vapor from any such activity drifting from a Lot into the Common Area. Specifically, smoking is not allowed in the outdoor pool area, or anywhere within the clubhouse recreational building including the meeting rooms located in the Common Area. The Board may adopt and enforce smoking Rules in addition to the provisions of this Section 5.4.

- 5.5 Delegation of Use. Any Owner may delegate his or her rights of use and enjoyment, including easements, in the Development to the members of his or her household, tenants, Contract Purchasers, and guests, subject to the terms of the Governing Documents. It is the express purpose and intent of this Section 5.5 to limit the right of use and enjoyment of the Common Area amenities to Residents of the Development and their accompanied guests. Upon the leasing or renting of a Lot, or upon occupancy of a Lot by a Contract Purchaser, the Owner shall be deemed to have delegated and assigned all such rights exclusively to the tenants or Contract Purchasers of such Lot. Any rights of enjoyment that have been delegated by an Owner are subject to suspension to the same extent that rights of Owners are subject to suspension as provided in the Governing Documents.
- 5.6 Residential Use. Except to the extent permitted in Section 5.8 ("Restriction on Businesses"), Lots shall be occupied and used only for single family residential purposes in conformity with the requirements of applicable zoning laws or other state or local rules or regulations.
- 5.7 Number of Occupants. No Dwelling shall be permanently occupied by a number of Residents that is more than two (2) times the number of bedrooms, plus one (1), based on the number of legal bedrooms contained in the Dwelling. For example, seven (7) Residents in a three bedroom Dwelling or nine (9) Residents in a four bedroom Dwelling. In no event shall any Dwelling be occupied by more individuals than permitted by applicable zoning laws or other governmental regulations.
- 5.8 Restriction on Businesses.
- 5.8.1 Types of Businesses Allowed. No business of any kind shall be established, maintained, operated, permitted, or conducted within the Development except: (i) professional, administrative, or clerical activity as may be permitted by applicable governmental ordinances without the requirement of a conditional use permit but only if such activity does not entail the presence of employees, patrons, clients, or vendors except on an infrequent basis; does not require storage of large amounts of bulky goods or inventory; there is no external evidence of such activity including but not limited to a significant increase in traffic within the Development; the activity complies with all applicable governmental ordinances; and the activity is merely incidental to the

use of the Lot for residential purposes and (ii) certain care facilities that, by law, cannot be prohibited within the Development.

- 5.8.2 Indemnification Regarding Business Activity. To the fullest extent permitted by law, every Owner or Resident who conducts or engages in any business, commercial endeavor, or profession within the Development, or whose tenant does so, agrees to and shall indemnify and defend the Association, its officers, directors, employees, and agents and shall hold them harmless from and against any cost, loss, claim, or damages of any kind, arising out of the conduct or presence of such activity, including but not limited to attorney fees, any claims for consequential damages, and any claims arising or alleged to arise out of the enforcement or nonenforcement by the Association of the Governing Documents, including but not limited to the restriction on business contained in this Section 5.8. Any amounts owed pursuant to this Section 5.8.2 may be assessed as a Reimbursement Assessment.
- 5.9 Compliance with Laws. Each Owner and Resident shall comply with all requirements of all federal, state, and local governmental authorities and all laws, ordinances, rules and regulations applicable to his or her Lot and Dwelling and the Common Area.
- 5.10 Unlawful Conduct; Nuisances; Noise. No noxious, illegal or offensive activities shall be carried on, in or upon any Lot, or any part of the Development, nor shall anything be done thereon, through noise or otherwise, which may be or may become an annoyance or a nuisance to or which may in any way interfere with the quiet enjoyment of any Residents of their respective Lots or Dwellings. The Association shall not be obligated to enforce this Section 5.10 when a dispute under the Declaration is solely between neighbors, does not involve Common Area, or is not an emergency. In any violation or dispute involving neighbors, Residents shall take reasonable steps to work with each other to resolve their differences before reporting a violation or dispute to the Association. Resident's complaints to the Association about neighbors shall: (a) be in writing; (b) give as much detail as possible concerning the dispute; (c) provide specific information about what informal efforts to resolve the matter were undertaken by the complaining Resident(s); and (d) provide the name, address, phone numbers, and email address of the complaining Resident(s).
- 5.11 Conditions Affecting Insurance. Nothing shall be done, placed, or kept within the Development that will increase the rate of insurance or result in the cancellation of insurance under any insurance policy maintained by the Association, or which will be in violation of any governmental statute, ordinance, rule, or regulation. If any Owner or Resident, member of their household, tenant, invitee, or guest shall violate this Section 5.11, the Lot Owner shall be liable to the Association for any resulting increase in insurance premiums and any other damages, which may be assessed against the responsible Owner as a Reimbursement Assessment.

- 5.12 Outbuildings. In no event shall any outbuilding, shed, tent or similar structure be used for human occupancy, either temporarily or permanently.
- 5.13 Requirement of Architectural Approval. As addressed in Article 7 ("Architectural Approval"), construction, installation, modification, or alteration of buildings, outdoor structures, landscaping, and outdoor lighting are subject to prior architectural approval.
- 5.14 Animals.
- 5.14.1 No Commercial Purposes. No animals shall be kept, bred, or maintained within the Development for any commercial purpose.
- 5.14.2 Number of Pets. The number of pets per Lot shall be as provided in the applicable City code. Unless otherwise provided in the Rules, a "reasonable number" of dogs and/or cats kept in a Lot shall be deemed to be no more than three (3), in any combination (for example, two (2) dogs and one (1) cat, two cats and one dog, or three cats or three dogs).
- 5.14.3 Control of Dogs. While in Common Areas, each dog must be restrained as required by applicable City code.
- 5.14.4 Responsibility for Pets. The owner of each pet shall be responsible for immediately removing and disposing of any waste introduced to any portion of the Development by such pet. Owners, Residents, their tenants, and guests shall prevent their pets from soiling any portion of the Common Area and shall immediately clean up any mess left by their pet.
- 5.14.5 Indemnification Regarding Pets. Each Owner, Resident, and any person bringing or keeping an animal within the Development shall be absolutely liable to the Association and all other persons for any injury or damage to persons or property caused by the animal brought upon or kept upon the Development by such person or by members of his or her household, tenants, invitees, or guests. To the fullest extent permitted by law, each Owner agrees to and shall indemnify and defend the Association, its officers, directors, employees, and agents and shall hold them harmless from and against any cost, loss, claim, or damages of any kind, arising out of or resulting from the presence or conduct of any animal brought upon or kept within the Development by the Owner, members of his or her household, tenants, invitees, or guests including but not limited to attorney fees, any claims for consequential damages, and any claims arising or alleged to arise out of the enforcement or nonenforcement by the Association of the Governing Documents, including but not limited to the restrictions on animals contained in this Section 5.14. Any amounts owed pursuant to

this Section 5.14.5 may be assessed as a Reimbursement Assessment.

- 5.14.6 Removal of Nuisance Pets. The Association shall have the right to prohibit the keeping of any animal which, after the responsible Owner or Resident has an opportunity for a hearing called by the Board pursuant to Section 14.12 ("Hearing Called by the Board; Executive Session; Open Meeting"), is found by the Board to be a nuisance.
- 5.14.7 Pet Rules. The Board may adopt and enforce pet Rules in addition to the provisions of this Section 5.14.
- 5.15 Trash Disposal. Trash, garbage, accumulated waste plant material, other waste and refuse, and recyclable waste shall be deposited only in dumpsters or other containers provided for that purpose by the garbage collection service in designated areas of the Common Area. All such waste shall be placed for pick up as required by the disposal service and any Rules adopted by the Association. No Owner or Resident shall permit or cause any garbage, trash, or other waste or refuse to be disposed of upon any portion of any Lot or elsewhere in the Development, except in such containers. Furniture, appliances, water heaters, construction or remodeling debris, and other bulky items or hazardous materials must be properly disposed of off-site by the Owner or Resident at his or her sole expense and shall not be placed in Association waste containers or discarded in the dumpster areas.
- 5.16 Signs, Banners, Flags. Only the following types of signs, posters, banners, or flags shall be displayed to the public view from any portion of the Development:
- (a) Signs required by legal proceedings;
 - (b) A noncommercial sign or poster no larger than nine (9) square feet in size or a noncommercial flag or banner no larger than fifteen (15) square feet in size, displayed upon a Lot or Dwelling, and limited to the fullest extent permitted by *Civil Code* section 4710;
 - (c) A single sign of customary and reasonable dimension and design, complying with the provisions of any applicable ordinance and the Architectural Rules, if any, and reasonably located on a Lot advertising a Lot for sale or rent;
 - (d) Other signs which by law cannot be prohibited;
 - (e) A flag of the United States, subject to the City or County restrictions as to size and as to time, place, and manner of display, as provided in *Civil Code* section 4705;

- (f) Garage sale signs located temporarily on an Owner's Lot on the day of the garage sale and to be removed within twenty-four (24) hours after the end of the garage sale. Garage sale signs shall comply with clause (b) of this Section 5.16;
- (g) A single identification sign which has been approved by the Board located on a Lot identifying the number or address of the Lot and/or the names of the occupants;
- (h) Signs approved by the Board as required for traffic control and regulation of streets or open areas within the Development; and
- (i) Signs on the Common Area as approved by the Board for a purpose reasonably related to the affairs of the Association, including signs located at or near any entrance to the Development identifying the Development.

5.17 Vehicles and Parking.

- 5.17.1 Parking Generally. Vehicles shall not be parked anywhere within the Development except wholly within a garage, a Private Driveway, or in a designated parking space. Parking is not allowed at any time on private Common Area streets.
- 5.17.2 Resident Parking: Garage and Private Driveway. The parking facilities for Residents are the garage of the Dwelling on the Resident's Lot, and the Private Driveway appurtenant to, and designated for, such Lot.
- 5.17.3 Guest Parking: Common Area Parking Spaces. The Development contains eight (8) Common Area parking spaces which shall remain unassigned and shall only be for the use of guests of Owners/Residents; *provided, however,* that if an Association maintenance project temporarily prevents normal use of Residents' parking facilities, such Residents may use the Common Area parking spaces. No vehicle shall be parked continuously in the Common Area parking spaces for longer than seventy-two (72) hours, or as needed if an Association maintenance project temporarily prevents normal use of Residents' parking facilities. Boats, trailers, and campers shall not be parked, stored or maintained within the unassigned Common Area parking spaces without the approval of the Board and subject to any related the Rules of the Association.
- 5.17.4 Prohibited and Restricted Vehicles. Unreasonably noisy or foul smelling vehicles are prohibited vehicles. Prohibited vehicles may not be operated in or brought into the Development. Dilapidated or inoperable vehicles and unregistered vehicles are restricted vehicles. Restricted vehicles shall not be kept or parked within the Development other than inside a garage.

- 5.17.5 Vehicle Repairs in the Development. No motor vehicles or boats shall be constructed, reconstructed, repaired, or serviced within the Development (other than minor emergency repairs to the extent necessary to move the vehicle to a repair facility) except within the garage of a Dwelling or in a Private Driveway but not for more than seventy-two (72) hours.
- 5.17.6 Other Parking Space Use Restrictions; Storage Pods. The Board may, in its discretion, briefly permit storage pods or other such non-vehicular conveyances to be placed in the parking spaces within the Common Area, including the Private Driveways, if preapproved by the Board pursuant to Article 7 ("Architectural Approval), and as more specifically noted in Section 7.2.12 ("Storage Units; Temporary Structures").
- 5.17.7 Parking Rules. In addition to the provisions of this Section 5.17, the Board shall have the power and authority to adopt, promulgate, and enforce Parking Rules and shall have the power to impose fines and other sanctions for violations of provisions of the Governing Documents relating to vehicles and parking.
- 5.17.8 Parking Enforcement and Towing. The provisions of this Section 5.17 apply to all vehicles within the Development, including vehicles of guests and invitees. Subject to the provisions of applicable law, including California *Vehicle Code* section 22658, the Board shall have the power and authority to cause the towing, at the vehicle owner's expense, of vehicles that are parked within the Development in violation of any of the provisions of the Governing Documents. Costs incurred by the Association relating to the towing and/or storage of any vehicle parked in violation of any provision of the Governing Documents shall be assessed as a Reimbursement Assessment against the Owner responsible or whose household member, Contract Purchaser, tenant, invitee, or guest is responsible for the presence of such vehicle.

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ARTICLE 6 RENTING OR LEASING

6.1 Requirements for Renting.

6.1.1 Written Lease. An Owner renting his or her Lot shall do so pursuant to a written lease or rental agreement. The lease or rental agreement shall expressly provide:

- (i) for an initial term of at least one hundred eighty (180) days;
- (ii) that its terms are subject to all of the provisions of the Governing Documents;
- (iii) that failure of the tenant, members of the tenant's household, invitees, or guests to comply with applicable provisions of the Governing Documents shall constitute a default under the terms of such lease or rental agreement; and
- (iv) that in the event of any such default, the Association shall be entitled to maintain an eviction action against the tenant to the same extent as the Owner of the Lot, the Association being deemed to be a third party beneficiary under such lease or rental agreement, as provided in Section 6.8 ("Association As Third Party Beneficiary").

6.1.2 No Subletting. No subletting shall be permitted.

6.1.3 Copy of Lease. An Owner renting his or her Lot shall file a copy of the signed lease or rental agreement with the Board. The Owner may redact or blackout the financial terms (i.e., the amount of rent and security deposit) from the copy provided to the Board.

6.1.4 Provide Governing Documents to Tenants. An Owner renting his or her Lot shall provide the tenant(s) with a copy of the Governing Documents and any subsequent changes thereto. Such requirement may be fulfilled by providing the Tenant with access to the documents through an online website or other equivalent access, provided that (1) if a tenant requests a printed copy, the Owner must provide same, and (2) the Owner provides to the Association the affidavit described in Section 6.1.5 ("Affidavit of Tenants").

6.1.5 Affidavit of Tenants. Upon request by the Association, or anytime a lease or rental agreement is executed, updated or otherwise amended, the Owner shall cause all tenants and occupants to execute and submit to the Association an affidavit or certificate in a form prescribed by the Association, which includes the following and such other

matters as are reasonably required by the Association: (i) that he/she/they understand, (ii) that he/she/they have received copies of the Governing Documents, or have been provided with online access thereto, as described in Section 6.1.4 ("Provide Governing Documents to Tenants"); (iii) that he/she/they understand that the lease is expressly subject to all the provisions of the Governing Documents, and (iv) that he/she/they understand that the breach of any provision of the Governing Documents shall constitute a default under the lease.

- 6.1.6 House Sitters. The provisions of Section 6.1.4 ("Provide Governing Documents to Tenants") and Section 6.1.5 ("Affidavit of Tenants") shall apply with respect to any person occupying a Lot as a guest of the Owner, as a paid or unpaid house sitter, or in a similar capacity when no Owner is in residence.
- 6.1.7 Owner's Contact Information. An Owner renting his or her Lot shall provide the Association with contact information for the Owner or a representative of the Owner with authority to act on behalf of the Owner with respect to the Lot and the tenants, including telephone number, email address, mailing address, and such other contact information as the Association may require.
- 6.2 Notice of Non-Owner Occupants. Without limiting the generality of the provisions contained in Section 6.1 ("Requirements for Renting"), each Owner shall notify the Board and the Association's manager of the names of (i) any tenants or any Contract Purchasers occupying such Owner's Lot, and (ii) any guest, house sitter, or other person occupying the Lot when no Owner is in residence (whether or not such person is paying rent or is being compensated by the Owner). If requested by the Board, each Owner, tenant, or Contract Purchaser shall also notify the Board or the Association's manager of the names of all members of his or her household to whom such Owner, tenant, or Contract Purchaser has delegated any rights of enjoyment in the Development as provided herein and the relationship each such person bears to such Owner, tenant, or Contract Purchaser.
- 6.3 No Transient Rentals. No Owner shall be permitted to lease, rent, or otherwise operate his or her Lot for transient or hotel purposes, which shall include, but is not limited to, rental for any period less than thirty (30) days or any rental (even if the term is longer than thirty days) where the occupant of a Dwelling is provided customary hotel services such as room service for food and beverage, maid service, periodic furnishing of clean bed linen and towels, laundry service, or bellboy services. This Section 6.3 shall not be deemed to permit an initial lease or rental term shorter than one hundred eighty (180) days as provided in Section 6.1.1(i) ("Written Lease").
- 6.4 Rental of Entire Lot. No Owner shall rent or lease less than the entire Lot except that an accessory dwelling unit as defined in California *Government Code*

sections 65852.2 and 65852.22 may be rented separately from the principal Dwelling on the Lot. The preceding sentence is intended to prohibit the operation of a rooming house or similar operation within the Development. This Section 6.4 is not intended to prohibit a resident Owner from sharing his or her Lot or Dwelling with a roommate or other person(s) with whom the Owner maintains a common household.

- 6.5 No Vacation Clubs; No Time Share Arrangements. No Lot or Lots or any portion thereof shall be leased, subleased, occupied, rented, let, sublet, or used for or in connection with any time sharing agreement, plan, program or arrangement, including, without limitation, any so called "vacation license," "travel club," "extended vacation," "home-exchange club," any other membership or time interval ownership arrangement, or any time-share estate or time-share use as defined in Section 11212 of the California *Business and Professions Code*. The term "time sharing" as used herein shall be deemed to include, but shall not be limited to, any agreement, plan, program, or arrangement under which the right to use, occupy, or possess any Lot or Lots or any portion thereof or Dwelling thereon rotates among various persons, either corporate, partnership, individual, or otherwise, on a periodically recurring basis for value exchanged, whether monetary or like kind use privileges, according to a fixed or floating interval or period of time. This Section 6.5 shall not be construed to limit the personal use of any Lot or any portion thereof by its Owner and such Owner's social or familial guests.
- 6.6 Private Exchanges Permitted. Section 6.5 ("No Vacation Clubs; No Time Share Arrangements") shall not be deemed to prohibit an Owner from entering into a private exchange arrangement with another person whereby the Owner will occupy the dwelling of the other party to the exchange for a defined temporary period and that other person will occupy the Owner's Dwelling during the same period; provided that the exchange period shall not exceed ninety (90) consecutive days and only one (1) such exchange shall be permitted in any calendar year. Each Owner who enters into a private exchange arrangement shall provide written notice to the Board in advance of arrival of the guest(s), which notice shall include the guest(s) name(s) and such other information as the Board shall require.
- 6.7 Implementation. Upon request from the Board, each Owner then renting or leasing a Lot shall provide to the Board such information as the Board may reasonably require in order to implement the provisions of this Article 6 including but not limited to the names of the tenants and the members of the tenant's household and the duration of the lease and/or a copy of the signed lease. Any rental or leasing of a Lot commencing after this Declaration is recorded and the renewal of a tenancy in effect on the date this Declaration is recorded shall be pursuant to a written lease or rental agreement in accordance with Section 6.1 ("Requirements for Renting").

- 6.8 Association As Third Party Beneficiary. Notwithstanding the failure of an Owner to comply with the requirements of Section 6.1 ("Requirements for Renting") and, whether or not it is so stated in a written contract or other agreement between such Owner and such tenant, the Owner and the tenant of any Lot subject to this Declaration shall be conclusively deemed to have agreed that the Association is an intended third party beneficiary to the contract between the Owner and the tenant; that failure of the tenant, members of the tenant's household, tenant's invitees, or guests to comply with applicable provisions of the Governing Documents shall constitute a breach of the terms of the contract between the Owner and the tenant; and that the Association shall have the right but not the obligation to enforce the contract and to pursue every remedy available under the contract, and under this Declaration including but not limited to the rights granted pursuant to Section 8.18 ("Assignment of Rents As Security for Payment"), or under the law. The power of the Association as provided in this Section 6.8 shall be exercised in good faith, in a reasonable and nondiscriminatory manner, and only after notice and opportunity for a hearing as provided in Article 14 ("Enforcement; Notice; Hearings").
- 6.9 Indemnification Regarding Tenant's Actions. Each Owner leasing or renting a Lot shall be strictly responsible and liable to the Association for the actions of such Owner's tenant(s) in or about all Dwellings, Lots, and Common Area and for each tenant's compliance with the provisions of the Governing Documents. No provision of any lease or rental agreement shall relieve the Lot Owner of his or her obligations pursuant to the Governing Documents. To the fullest extent permitted by law, every Owner of a Lot that is occupied by persons other than the Owner pursuant to a rental agreement or lease or otherwise, agrees to and shall indemnify and defend the Association, its officers, directors, employees, and agents and shall hold them harmless from and against any cost, loss, claim, or damages of any kind, arising out of the conduct or presence of the occupants of the Lot upon the Development, including but not limited to attorney fees (including attorney fees incurred to enforce the provisions of this Article 6 against the Owner of the Lot or any guest, tenant or other occupant of the Lot), any claims for consequential damages, and any claims arising or alleged to arise out of the enforcement or nonenforcement by the Association of the Governing Documents with respect to such occupants. Any amounts owed pursuant to this Section 6.9 may be assessed as a Reimbursement Assessment against the responsible Owner and his or her Lot.

ARTICLE 7 ARCHITECTURAL APPROVAL

- 7.1 Prior Architectural Approval Required. Prior architectural approval in accordance with this Article 7 must be obtained before making any exterior addition or change or alteration of any kind to a Dwelling, within a Lot or within the Development. The foregoing includes but is not limited to:

- (a) Installing, altering or adding any building, accessory dwelling unit, fence, wall, hedge, or similar barrier, balcony, screen, skylight, window, patio cover, carport cover, tent, awning, improvement or other structure of any kind, screen, exterior lighting, exterior wiring, mast, pole, tower, antenna, receiver, satellite dish or transmitter to the extent restricted by Section 7.2.8 ("Satellite Dishes and Antennas"), or attaching any of the foregoing to the exterior of any building, balcony or fence;
- (b) Exterior painting;
- (c) Plumbing or electrical work modifications;
- (d) Installing, moving, or removing landscaping.

No such modification, alteration or addition shall be commenced, erected, painted, or installed within the Development, nor shall any exterior addition or change or alteration be made, until the plans and specifications showing the nature, kind, shape, color, height, size, materials, and location of the same have been submitted to and approved in writing by the Board. The requirement of architectural approval shall not apply to improvements made or constructed by or on behalf of the Association.

7.2 Some Common Architectural Concerns. This Section 7.2 enumerates some common areas of architectural concern. These are examples only and do not represent an exhaustive list of changes that require prior architectural approval. Nothing in this Section 7.2 shall be deemed to limit the generality of Section 7.1 ("Prior Architectural Approval Required").

7.2.1 Air Conditioner Units. Prior architectural approval is required for any exterior installation of an air conditioner or heat pump, including installation in a window or door.

7.2.2 Disproportionate Burden on Common Utility Service; Separate Metering. If an Owner-installed or tenant-installed alteration or addition will increase the electrical, water, or other utility usage for the Owner's Lot, the Board may require that separate metering facilities be installed at the Lot Owner's sole cost and expense or, if that is not feasible, the Board may allocate such utility costs in a manner the Board determines is reasonable and equitable as provided in Section 8.7.2 ("Allocation of Annual Assessment").

7.2.3 Exterior Lighting. Exterior lights may be not be installed upon any structure, and existing lighting devices shall not be altered (other than light bulb replacement), without prior architectural approval.

7.2.4 Exterior Wiring. No telephone, cable television, or other wiring shall be routed along the building exterior unless prior architectural approval

has been obtained. If an Owner cannot provide a copy of a bona fide written approval from the Association for any such installation, it shall be presumed to be non-approved.

- 7.2.5 Mailboxes. Mailboxes shall comply with all applicable postal regulations and Association Rules, if any. There shall be no free-standing exterior mailboxes or newspaper tubes.
- 7.2.6 Masts, Poles, Towers, Other Projections. No outside mast, pole, tower, or projection of any type attached to any structure that extends above the roof of the structure (with the exception of chimneys and vent stacks) and no outside mast or pole shall be placed or permitted to remain without prior architectural approval.
- 7.2.7 No Installations on Roof. Absolutely no installation of any kind, including but not limited to skylights, antennas, or air-conditioning equipment, shall be placed or installed upon any roof without obtaining prior architectural approval; and such approval shall be subject to such conditions as the Board may determine, including but not limited to insurance requirements, release of the Association from liability and indemnification of the Association by the Owner concerning damage to property or injury to persons in connection with the installation or presence of the skylight, antennas, or air-conditioning equipment and obligation of the Lot Owner to pay for incremental costs of maintenance, repair, or replacement of the roof on account of the installation or presence of the skylight, antennas, or air-conditioning equipment.
- 7.2.8 Satellite Dishes and Antennas. No outside radio or television aerial, antenna, dish, wire, or other receiving or transmitting device shall be erected, constructed, or maintained on any Lot, except (i) those expressly approved by the Board or (ii) those that, by law, cannot be prohibited. It is the intention of this Section 7.2.8 to restrict outside radio or television aerials, antennas, dishes, wires, and other receiving or transmitting devices in the Development to the fullest extent permitted by law and to authorize the Board to adopt and implement Rules regarding the same.
- 7.2.9 Skylights. No skylight shall be installed without prior architectural approval and such approval shall be subject to such conditions as the Board may determine, including but not limited to insurance requirements, release of the Association from liability and indemnification of the Association by the Owner concerning damage to property or injury to persons in connection with the installation or presence of the skylight, and obligation of the Owner to pay for incremental costs of maintenance, repair, or replacement of the roof on account of the installation or presence of the skylight.

- 7.2.10 Solar Energy Systems. Solar energy systems as defined in *Civil Code* section 801.5(a)(1) and (2) are subject to prior architectural approval pursuant to this Article 7. Nothing in this Declaration shall be deemed to authorize or permit any Owner to install any solar energy system upon any portion of the Common Area.
- 7.2.11 Sports Apparatus. No basketball standards (excluding portable, nonattached basketball standards) or fixed sports apparatus shall be placed upon or attached to any Lot or Dwelling without prior written approval of the Architectural Committee.
- 7.2.12 Storage Units; Temporary Structures. No shed, tent, temporary structure, cargo container, temporary storage container ("PODS") shall be erected, maintained, kept, or used anywhere within the Development without the prior architectural approval pursuant to this Article 7. Any approved temporary building shall be used only for purposes incidental to approved construction and shall be removed promptly upon completion of the work.
- 7.2.13 Structural Integrity of Dwellings; Floors, Walls, Ceilings; or Utility Systems. Prior architectural approval shall be required for (i) any change that may affect the structural integrity of any Dwelling or Lot or of the Common Area, including but not limited to removing, moving, changing, or creating any opening in a wall, floor, or ceiling within a Dwelling or (ii) any change in the plumbing, electrical wiring, heating and ventilating ducts, or any other system that may affect neighboring Dwellings, Lots or the Common Area.
- 7.2.14 Window Replacement. No window frame, sash, or sliding door shall be installed without prior architectural approval and such approval shall be subject to such conditions as the Board may determine, including but not limited to release of the Association from liability and indemnification of the Association by the Owner concerning damage to property or injury to persons in connection with the installation or presence of the new window frame, sash, and/or sliding door, and obligation of the Owner to pay for incremental costs of maintenance, repair, or replacement of the exterior surface of the Dwelling on account of the installation or presence of the window, sash, and/or sliding door.

7.3 Architectural Rules.

- 7.3.1 In General. Subject to the requirements of *Civil Code* section 4340 and following, the Board may from time to time adopt, amend, and repeal rules and regulations to be known as "Architectural Rules." Architectural Rules shall set forth the standards for architectural review

and guidelines for architectural design, placement of buildings and other structures, outdoor lighting, and landscaping, color schemes, exterior finishes and materials, and similar features which are recommended for use in the Development and may include restrictions on satellite dishes and solar energy systems consistent with applicable law; *provided, however*, that Architectural Rules shall not be in derogation of any minimum standards required by this Declaration.

- 7.3.2 Solar Energy Systems. Pursuant to *Civil Code* sections 714 and 714.1, reasonable restrictions on solar energy systems are permitted provided they do not significantly increase the cost of the system or significantly decrease the efficiency or specified performance, and they allow for an alternative system of comparable cost, efficiency, and energy conservation benefits. Such Rules may restrict installation in Common Areas and may require that the Association be indemnified for loss or damage caused by installation, maintenance, or use of solar energy systems. Nothing in this Declaration shall be deemed to authorize or permit any Owner to install any solar energy system upon any portion of the Common Area.
- 7.4 Preliminary Consultation Prior to Submitting Application. Any Owner considering performing any work requiring prior approval may apply to the Board for preliminary consultation by submitting preliminary plans or drawings of the contemplated work. The purpose of the preliminary consultation procedure is to allow an Owner considering making substantial improvements an opportunity to obtain guidance concerning design considerations before expending substantial sums for plans and other exhibits required to apply for actual approval. Within sixty (60) days after receiving a request for a preliminary consultation, the Board shall consider the preliminary information submitted and shall respond in writing to the Owner. The Board's response shall give the requesting Owner such direction concerning the form and substance of an approval application for the contemplated work as the Board deems proper or desirable for the guidance of the Owner. The issuance of a preliminary consultation response by the Board shall not under any circumstances be deemed approval of any contemplated work; nor, once an Owner submits a request for approval, shall it preclude the Board from requesting additional information about the proposed work based on the actual application.
- 7.5 Written Request for Board's Approval. Any Owner proposing to perform any work that requires prior approval pursuant to this Article 7, shall submit to the Board (or the committee if one is appointed) a written request setting forth the nature of the proposed work and furnishing such information and documentation as the Board may require depending on the nature and size of the proposed work. Such information and documentation may include but is not limited to: (i) floor plans, (ii) color samples of exterior materials, (iii) specifications, (iv) building plans, (v) wall sections, (vi) exterior elevations, (vii) roof plans, (viii) landscaping

plans, (ix) graphics and exterior furnishings, and (x) the Owner's proposed construction schedule.

- 7.6 Fees; Professional Consultants. The Board may charge a reasonable fee or fees for review of architectural or landscaping applications, drawings, plans, and specifications which may include the cost of retaining outside consultants including but not limited to architects, engineers, soils experts, or contractors.
- 7.7 Meetings. To the extent required by *Civil Code* section 4765 and as provided in *Civil Code* section 4900, an Owner's request for approval shall be considered by the Board in an open Board meeting. The Owner and, in the Board's discretion, other interested persons, may present information relevant to the requested approval.
- 7.8 Basis for Decisions; Good Faith. The Board's decisions shall be made in good faith and shall not be unreasonable, arbitrary, or capricious. It is recognized and intended that the Board will employ subjective criteria and judgments in its review of and determination concerning plans and proposals submitted to it. The Board shall make its decisions from the perspective of the interest of the Development as a whole in the fostering of the coherence, value, attractiveness and aesthetic compatibility of all architectural designs and features in the Development, after consideration of such factors the Board reasonably determines to be relevant and after reasonable investigation consistent with the scope and circumstances of the proposal submitted to the Board. The Board shall grant the requested approval only if:
- (a) The Owner has submitted a complete application;
 - (b) The Board finds that the plans and specifications conform to this Declaration and to the Architectural Rules in effect at the time such plans were submitted to the Board;
 - (c) The Board finds that the proposed work will, if approved, be consistent and compatible with the architectural and aesthetic standards prevailing within the Development and will be in harmony with the external design and appearance of other existing structures and improvements within the Development, and as to location with respect to topography and finished grade elevations; and
 - (d) The Board determines that the proposed work would be consistent with the standards of the Development and the purposes of this Declaration as to quality of workmanship and materials.
- 7.9 Decisions in Writing; Timely Decision; Reasonable Conditions. All approvals and rejections of requests for approval shall be in writing and shall be issued by the Board within forty-five (45) days from the date of submission of a complete application to the Board. Any approval may include such reasonable conditions

as the Board may determine. If a request is rejected, the decision shall include an explanation of the Board's decision.

- 7.10 Variances. The Board may, but is not obligated to, grant variances or adjustments in its discretion if necessary to overcome practical difficulties due to topography or other conditions unique to a particular Lot, avoid unnecessary expense, or prevent unnecessary hardship in the application of the provisions of the Declaration; *provided, however*, that such variance or adjustment does not violate the purpose or purposes intended to be served by the standard or criteria being waived in each instance and is in conformity with the intent and purposes of the Declaration; and, *provided further*, that no such variance shall constitute a waiver of such provision with respect to any future application whether for the same Lot or any other Lot. Any variance granted by the Board shall be noted in the written approval of the proposed work and may be required by the Board to be recorded in the County records.
- 7.11 Failure of Board to Make Timely Decision. If the Board fails to act on a request for approval within the time specified in Section 7.9 ("Decisions in Writing; Timely Decision; Reasonable Conditions"), the Owner shall be entitled to invoke internal dispute resolution pursuant to *Civil Code* section 5910, discussed in Section 14.16 ("Internal Dispute Resolution"); *except that*, (i) in the case of an application for installation or use of a solar energy system subject to *Civil Code* section 714, any application that is not denied by the Board within forty-five (45) days from receipt of a complete application shall be deemed approved; and (ii) in the case of an application for installation of an electric vehicle charging station subject to *Civil Code* section 4745, any application that is not denied by the Board within sixty (60) days from receipt of a complete application shall be deemed approved. Nevertheless, as provided in Section 7.2.10 ("Solar Energy Systems"), nothing in this Declaration shall be deemed to authorize or permit any Owner to install any solar energy system upon any portion of the Common Area or Exclusive Use Common Area.
- 7.12 Failure to Obtain Required Approval. If any work that requires prior approval pursuant to this Article 7 is performed without such approval having been obtained, the Board shall be entitled to proceed in accordance with the provisions of Section 7.19 ("Failure to Remedy Non-conformity") and as though the Board had given written notice of non-conformity with approved plans per Section 7.18 ("Notice of Non-conformity").
- 7.13 Compliance with Governmental Requirements. The Owner of the Lot is required to obtain all permits and governmental authorizations, if any; required for any work done upon such Owner's Lot and such Owner must comply with all applicable zoning and building codes as well as other applicable laws and ordinances. The Owner of each Lot is solely responsible for complying with any applicable building permit process or other governmental requirements with respect to any work done upon the Owner's Lot. Submission of a request for approval by the Board and the review and approval of any proposals, plans, or

other submittals shall in no way be deemed to be satisfaction of or compliance with any building permit process or any other governmental requirements, nor shall it constitute the assumption of any responsibility by or impose any liability on the Association, the Board, or its or their members as to the accuracy, efficacy, or sufficiency thereof. When Architectural approval standards of the Association are more stringent than applicable governmental standards, the more stringent standards of the Association shall apply, notwithstanding the fact that governmental approval may have been obtained based on governmental standards that are less stringent than those of the Association.

- 7.14 Commencement of Approved Work. Upon receipt of written approval, the Owner shall, as soon as practicable, satisfy all conditions of the approval and diligently proceed with the commencement and completion of all approved work. Commencement of the approved work shall occur, in all cases, within six (6) months from the date of such approval. If the Owner fails to comply with this paragraph, any approval previously given shall be deemed revoked unless the Board, upon written request of the Owner made prior to the expiration of the time for commencement of the approved work, extends the time for such commencement. The Board shall not grant an extension of time for commencement of the work if the Board finds that there has been a material change in the circumstances upon which the original approval was granted.
- 7.15 Notice to Association Before Commencement of Work; Bond. The Board, in its discretion, may require an Owner to give the Association and any other Owner whose Lot will be affected by the work up to thirty (30) days' prior written notice before commencing approved work so that the Association or other Owner may record a notice of non-responsibility or take other appropriate action. The Board may require from the Owner performing work a bond or other assurance (such as disbursement through a voucher system of payments directly to materialmen, contractors, and subcontractors) to protect against mechanic's or materialmen's liens arising against the Common Area or other Lots.
- 7.16 Completion; Extension of Deadline. The Owner shall complete all approved work within one (1) year after commencement thereof; except that in the case of reconstruction after substantially total destruction of the improvements on a Lot, the construction or reconstruction shall be completed within eighteen (18) months after commencement thereof. In the case of projects under construction when this Declaration is recorded, the construction or reconstruction shall be completed by the completion date specified in the project approval or, if no such completion date was specified, within one year (or in the case of original construction on a vacant Lot or reconstruction after substantially total destruction of the improvements on a Lot within eighteen months), after the date of recordation. The date for completion may be extended as long as such completion is rendered impossible or would result in great hardship to the Owner due to strikes, fires, national emergencies, natural calamities, or other supervening forces beyond the control of the Owner or his or her agents, provided the Owner notifies the Board of such occurrence within a reasonable

time after becoming aware of it. If an Owner fails to comply with this Section 7.16, the Board shall be entitled to proceed in accordance with the provisions of Section 7.19 ("Failure to Remedy Non-conformity") and as though the Board has given written notice of non-conformity with approved plans per Section 7.18 ("Notice of Non-conformity").

- 7.17 Notice of Completion; Inspection of Completed Work. Upon the completion of any work for which approval is required under this Article 7, the Owner shall give written notice of completion to the Board. The written notice shall include copies of all applicable permits, job cards, and building permit inspections. Within sixty (60) days after receiving notice of completion from the Owner, the Board or its duly-authorized representative may inspect such work to determine if it substantially complies with the granted approval and Owner shall cooperate with the Board to conduct such inspection. If the Board fails to notify the Owner of any non-conformity within such sixty (60) day period, the work shall be deemed to be in accordance with the granted approval. If the Owner fails to give notice of completion, the Board shall be entitled to proceed in accordance with the provisions of Section 7.19 ("Failure to Remedy Non-conformity") and as though the Board had given written notice of non-conformity with approved plans per Section 7.18 ("Notice of Non-conformity").
- 7.18 Notice of Non-conformity. If the Board finds that the work was not done in substantial conformity with the granted approval, it shall notify the Owner in writing before the end of such sixty (60) day period set forth in Section 7.17 ("Notice of Completion; Inspection of Completed Work") specifying particulars of non-conformity and requiring the Owner to remedy the same within thirty (30) days from the date of the notice from the Board or such longer time as the Board may designate in the notice.
- 7.19 Failure to Remedy Non-conformity. If the Owner fails to remedy such non-conformity within the time specified in the notice of non-conformity, the Board shall then, pursuant to the procedures set forth in Section 14.12 ("Hearing Called by the Board; Executive Session; Open Meeting"), set a date on which a hearing before the Board shall be held regarding the alleged non-conformity. If the Board finds at such hearing that a substantial non-conformity exists, the Board may, in addition to any other remedy available under the Governing Documents or applicable law, order the Owner to remedy or remove such non-conformity. If the Owner thereafter fails to do so within the time specified by the Board, the Board may, in addition to any other remedy available under the Governing Documents or applicable law, remove or remedy the non-conformity and, in that event, all expenses incurred by the Association in connection therewith shall be assessed against the Owner as a Reimbursement Assessment.
- 7.20 Non-waiver. The approval by the Board of any plans, drawings, or specifications for any work done or proposed, or for any other matter requiring approval under this Article 7, shall not be deemed to constitute a waiver of the right to withhold

approval of any similar plan, drawing, specification, or matter subsequently submitted for approval with respect to the same Lot or any other Lot.

- 7.21 Disclaimer of Liability. Neither the Board, nor any committee, nor any member thereof shall be liable to the Association, to any Owner, or to any person deriving an interest through an Owner for any damage, loss, or prejudice suffered or claimed on account of: (i) the approval or disapproval of any plans, drawings, and specifications, whether or not defective; (ii) the construction or performance of any work, whether or not pursuant to approved plans, drawings, and specifications; or (iii) the development of any property within the Development; *provided, however,* that the Board, committee, or such member has acted in good faith on the basis of such information as may be possessed by it or him or her. Without limiting the generality of the foregoing, the Board or any committee may, but is not required to, consult with or hear the views of the Association or any Owner with respect to any plans, drawings, specifications, or any other proposal submitted for approval pursuant to this Article 7. Every purchaser, by acquiring title to a Lot or portion thereof agrees not to bring any action or suit against the Board, the committee, or its or their members seeking to recover any such damages.

ARTICLE 8 ASSESSMENTS AND LIENS

- 8.1 Covenant of Owner. Each Owner of a Lot within the Development, by acceptance of a deed or other conveyance thereof, whether or not it shall be so expressed in such deed or conveyance, shall be deemed to have covenanted and agreed to pay to the Association all: (i) Annual Assessments, (ii) Special Assessments, (iii) Reimbursement Assessments, and (iv) Enforcement Assessments levied by the Association as hereinafter provided, together with all Additional Charges.

8.1.1 Association's Power to Collect. Such deed or conveyance shall be deemed to vest in the Association the right and power to initiate all actions and procedures as the Board shall deem necessary or appropriate for the collection of such Assessments and Additional Charges and for the enforcement of the liens hereinafter provided for.

8.1.2 Assessments Are a Personal Obligation. Assessments levied by the Association pursuant to this Declaration, together with all Additional Charges, shall be a personal debt and obligation of the Owner against whom they are assessed, and shall bind his or her heirs, devisees, personal representatives, successors, and assigns.

8.1.3 Obligation Runs with the Land. The obligation to pay Assessments and Additional Charges and the right and power of the Association to initiate all actions and procedures for collection shall run with the land,

so that each successive Owner or Owners of any Lot shall, in turn, become liable to pay all such Assessments and Additional Charges assessed that become due and payable during the time he or she is Owner of such Lot.

- 8.1.4 Owner's Liability After Transfer. After an Owner transfers his or her ownership interest in any Lot, he or she shall not be liable for any Assessments levied thereafter with respect to such Lot. Such Owner shall remain personally liable, however, for all unpaid amounts due and owing at the time of transfer, together with Additional Charges accruing until time of collection. No assumption of personal liability by a successor Owner shall relieve any Owner from personal liability for delinquent Assessments. A Contract Seller of any Lot shall continue to be liable for all Assessments and Additional Charges until a conveyance by deed of such Lot is recorded in the Office of the County Recorder.
- 8.2 Creation of Lien. Each Assessment levied by the Association pursuant to this Declaration, together with all Additional Charges, shall be a charge upon the land and upon levy shall be secured by a continuing lien upon the property against which such Assessment is levied. The Association shall have a separate lien and a separate lien is hereby created upon each Lot to secure the payment of any such Assessments and Additional Charges as may be levied under this Declaration.
- 8.2.1 Lien Is Continuing. The lien provided for herein shall continue to secure all Assessments and Additional Charges levied upon any Lot notwithstanding the transfer of record title to such Lot, and any such transfer shall be subject to the Association's lien, provided that, prior to such transfer, a notice of delinquent assessment has been recorded as provided in the Declaration and by law.
- 8.2.2 Priority of Association's Assessment Liens. The priority of all such liens on each Lot shall be in inverse order so that upon the foreclosure of the lien for any particular charge on any Lot, any sale of such Lot pursuant to foreclosure of the lien will be made subject to all liens securing Assessments and Additional Charges on such Lot that become due and payable subsequent to the lien being foreclosed upon.
- 8.3 Purpose of Assessments. The Assessments levied by the Board shall be used exclusively to pay for the costs of management and operation of the Development, of conducting the business and affairs of the Association, to promote the recreation, health, safety, welfare, benefit, and interests of the Owners and Residents in the Development, and for the improvement and maintenance, repair, and replacement of the Common Area and, to the extent provided for in the Governing Documents or by law, of the Lots situated within

the Development or which, in the opinion of the Board, shall be deemed to be necessary or proper for the management of the Development or of the affairs of the Association, or the benefit of the Owners, or for the enforcement of the Governing Documents.

- 8.4 Funds to Be Held in Association's Name. Unless otherwise determined by the Board, the Association shall maintain at least two (2) separate accounts in one (1) or more banks or other depositories selected by the Board, which accounts shall be clearly designated Casa del Rey HOA of Santa Clara operating account and Casa del Rey HOA of Santa Clara reserve account. The Assessments collected by the Association shall be properly deposited into such accounts. Withdrawal of funds from Association accounts shall be subject to the requirements of Section 10.4 of the Bylaws ("Checks, Drafts, and Evidences of Indebtedness").
- 8.5 Funds Held in Trust for Owners. The Assessments collected by the Association shall be held in trust by the Association for and on behalf of each Owner. Upon sale or transfer of any Lot by any Owner, the Owner's interest in the funds held in trust by the Association shall terminate and shall be deemed automatically transferred to the successor-transferee of such Owner.
- 8.6 Authority of the Board to Levy Assessments. The Board shall have the power and the duty to levy Annual Assessments and Special Assessments sufficient to meet the Association's obligations under the Governing Documents and applicable law.
- 8.7 Annual Assessment.
- 8.7.1 Calculation of Estimated Requirement. Prior to the beginning of each fiscal year, the Board shall estimate the net funds required by the Association for such fiscal year to manage, administer, operate, and maintain the Development; to conduct the affairs of the Association; and to perform all of the Association's duties in accordance with the Governing Documents, including a reasonable amount allocated to contingencies and to a reserve fund for restoration, repair, and/or replacement of those components for which the Association is responsible and which must be repaired or replaced on a periodic basis. The amount of estimated required funds shall constitute the Annual Assessment.
- 8.7.2 Allocation of Annual Assessment. The Board shall allocate and assess the Annual Assessment equally among the Lots by dividing the amount by the number of Lots within the Development. Notwithstanding the foregoing, if the Annual Assessment includes charges for commonly metered utilities supplied to the Lots and any Owner-installed or tenant-installed alteration to a Lot or any business use conducted upon a Lot results in disproportionate electrical, water, or other utility usage

for that Lot, the Board may allocate such commonly metered utility costs as the Board determines is reasonable and equitable.

- 8.7.3 Payment of Annual Assessment. Unless the Board shall designate otherwise, Annual Assessments shall be levied on an annual basis and shall be paid in twelve (12) equal monthly installments during the fiscal year, and each installment shall be due and payable on the first day of each month.
- 8.7.4 Notice of Annual Assessment. Not less than thirty (30) days and not more than ninety (90) days prior to the beginning of each fiscal year, the Board shall send to each Owner a notice of the amount of the Annual Assessment allocated to his or her Lot, except that if there is an increase in the Annual Assessment over the previous year, in compliance with *Civil Code* section 5615, the notice shall be provided to the Owner by Individual Delivery not less than thirty days and not more than sixty (60) days before the due date of the increased Annual Assessment.
- 8.7.5 Permitted Increase in Annual Assessment. Pursuant to *Civil Code* section 5605(b), except as otherwise provided by law, the Board shall not increase the Annual Assessment for any fiscal year above the amount of the Annual Assessment for the preceding fiscal year by more than twenty percent (20%) (or such other limitation on the increase as may be imposed by law), except upon the affirmative vote of a majority of Members voting on any such increase in the Annual Assessment, provided that a quorum is established. For purposes of the preceding sentence and to the extent required pursuant to *Civil Code* section 5605(c), a quorum shall mean more than fifty percent (50%) of the Members of the Association, notwithstanding any lower quorum requirement which may be set forth in the Bylaws.
- 8.7.6 Revised Annual Assessment. Subject to the provisions of Section 8.7.5 ("Permitted Increase in Annual Assessment") or as otherwise permitted by law, if at any time during the course of any fiscal year, the Board determines the amount of the Annual Assessment to be inadequate, by reason of a revision of its estimate of either expenses or income or otherwise, the Board shall have the right, at a regular or special meeting of the Board, to revise the Annual Assessment for the balance of the fiscal year. To the extent required by *Civil Code* section 5615, notice of any such increase shall be given to the Members by Individual Delivery and such revised Annual Assessment shall become effective on the first day of the next month that is at least thirty (30) days and not more than sixty (60) days after the date of such notice.
- 8.7.7 Failure to Fix Annual Assessment. The failure or omission by the Board to fix or levy any Annual Assessment before the expiration of

any fiscal year, for that fiscal year or the next fiscal year, shall not be deemed either a waiver or a modification in any respect of the provisions of this Declaration, or a release of any Owner from the obligation to pay Assessments or any installment thereof for that or any subsequent year, but the amount of the Annual Assessment fixed for the preceding fiscal year shall be the amount of the Annual Assessment for the ensuing fiscal year until a new Annual Assessment is levied.

8.8 Special Assessments.

8.8.1 Purpose of Special Assessments. If at any time during any fiscal year the Annual Assessment proves inadequate for any reason, including nonpayment of any Owner's share thereof or the unexpected repair, replacement, or reconstruction of improvements located in the Development, or if funds are otherwise required for any authorized activity of the Association, the Board may levy a Special Assessment in the amount of such actual or estimated inadequacy or cost.

8.8.2 Permitted Amount of Special Assessments. Except in the case of an emergency situation as defined in *Civil Code* section 5610, in any fiscal year the Board may not levy Special Assessments which, in the aggregate, exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year (or such other limitation on the amount as may be imposed by law), except upon the affirmative vote of a majority of the Members voting on any such Special Assessment, provided that a quorum is established. For purposes of the preceding sentence and to the extent required pursuant to *Civil Code* section 5605(c), a quorum shall mean more than fifty percent (50%) of the Members of the Association, notwithstanding any lower quorum requirement which may be set forth in the Bylaws.

8.8.3 Allocation of Special Assessments. Special Assessments shall be allocated and assessed among the Lots in the same manner as Annual Assessments.

8.8.4 Notice of Special Assessment. Upon the imposition of a Special Assessment or an increase in a Special Assessment, in compliance with *Civil Code* section 5615, notice thereof shall be given to each Owner by Individual Delivery, not less than thirty (30) days and not more than sixty (60) days prior to the due date of the Special Assessment.

8.8.5 Payment of Special Assessments; Cost of Payment Plans. Special Assessments shall be payable in a lump sum or in installments as may be determined by the Board with regard to each Special Assessment when it is imposed. If the Association incurs additional expenses

because of a payment method selected by an Owner (for example, but not limited to, paying a Special Assessment in installments instead of in a lump sum), the Association may charge such expense to the Owner as an Additional Charge or as a Reimbursement Assessment. Nothing in this Section 8.8 shall be deemed to obligate the Association to offer or permit alternate payment plans.

8.9 Application of Surplus Funds (IRS Resolution). If, as of the end of any fiscal year, there is an excess of membership income over membership expenses as defined in Internal Revenue Code section 277 for the year ended, the Board shall determine, without the need for a Member vote, whether such excess shall be applied to reserves and deposited in the Association's reserve account or shall be applied against the subsequent tax year's Member Assessments as provided in Internal Revenue Service Revenue Ruling 70-604. If the Board does not determine to so apply such excess membership income to reserves or to the subsequent year's Member Assessments, any other lawful disposition of such excess income shall be as determined by the vote of the Members.

8.10 Reimbursement Assessments. The Board, after notice and a hearing as provided for in Section 14.11 ("Notices: Content, Delivery") and Section 14.12 ("Hearing Called by the Board; Executive Session; Open Meeting"), may levy a Reimbursement Assessment against an Owner and his or her Lot:

- (a) To reimburse the Association for costs incurred to maintain, repair, or replace property (including property within a Lot) when such damage is due to the act or neglect of such Owner, his or her Contract Purchaser, or member of his or her household, pet, tenant, invitee, or guest, or as otherwise provided in the Governing Documents;
- (b) If the failure of such Owner, his or her Contract Purchaser, or member of his or her household, pet, tenant, invitee, or guest to comply with any provision of the Governing Documents has necessitated or resulted in an expenditure of funds by the Association to deal with such lack of compliance or to bring such person or the Lot into compliance;
- (c) To reimburse the Association for any costs of collecting from an Owner any amount the Owner is obligated to pay the Association.

Without limiting the generality of the foregoing, and to the fullest extent permitted by law, all costs including attorney fees, incurred by the Association to enforce Section 5.8 ("Restriction on Businesses"), Section 5.14 ("Animals"), Section 6.8 ("Association As Third Party Beneficiary"), Section 6.9 ("Indemnification Regarding Tenant's Actions"), Section 8.18 ("Assignment of Rents As Security for Payment"), and Section 14.6 ("Injunctions"), or to defend any claim arising or alleged to arise from any of the foregoing sections, shall be reimbursed to the Association as a

Reimbursement Assessment. Any Reimbursement Assessment shall be due and payable to the Association when levied.

- 8.11 Enforcement Assessments. Subject to the requirements set forth in Section 14.8 ("Imposing Sanctions"), the Board may levy an Enforcement Assessment (and any fine or monetary penalty imposed by the Board in accordance with the provisions of the Governing Documents shall be deemed to be such an Enforcement Assessment), for violation of any of the provisions of the Governing Documents. Any Enforcement Assessment shall be due and payable to the Association when levied.
- 8.12 No Offsets. All Assessments levied by the Board shall be payable in the full amount specified, including any Additional Charges imposed as provided by the terms of this Declaration, and no offsets against any such amounts shall be permitted for any reason whatsoever, including without limitation a claim that the Association has failed to properly exercise its duties of maintenance or enforcement.
- 8.13 Bad Checks. An Owner who writes a check to the Association on insufficient funds may be charged a service fee in the amount permitted by *Civil Code* section 1719 and may be liable for damages to the Association in an amount equal to three (3) times the amount of the bad check, as provided by statute.
- 8.14 Delinquent Assessments; Acceleration in the Event of Delinquency. Any installment or other portion of an Assessment not received within fifteen (15) days after its due date shall be delinquent and, to the fullest extent permitted by law including *Civil Code* section 5650(b), shall be subject to a late charge and, thirty (30) days after the due date, interest not to exceed the maximum rate permitted by law, as well as all other Additional Charges. If any monthly installment of the Annual Assessment or any installment of a Special Assessment that has been levied or is permitted to be paid on an installment basis is delinquent for a period of sixty (60) days, the Association may, but shall not be obligated to, declare the entire balance of the Annual Assessment or the Special Assessment immediately due and payable together with all other delinquent amounts.
- 8.15 Enforcement by Action at Law or Foreclosure. The Board, on behalf of the Association, may enforce the payment of any delinquent Assessment plus Additional Charges by bringing an action at law against any Owner personally obligated to pay the same, or by foreclosing the lien against the Owner's Lot by judicial or non-judicial foreclosure, to the fullest extent permitted by law. To the extent prohibited by *Civil Code* section 5725(b), the amount of an Enforcement Assessment may not become a lien that is enforceable by non-judicial foreclosure.
- 8.15.1 Pre-lien Notice. At least thirty (30) days prior to recording a notice of delinquent assessment against a Lot to collect a debt that is past due,

the Association shall provide written notice to the Owner(s) of the Lot, as required by *Civil Code* section 5660 ("Pre-lien Notice").

- 8.15.2 Prior to Recording a Lien. Prior to recording a notice of delinquent assessment, the Association shall comply with all applicable requirements imposed by law, including offering to participate in internal dispute resolution (Section 14.16 "Internal Dispute Resolution") or alternative dispute resolution (Section 14.17 "Alternative Dispute Resolution Before Initiating Lawsuit") to the extent required pursuant to *Civil Code* section 5670 and making the decision to record a lien for delinquent Assessments at an open meeting of the Board, to the extent required pursuant to *Civil Code* section 5673.
- 8.15.3 Owner's Right to Discuss Payment Plan. To the extent provided in *Civil Code* section 5665, an Owner may submit to the Board a written request to discuss a payment plan for a debt noticed in a pre-lien notice. If the Owner's written request is mailed to the Board (as evidenced by a postmark or receipt of mailing) within fifteen (15) days after the postmark on the pre-lien notice, the Board shall meet with the Owner within forty-five (45) days of the postmark date of the Owner's written request, unless there is not a regularly scheduled Board meeting within the period, in which case the Board, in its discretion, may hold a special meeting in executive session to meet with the Owner or may designate a committee of one (1) or more Board members to meet with the Owner.
- 8.15.4 Notice of Delinquent Assessment. The amount of the past due debt noticed in the pre-lien notice shall be a lien from and after the recording of a notice of delinquent assessment. No later than ten (10) days after recordation, a copy of the notice of delinquent assessment shall be mailed by certified mail in compliance with *Civil Code* section 5675 to every person whose name is shown as an Owner of the Lot in the Association records or in such manner and to such persons as may be required by applicable law.
- 8.15.5 Delinquent Assessments of Less Than \$1,800. To the extent provided in *Civil Code* section 5720(b), delinquent Assessments totaling less than One Thousand Eight Hundred Dollars (\$1,800) that are less than twelve (12) months delinquent may not be collected by judicial or non-judicial foreclosure, but may be collected in any other manner provided by law including a civil action in small claims court to the extent provided in *Civil Code* section 5720(b)(1) or recording a lien as provided in *Civil Code* section 5720(b)(2). Prior to recording such a lien the Association shall offer to participate in internal dispute resolution (Section 14.16 "Internal Dispute Resolution") to the extent required by *Civil Code* section 5720(b)(2).

- 8.15.6 Initiating Foreclosure. As provided in *Civil Code* section 5700(a), no procedures shall be initiated to foreclose the lien securing any noticed past due debt under this Article 8 until after the expiration of thirty (30) days following the recording of a notice of delinquent assessment. To the extent required pursuant to *Civil Code* section 5705(b), the Association shall offer to participate in internal dispute resolution (Section 14.16 "Internal Dispute Resolution") or alternative dispute resolution (Section 14.17 "Alternative Dispute Resolution Before Initiating Lawsuit"). To the extent required by *Civil Code* section 5705(c), a decision to initiate foreclosure shall be made only by the Board in an executive session meeting.
- 8.15.7 Amount Due and Payable. Except with respect to the amount of any Enforcement Assessment, upon the recording of the notice of delinquent assessment referred to above, the Association may, at its option, declare the entire balance of all sums then due or to become due from the Owner, immediately due and payable, which total sum may then be included in any suit, action, or other procedure initiated to collect said sums, including all Additional Charges.
- 8.15.8 Notice of Initiating Foreclosure. To the extent required pursuant to *Civil Code* section 5705(d), the Association shall provide written notice of initiating foreclosure to the record Owner of the Lot, including notice by personal service to any resident Owner.
- 8.16 Power of Sale. Each Owner does hereby appoint the Association as trustee to enforce and to foreclose any lien which is established pursuant to the terms of this Declaration, by private power of sale, as provided in Division III, Part 4, Title 14, Chapter 2, Article 1, (Section 2920 and following) of the *Civil Code* of the State of California, and does further grant to the Board of Directors, on behalf of the Association, the authority and power to sell the Lot of such Owner in the event of any default in payment of any Assessments or Additional Charges levied against such Lot, for lawful money of the United States, to the highest bidder, to satisfy said lien. The Association, as trustee for the remaining Owners, or any other Owner, may purchase the Lot at said sale.
- 8.17 Right of Redemption. To the extent provided pursuant to *Civil Code* section 5715(b), a non-judicial foreclosure to collect delinquent Assessments shall be subject to a right of redemption.
- 8.18 Assignment of Rents As Security for Payment. As security for the payment of all liens provided for under this Declaration, each Owner hereby gives to and confers upon the Association the right, power, and authority during the continuance of such ownership to collect the rents, issues, and profits of the Owner's Lot, reserving unto the Owner the right, prior to any default by such Owner in performance of that Owner's obligations under the Governing Documents in payment of any indebtedness to the Association, to collect and

retain such rents, issues, and profits as they become due and payable. Upon any such default, the Association may (i) instruct the tenant to pay rent to the Association as and when such rents become due or (ii) at any time upon ten (10) days' written notice to such Owner (either in person, by agent, or by a receiver to be appointed by a court, and without regard to the adequacy of any security for such indebtedness) in its own name sue for or otherwise collect such rents, issues, and profits, including those past due and unpaid, and in either event apply the same, less costs and expenses of operation and collection, including reasonable attorney fees, upon any such indebtedness, and in such order as the Association may determine or as required by applicable law. Owner waives the giving of any and all notices required by the laws of the State of California in order for the Association to exercise the rights provided by this Section 8.18. The collection of such rents, issues, and profits, and the application thereof as aforesaid, shall not cure or waive any default under the Governing Documents or invalidate any act done pursuant to this Declaration. The assignment of rents and powers described in this Section 8.18 shall not affect, but shall in all respects be subordinate to, the rights and power of the holder of any First Mortgage on any Lot, or any part thereof, to do the same or similar acts.

- 8.19 Remedies Are Cumulative. The Board may commence any procedure for the collection of delinquent Assessments upon its own decision. The remedies provided in this Declaration for collection of delinquent Assessments shall be cumulative and not exclusive; that is, the Association may use one (1) or more or all of the available remedies to collect delinquent Assessments to the fullest extent permitted by law.
- 8.20 Partial Payments. The Association's acceptance of a partial payment, whether involuntary or voluntary, shall not prevent the Association from pursuing any or all of its available collection remedies.
- 8.21 Certificate of Satisfaction and Release of Lien. Upon payment in full of a delinquent Assessment, including any Additional Charges, or the satisfaction thereof, the Board shall cause to be recorded, in the same manner as the notice of delinquent assessment, a further certificate stating the satisfaction thereof and the release of the lien.
- 8.22 Subordination to Lien of First Mortgage. Except as otherwise expressly provided by law, the lien securing each of the Assessments provided for under this Declaration shall have priority as of the date of recordation of the notice of delinquent assessment as provided in Section 8.15.4 over all other liens and encumbrances applicable to the Lots; *provided, however*, that such Assessment lien shall be subordinate to the lien of any First Mortgage recorded against the Lot prior to the date the notice of delinquent assessment was recorded; and *provided, further*, that such subordination shall apply only to the Assessments which have become due and payable prior to the sale of such property pursuant to a decree of foreclosure of any such First Mortgage, or pursuant to a power of sale contained in any such First Mortgage. Such foreclosure sale shall not

relieve such property from liability for any Assessments and Additional Charges becoming due after the sale of such property pursuant to a decree of foreclosure of any such First Mortgage, or pursuant to a power of sale contained in any such First Mortgage, nor from the lien of any subsequent Assessment, including Assessments levied against all Lots proportionately to compensate for the unpaid Assessments and Additional Charges, which shall constitute a lien upon the purchased Lot in accordance with this Article 8.

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

8.24 Property Exempt from Assessments. The following property subject to this Declaration shall be exempt from the Assessments; Additional Charges, and liens created herein:

- (a) All property dedicated to and accepted by the City or County or other local public authority and devoted to public use;
- (b) Any Lot which is owned by the Association as a result of the Association having acquired such Lot through foreclosure; *provided, however*, that such exemption shall apply only during the period in which the Association is record owner of such Lot; and
- (c) All Common Area.

ARTICLE 9 MAINTENANCE OF PROPERTY

9.1 Association's Responsibility for Common Area Generally. The Association shall provide maintenance, repair, and replacement of the Common Area and all facilities, improvements, and landscaping thereon, including but not limited to private streets, curbs, gutters and storm drainage system, visitor parking spaces, signs, Private Driveways, open space, landscaping, including trees, plants and grass, fences, utility boxes, sidewalks, trash service area, fire sprinklers for dumpster area, the clubhouse recreation building and meeting rooms, the swimming pool and related equipment, the gated pool area and poolside restrooms the storm drainage system in the storm drainage easement as shown on the Subdivision Map, and all other real and/or personal property that may be acquired by the Association, keeping such property in good condition and repair; *provided, however*, that the Association shall not be responsible for maintenance, repair, or replacement of Exclusive Use Common Area portions of the Common Area to the extent the responsibility therefor is expressly assigned to one (1) or

more Owners, as set forth in Section 9.3.6 ("Owner's Responsibility for Upkeep of Private Driveway"). Without limiting the generality of the foregoing:

- 9.1.1 Landscaping; Janitorial; Painting in Common Area. The Association shall specifically be responsible for providing lighting, landscaping, gardening (including periodic replacement, as the Board deems necessary, of trees, shrubs, and other plants upon the Common Area), and janitorial services for the Common Area, as needed, and shall cause any and all other acts to be done which may be necessary to assure the maintenance of the Common Area in good condition and repair, including painting of the exterior surfaces of Common Area building(s) and such other portions of the Common Area as the Board, in its discretion, determines to be necessary.
- 9.1.2 Common Area Utilities and Services. The Association shall procure and pay for water, sewage, garbage, electrical, gas, and any other utility service for the Common Area and (to the extent not separately metered or charged) for the Lots. The Association shall maintain all the aforementioned utility installations serving the Common Area *except for* those installations maintained by utility companies, public, private, or municipal. The Association shall maintain all aforementioned utility installations that serve the Lots located in the Common Area except for (i) those installations maintained by utility companies, public, private, or municipal (including, but not necessarily limited to, electrical utilities) and (ii) gas utility lateral lines that serve a single Lot exclusively.
- 9.1.3 Common Area Perimeter Fences. The Association shall maintain, repair, and replace all fences upon the Common Area including but not limited to the fencing and gates surrounding the pool, and any fences situated on or approximately on the boundary line between a Lot and any portion of the Common Area, as set forth in Section 9.1.4 ("Shared Fences") but excluding Party Fences (described in Article 10 ("Party Wall and Party Fences")).
- 9.1.4 Shared Fences. "Shared fences" shall mean and refer to any fence situated upon or approximately upon the boundary between any Lot and any portion of the Common Area. Except for situations described in Section 9.10 ("Owner's Liability to Association for Negligent Damage"), the cost of maintenance, repair, and replacement of shared fences shall be borne by the Association.
- 9.1.5 Employees or Independent Contractors. The Association may perform its obligations and provide such services as the Board shall determine through employees of the Association or through independent contractors. In either case, Residents or Owners shall not interfere

with or attempt to instruct any of such persons in the performance of their duties.

9.2 Association's Responsibility for Lots and Exclusive Use Common Area. Unless otherwise stated in this Declaration, the Owners are responsible for maintaining, repairing and replacing their separate interest Lots and Dwellings. The Association shall be responsible for the following components of the separate interest Lots and Dwellings and Exclusive Use Common Area:

9.2.1 Painting. The Association shall have the exclusive right and responsibility to periodically paint the exterior surfaces of the Dwellings. For purposes of painting, exterior surfaces shall mean the surfaces covering the exterior perimeter walls as such surface may be replaced from time to time (including but not limited to siding or stucco, the exterior surfaces of the balconies and the railings, the exterior underside surface of rear and side balconies (but not the surface of such balcony floors), exterior trim pieces around doors and windows; the outside surface of front doors and front door frames, garage doors and garage door frames, and the exterior surface of all gutters, downspouts and vents). Any exterior improvements later placed upon a Dwelling that was not a part of the original improvements planned for and constructed upon the Dwellings are not a part of the "exterior surfaces" for which the Association is responsible for painting.

The Association shall not be responsible for painting the floor surfaces of rear and side balconies, exterior doors or door frames, window frames or sashes, flashing around windows or doors, door or window handles, hardware or locks, mailboxes, or any exterior decoration, fixture or improvement placed upon any Dwelling.

"Painting" shall include varnishing, cleaning and priming surfaces as necessary and caulking and sealing cracks as necessary to prepare the exterior surfaces for the application of paint.

9.2.2 Exterior Building Surfaces. Other than as described in Section 9.2.1 ("Painting"), the Association shall be responsible for maintaining, repairing, and replacing the exterior surfaces of Dwellings as follows: siding, stucco or other exterior covering of the perimeter walls and the moisture proof barrier below such exterior covering; trim including pieces around doors and windows, and garage doors. Such maintenance, repair, and replacement shall be periodically performed by the Association as determined by the Board.

Other than the components noted above, the Association is not responsible for maintaining, repairing, or replacing any portion of the Dwellings, including the rear and side balconies (other than painting as described in Section 9.2.1 ("Painting")), any glass, window frames,

window sashes, doors (other than front doors and garage doors), flashing around windows or doors, door or window hardware or locks, screens, any other exterior decoration or fixture, or any structural systems to which the stucco, siding, exterior coverings and/or moisture proof barriers are attached.

- 9.2.3 Roof Coverings. The Association shall have the exclusive right and responsibility to provide maintenance, repair, and replacement of the roofs of the Dwellings due to normal wear and tear and exposure to the elements. "Roof" shall mean the exterior surface layers of the roofing systems covering the Dwellings as they may be replaced from time to time (including but not limited to shakes, shingles, ceramic and asphalt tile, and tar and gravel surfacing, flashing, scuppers, and building paper and felt or other secondary weatherproofing systems, the plywood substrate or similar component upon which these exterior surface coverings are attached. "Roof coverings" as used herein shall not include the trusses or any other portions of the Dwelling unless described above.
- 9.2.4 Front Balconies. In addition to the exterior surface maintenance described in this Section 9.2, the Association shall have the exclusive right and responsibility to provide maintenance, repair, and replacement of the walking surface of the front balconies of the Dwellings due to normal wear and tear and exposure to the elements. This Section 9.2.4 only applies to the front balconies of those Dwellings that were originally constructed by the developer with such front balconies, and expressly excludes rear or side balconies or front balconies not part of the original construction and any Owner-installed balcony.
- 9.2.5 Gutters and Downspouts. The Association shall have the exclusive right and responsibility to provide maintenance (including periodic painting as provided in Section 9.2.1 ("Painting") and periodic cleaning), repair, and replacement of the gutters and downspouts of the Dwellings. The foregoing shall not include disposal of downspout water at grade level, or maintenance, repair, or replacement of foundation drains, if any.
- 9.2.6 Skylights and Roof-mounted Appliances; Obligation Runs with the Land. The Association shall not be responsible for maintenance, repair, or replacement of skylights or any roof-mounted appliances, such as air-conditioning equipment or solar devices installed by Owners. In the event that removal and reinstallation of Owner-installed skylights, roof-mounted appliances, or other personal property affixed to the roof is necessary or appropriate to facilitate the Association's maintenance, repair, or replacement of the roof, upon thirty (30) days' notice, the Owner shall be responsible for the removal and

replacement of such items, including any costs incurred for such removal and replacement, as provided in Section 9.3.5 ("Owner-installed Skylights; Solar Systems; Other Roof-mounted Appliances"). In the event that an Owner fails to remove such Owner-installed skylight or other roof-mounted appliance after the thirty-day notice, the Association shall remove and reinstall such appliance, with the costs incurred by the Association in such work removing and reinstalling such items, charged to the Owner as a Reimbursement Assessment. The Association shall not be liable for any damage to an Owner-installed skylight or roof-mounted appliance that may result from the Association's performance of its duty to repair or replace the roof as described in Section 9.2.3 ("Roof Coverings") or such removal described in this Section 9.2.6. In addition, the Owner may be charged any additional costs incurred by the Association in the performance of its responsibility to maintain, repair, and replace the roof, resulting from the presence of such Owner-installed skylight, appliance, or device, as the case may be. Responsibility for such incremental costs shall run with the land and shall be binding upon the Owner who installed the skylight, appliance, or device and each successor Owner of the Lot, unless and until the Owner removes the skylight, appliance, or device and restores the affected portion of the roof to the then-existing Association standard as determined by the Board.

- 9.2.7 Landscaping. The Association shall have the exclusive right and responsibility to provide landscaping and gardening (including maintenance and periodic replacement, as the Board deems necessary, of grass, trees, shrubs, and other plants as well as irrigation and other landscaping improvements) in the unenclosed portion of each Lot. The Association shall not be responsible for the maintenance of any item that may be planted or placed by any Owner in the unenclosed portion of each Lot.
- 9.2.8 Private Driveways. Except as provided in Section 9.3.6 ("Owner's Responsibility for Upkeep of Private Driveway"), the Association shall have the exclusive right and responsibility to provide for maintenance, repair, and replacement of the Private Driveways serving the Lots up to the garage entry.
- 9.2.9 Certain Portions of Utility Laterals in Lots. Except as stated in this Section 9.2.9, the Association is not responsible for utility connections to or serving the Lots, including, but not limited to, telephone lines, cable television lines, internet service, fiber optic lines, fire alarm and other security services. The Association's responsibility to maintain, repair and replace utility laterals and related components on the Lots is limited to the following:

- (i) Water lines. The Association is responsible for water lines up to *but not including* the exterior main shutoff valve for each Lot. Owners are responsible for the exterior main shutoff valve and any water lines from the valve extending toward the Lot or Dwelling.
- (ii) Sewer lines. The Association is responsible for sewer laterals connecting the mains to the Lots up to and including the clean-out typically located near a Lot's garage door, including replacement of broken clean-out covers. Owners are responsible for the portion of the lateral extending from such clean-out toward the Lot or Dwelling.

9.2.10 Limitation of Association's Responsibility in Case of Termites. Except for the Association's responsibility for maintenance, repair, and replacement of any of the components described in this Section 9.2, the Association shall not be responsible for maintenance, repair, and replacement of any portion of the Lot required due to the presence of wood destroying pests or organisms, including mold, decay, dry rot, and termites, as described in Section 9.5 ("Wood Destroying Organisms").

9.2.11 No Other Responsibility of Association. Except as provided in this Section 9.2, the Association shall not otherwise be responsible for maintenance, repair, or replacement of any other portion of the Lot, including the Dwelling thereon.

9.3 Owner's Responsibility for Lots.

9.3.1 Owner's Responsibility for Improvements on Lots. Except to the extent that maintenance, repair, or replacement of any improvement on a Lot is expressly and clearly made the responsibility of the Association as provided in Section 9.2 ("Association's Responsibility for Lots and Exclusive Use Common Area"), each Owner shall be responsible for the maintenance, repair and replacement of his or her Lot and all improvements thereon, keeping the same in a clean, sanitary, workable, and attractive condition.

9.3.2 Patios. Each Owner shall be responsible to provide maintenance, repair, and replacement of any patio serving the Lot, including any portion thereof that encroaches upon the Common Area.

9.3.3 Owner's Responsibility for Party Walls and Party Fences. Owner's responsibility for Party Walls and Party Fences shall be as set forth in Article 10 ("Party Walls and Party Fences").

9.3.4 Utility Lateral Lines. Each Owner shall be responsible for the maintenance, repair and replacement of utility lateral lines as follows:

- (i) Water lines. Owners are responsible for the exterior main shutoff valve and any water lines from the valve extending toward the Lot or Dwelling.
- (ii) Sewer lines. Owners are responsible for the portion of the sewer lateral extending from the clean-out (e.g., the clean-out located closest to a Lot's garage door) toward the Lot or Dwelling.
- (iii) Gas. The utility company is responsible for anything up to and including the Lot meter. Owners are responsible for all gas lines from the Lot meter toward and into the Lot.

9.3.5 Owner-installed Skylights, Solar Systems, Other Roof-mounted Appliances . Without limiting the generality of Section 9.3.1 ("Owner's Responsibility for Lots"); in the case of an Owner-installed skylight, solar system, or any roof-mounted appliance or device that was not part of the original construction of the Dwelling or a replacement thereof, the Owner installing the same shall be responsible for maintenance, repair, and replacement (when necessary) of such skylight, appliance, or device as well as any incremental cost that may be incurred by the Association in the performance of its responsibility to maintain, repair, and replace the roof, resulting from the presence of such skylight, appliance, or device, as the case may be. Responsibility for such incremental costs shall run with the land and shall be binding upon the Owner who installed the skylight, appliance, or device and each successor Owner of the Lot, unless and until the Owner removes the skylight, appliance, or device and restores the affected portion of the roof to the then-existing Association standard as determined by the Board.

9.3.6 Owner's Responsibility for Upkeep of Private Driveway. Each Owner shall be responsible for day-to-day upkeep of the Private Driveway appurtenant to his or her Lot, keeping the area free of debris and promptly cleaning any fluid leaks.

9.3.7 Owner's Cooperation. Each Owner and Resident shall cooperate with the Board and its agents in the performance of maintenance, repair, or replacement by the Association of any portion of Common Area or the Lots that is the Association's responsibility.

9.3.8 Compliance with Architectural Provisions. An Owner's right and responsibility for maintaining, repairing or replacing any portions of his or her Lot or Exclusive Use Common Area shall be subject to any

applicable provisions of the Governing Documents relating to landscaping and architectural control, including Article 7 ("Architectural Approval").

- 9.4 Concealed Damage. If, in the course of performing maintenance, repairs, or replacement that is the Association's responsibility, the Association or its agents discover damage that is the Owner's responsibility, the responsible Owner(s) shall be promptly notified of the situation and of the time in which required repairs or replacement must be performed in order for the Association to proceed with or complete the work for which the Association is responsible. If, for any reason, the responsible Owner does not perform or arrange for timely performance of the required repairs or replacement, and the Board in its reasonable judgment determines that a delay in the performance of such work by the Owner would unreasonably delay or increase the cost of the work for which the Association is responsible, then the Association shall have the right to arrange for the performance of such repairs or replacement and charge the cost thereof to the responsible Owner as a Reimbursement Assessment. Repair or replacement performed by the Association pursuant to this Section 9.4 may be performed on shortened notice to the Owner, notwithstanding the repair period authorized in Section 9.8 ("Board's Discretion to Require Maintenance").
- 9.5 Wood Destroying Organisms. As provided in *Civil Code* section 4780(b), each Owner is responsible for and shall perform maintenance and repair of his or her Lot and Dwelling (other than those portions thereof that are the responsibility of the Association, as provided in in Section 9.2 (Association's Responsibility for Lots and Exclusive Use Common Area") occasioned by the presence of wood destroying pests or organisms, including responsibility for abatement. Without limiting the generality of the foregoing, every Owner and Resident shall be responsible for taking reasonable measures to prevent conditions that may cause such damage, including but not limited to use of proper spacers under planters and other objects that may trap moisture, stacking of firewood on racks, and prompt removal of leaves, dirt, and other debris and may be liable to the Association for the cost of maintenance, repair, or replacement due to damage, including the presence of mold, decay, or dry rot, as provided in Section 9.10 ("Owner's Liability to Association for Negligent Damage") or to others as provided in Section 9.11 ("Owner's Liability to Other Lot Owners or Residents").
- 9.6 Authority for Entry of Lot or Exclusive Use Common Area. The Association or its agents shall have the right to enter any Lot or any portion of Exclusive Use Common Area whenever such entry is necessary, in the Board's discretion, for purposes of inspection and/or in connection with the performance of any maintenance, repair, construction, or replacement for which the Association is responsible or for which it is authorized to perform. Such entry shall be made with as little inconvenience to the Residents as practicable and only upon reasonable advance written notice of not less than twenty-four (24) hours, except that in emergency situations notice shall be given as the situation reasonably permits.

- 9.7 Acceptance of Condition of Lot. Each Owner, by acceptance of a deed to a Lot, accepts responsibility for the condition of the Lot including but not limited to existing defects, unresolved architectural violations of any predecessor Owner, and failure of a predecessor Owner to perform maintenance, repairs, or replacement upon the Lot or any encroachments upon the Common Area that are the responsibility of the Lot Owners, and the Association shall be entitled to exercise all of its enforcement powers with respect to the obligations of Lot Owner in connection with such conditions, whether or not such conditions were disclosed to the Owner. The foregoing shall not be deemed to waive the responsibility of the Association for the performance of maintenance, repair, or replacement upon the Lot as provided in Section 9.2 ("Association's Responsibility for Lots and Exclusive Use Common Area").
- 9.8 Board's Discretion to Require Maintenance. The Board shall have the discretion to determine whether any maintenance, repair, or replacement that is the responsibility of an Owner is necessary to preserve the appearance and value of the property within the Development or any portion thereof and may notify an Owner of the work the Board deems necessary. In the event an Owner fails to perform such work within sixty (60) days after notification by the Board to the Owner, the Board may, after written notice to the Owner and the right of a hearing before the Board pursuant to Section 14.12 ("Hearing Called by the Board; Executive Session; Open Meeting"), cause such work to be done and charge the cost thereof to the Owner as a Reimbursement Assessment.
- 9.9 Limitation of Association's Liability. In the case of damage to a Lot, any Dwelling or improvement thereon, or the contents thereof, arising or allegedly arising from the Association's performance of its maintenance, repair, or replacement obligations, the Association shall not be responsible or liable for such damage, except to the extent arising from the willful misconduct or gross negligence of the Association, its employees, contractors, or agents.
- 9.10 Owner's Liability to Association for Negligent Damage. In the event the need for any maintenance, repair, or replacement performed by the Association is caused by the willful or negligent act or omission of an Owner or a Resident, a member of his or her household, pets, tenants, invitees, or guests, the cost of such maintenance, repair, or replacement not covered by insurance, including any applicable insurance deductible and the cost of materials, labor, supplies, and services shall be charged to, and paid by, the Owner of the Lot in the form of a Reimbursement Assessment.
- 9.11 Owner's Liability to Other Lot Owners or Residents. In the case of damage to a Lot or Residence or its contents arising or allegedly arising from another Lot or the conduct of the Owner or Resident of another Lot (for example and not by way of limitation, damage to a Residence resulting from water leaking from another Lot), if any affected party or their insurers should assert claims against the Owner or Resident of another Lot to recover damages, any such claims shall not alter

the obligation of each Lot Owner as provided in this Declaration to maintain, repair, and replace their respective Lots and Dwellings; to carry insurance; and to perform and/or pay for repairs or reconstruction of their Lot and Residence in the event of casualty. Moreover, any such claims shall not affect the authority of the Board to enforce a Lot Owner's obligations with respect to his or her own Lot or Residence under the Declaration and shall not obligate the Association or the Board to intervene in any such claims or disputes between Lot Owners or Residents.

ARTICLE 10 PARTY WALLS AND PARTY FENCES

- 10.1 Party Wall and Party Fence Defined. "Party Wall" or "Party Fence" shall mean each wall or fence built as part of the original construction of the Dwellings within the Development and placed on or approximately on the boundary line between the Lots. A fence that is situated on the boundary line between a Lot and Common Area is a "shared fence" and shall be maintained, repaired, or replaced pursuant to Section 9.1.4 ("Shared Fences"), above.
- 10.2 General Rules of Law to Apply. Unless and to the extent they conflict with the provisions of the Declaration, the general rules of law regarding party walls and party fences and liability for property damage due to negligence or willful acts or omissions shall apply thereto, as provided in this Article 10.
- 10.3 Changes, Impairments, or Permanent Structural Attachments. There shall be no changes in, impairments of, or permanent structural attachments made to any such wall unless expressly made in conformity with this Article 10 and consented to by all Owners having an interest in said wall.
- 10.4 Sharing of Maintenance, Repair, and Replacement Costs. The cost of maintenance, repair, and replacement of a Party Wall or Party Fence shall be shared by the Owners pursuant to the terms of any written agreement entered into between the Owners thereof for that purpose. In the absence of such a written agreement, such costs shall be shared by the Owners who make use of the Party Wall or Party Fence in proportion to such use; provided that if a Party Wall or Party Fence is destroyed or damaged by fire or other casualty, any Owner who has used the Party Wall or Party Fence may restore it, and if the other Owners thereafter make use of the Party Wall or Party Fence, they shall contribute to the cost of restoration thereof in proportion to such use, without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions. There shall be an easement for reasonable repairs over the areas immediately adjacent to each side of all such walls and fences for the benefit of all persons having an interest therein as set forth further in Section 4.6 ("Party Wall and Party Fence Easements"). Notwithstanding the foregoing,

the responsibility for maintenance, repair, and replacement of Party Fences may be assumed by the Association if so determined by the Board.

- 10.5 Weatherproofing. Notwithstanding any other provision of this Article 10, an Owner who by his or her negligent or willful act causes an interior Party Wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.
- 10.6 Right to Contribution Runs with Land. The right of any Owner to contribution from any other Owner under this Article 10 shall be appurtenant to and run with the land and shall pass to such Owner's successors in title.
- 10.7 Party Wall or Party Fence Disputes. Party Walls and Party Fences are not Common Area and are not the responsibility of the Association. Any dispute concerning a Party Wall or Party Fence, or otherwise under the provisions of this Article 10, shall be subject to the alternative dispute resolution provisions in Section 14.17 ("Alternative Dispute Resolution Before Initiating Lawsuit").

ARTICLE 11 INSURANCE

- 11.1 Insurance Coverage to Be Maintained by Association. The Association shall procure and maintain, as a common expense of all Owners, the types of insurance described in Section 11.2 ("Master Hazard Insurance to Be Maintained by Association"), Section 11.3 ("General Liability Insurance to Be Maintained by Association"), and Section 11.4 ("Other Insurance to Be Maintained by Association"), if and to the extent such insurance, with the coverages described below, is available at a reasonable premium cost.
- 11.2 Master Hazard Insurance to Be Maintained by Association.
- 11.2.1 Scope of Coverage. The Association shall maintain a blanket policy of fire and extended coverage insurance covering (i) all of the Common Area and all furnishings, equipment, and personal property owned by the Association or owned in common by all of the Owners and (ii) the following real property improvements upon the Lots: (a) the building structure including any additions or extensions thereto; (b) all of the fixtures, machinery, and equipment permanently affixed to the building; windows, monuments, lighting fixtures, and exterior signs; (c) the standard fixtures installed within the structures upon the Lots at the time of original construction by the developer and any equivalent replacements and upgrades thereof, including but not limited to interior walls and doors; ceiling, floor and wall surface materials (for example, paint; wallpaper, mirrors, carpets, and hardwood floors); utility fixtures (including gas, electrical, and plumbing); cabinets, built-in appliances; heating and air-conditioning systems; water heaters installed as part of

the original construction and any equivalent replacement thereof; but excluding any personal property located within a structure upon the Lot; and (d) lawns, trees, shrubs and plants upon the Lots. The limits of coverage shall be equal to one hundred percent (100%) of the full insurable replacement costs exclusive of land, foundation, excavations, and other items normally excluded from coverage. The policy may contain a reasonable deductible and the amount of the deductible shall be added to the face amount of the policy in determining whether the insurance equals the replacement cost.

11.2.2 Policy Endorsements. The policy may include such endorsements as the Board, in its discretion, shall determine based on the character and replacement cost of the Common Area and Lot improvements from time to time, such as:

- (i) an agreed amount endorsement or its equivalent,
- (ii) an increased cost of construction endorsement or a contingent liability from operation of building laws endorsement or their equivalent,
- (iii) an extended coverage endorsement,
- (iv) coverage for costs of demolition,
- (v) glass coverage,
- (vi) coverage for loss or damage as a result of theft, vandalism, malicious mischief; coverage for equipment breakdown of any equipment required to run and operate the Development; and for sprinkler leakage; windstorm, or water damage,
- (vii) coverage to permit cash settlement covering full value of the improvements in case of partial destruction and a decision not to rebuild,
- (viii) coverage for demolition in the event of total or partial destruction and a decision not to rebuild, and
- (ix) maintenance fees receivable coverage in case of damage to a Lot by a covered peril and the Board is unable, after reasonable effort, to collect assessments from the Owner of the affected Lot.

11.2.3 General Policy Provisions. Such policy shall:

- (i) name the Association as the first-named insured and the Owners as named insureds with policy benefits payable to the Association as trustee for the Owners or any of them,
- (ii) contain a standard Mortgagee clause,
- (iii) provide a waiver of subrogation as to any and all claims against the Association, its officers and directors, the manager, and the Owners and a waiver of all defenses based upon acts of the insureds or the existence of co-insurance, and
- (iv) require that at least thirty (30) days' prior written notice be given to the Association by the insurer before cancellation except that in the case of cancellation for nonpayment of premiums or for fraud the notice shall be given no less than ten (10) days prior to the effective date of the cancellation.

11.2.4 Earthquake Insurance. The Association shall carry earthquake insurance with such coverage and deductibles as the Board may from time to time determine; *provided, however,* that if a Special Assessment in an amount requiring approval of the Members or an increase in the Annual Assessment in an amount requiring approval of the Members shall be required to fund the payment of the earthquake insurance premiums, and the Members shall fail to approve such Special Assessment or increase in the Annual Assessment, the Association shall not be obligated to maintain or procure earthquake insurance.

11.3 General Liability Insurance to Be Maintained by Association. The Association shall maintain commercial general liability insurance insuring the Association, its officers and directors, its managers, and the Owners against any liability incident to ownership, maintenance, and repair of the Common Area, but excluding the liability of an Owner incident to personal bodily injury and property damage occurring within that Owner's Lot or in any other Lot or upon the Common Area resulting from the negligence of that Owner. Limits of liability shall be set by the Board but shall in no event be less than Two Million Dollars (\$2,000,000).

11.3.1 Scope of Coverage. Such liability insurance policy shall insure against bodily injury, death, or property damage occurring in, on or about any portion of the Common Area and, if available at a reasonable cost as determined by the Board, shall include:

- (i) water damage liability,

- (ii) hired and non-owned vehicle coverage, theft and collision coverage,
- (iii) liability for property of others,
- (iv) off-premises employee coverage, and
- (v) such other risks as are customarily covered in townhouse developments.

The City of Santa Clara shall be named as an additional insured in said policy.

11.3.2 Other Provisions. If available and at a reasonable cost as determined by the Board, such liability insurance policy:

- (i) shall name the Association as a first-named insured and Owners as named insureds, with policy benefits payable to the Association as trustee for the Owners or any of them;
- (ii) shall contain a waiver of subrogation as to claims against the Association, the Board members, the Owners and members of the Owner's family who reside with such Owner, except in cases of arson or fraud;
- (iii) shall contain a waiver of the defense of invalidity on account of the conduct of any Owner over which the Board has "no control;"
- (iv) shall require that at least thirty (30) days' prior written notice be given to the Association by the insurer before cancellation except that in the case of cancellation for nonpayment of premiums or for fraud the notice shall be given no less than ten (10) days prior to the effective date of the cancellation;
- (v) shall provide that in no event shall the insurance be brought into contribution with insurance purchased individually by Owners or their Mortgagees;
- (vi) shall exclude policies obtained by the individual Owners from consideration under any "other insurance" clause; and
- (vii) shall contain a provision requiring the insurer to defend lawsuits for which there is coverage under the policy even if the allegations are fraudulent, but authorizing the insurer to make such investigation and settlement of any claim or suit within the policy limit as it deems expedient.

11.4 Other Insurance to Be Maintained by Association.

11.4.1 Directors' and Officers' Insurance. The Association shall maintain directors' and officers' liability insurance with limits to be set by the Board but in no event less than Five Hundred Thousand Dollars (\$500,000) or any higher applicable limit set forth in *Civil Code* section 5800, and containing a cross-liability endorsement and waiver of subrogation as to the Association, the officers, and the directors, and the agents and employees of any of them. Coverage for prior acts, to the extent obtainable, shall be included.

11.4.2 Workers' Compensation Insurance. The Association shall maintain workers' compensation insurance to the extent necessary to comply with any applicable laws and may carry such insurance at any time as determined by the Board.

11.4.3 Fidelity Bond. In accordance with *Civil Code* section 5806, the Association shall maintain a standard fidelity bond covering dishonest acts on the part of officers and directors of the Association, the manager, and any employees or volunteers who are responsible to handle funds of the Association, including computer fraud and funds transferred fraud. Such bond shall name the Association as obligee, shall be written in an amount which shall be determined by the Board but in no event less than the combined amount of the Association's reserves and total Assessments for three (3) months, and shall contain a waiver of any defense based on the exclusion of persons serving without compensation.

11.4.4 Other Insurance. The Association may maintain at any time and from time to time any other insurance, including but not limited to flood insurance, and bonds as the Board may from time to time deem necessary or desirable.

11.5 Insurance to Be Maintained by Owner. Owners shall have the following obligations and rights to carry individual insurance:

11.5.1 HO6 Owner's Policy. Each Owner shall be responsible, at his or her sole expense, to carry an "HO6 Owner's Policy" or the equivalent covering the following risks which are not covered by the insurance policies carried by the Association:

- (i) the Owner's individual liability for damage to property or injury to person of others occurring within the Lot, recommended to be in an amount not less than Three Hundred Thousand Dollars (\$300,000) for each occurrence or in such other amount as the Board may establish from time to time by Rule;

- (ii) property damage to contents and personal property within the Owner's Lot in such amount as the Owner shall determine is adequate;
- (iii) loss assessment coverage (recommended to be in an amount not less than Fifty Thousand Dollars (\$50,000)); and
- (iv) insurance to pay the deductible under the blanket insurance policy carried by the Association pursuant to Section 11.2 ("Master Hazard Insurance to Be Maintained by Association") in an amount not less than the deductible under that policy or such amount as the Owner shall determine is adequate.

11.5.2 No Overlapping Coverage. No Owner shall obtain or maintain any policy of insurance that reduces the amount of coverage under any policy obtained or maintained by the Association pursuant to Section 11.2 ("Master Hazard Insurance to Be Maintained by Association"), Section 11.3 ("General Liability Insurance to Be Maintained by Association"), or Section 11.4 ("Other Insurance to Be Maintained by Association"). If any Owner violates the provisions of this Section 11.5.2, any diminution in insurance proceeds otherwise payable to the Association that results from the existence of such other insurance will be chargeable to the Owner who acquired such other insurance and each Owner hereby assigns to the Association the proceeds of any such policy to the extent any such decrease in proceeds in fact occurs (such proceeds to be applied pursuant to the Declaration as if produced by the Association's coverage). Such Owner will be liable to the Association to the extent of any diminution and the Association shall levy a Reimbursement Assessment against such Owner in the amount of such diminution.

11.5.3 Other Owner-maintained Insurance. Each Owner shall be responsible, at his or her sole cost and expense, to obtain such other insurance as the Owner shall determine is adequate to cover such other risks as the Owner shall determine, including but not limited to loss of use or loss of rental income.

11.5.4 Evidence of Insurance; No Obligation of Association. Upon request from the Board, each Owner shall provide evidence of such insurance annually. If an Owner fails to obtain any insurance he or she is obligated or permitted to obtain pursuant to this Declaration, nothing in this Declaration shall be construed to impose any obligation whatsoever on the Association to insure that which the Owner does not insure. The right of the Board to request evidence of insurance that an Owner is obligated to carry pursuant to this Declaration shall not be deemed to impose a duty on the Board or the Association to request

such evidence of insurance or impose on the Association any liability to any person arising or claimed to arise out of any action or inaction by the Board, the Association or anyone acting on the Association's or the Board's behalf with respect to verifying any Owner's compliance with the Owner's obligation to carry insurance.

11.6 Insurance Proceeds. Proceeds of all insurance policies owned by the Association shall be received by the Association and shall be distributed to the Association, the Owners, and their Mortgagees subject to the provisions of the Declaration as their interest may appear; *provided, however*, that whenever repair or reconstruction is required, the proceeds of any insurance received by the Association as a result of any loss shall be applied to such repair or reconstruction except to the extent of any excess insurance proceeds as provided in Section 12.2.4 ("Excess Insurance Proceeds").

11.7 Responsibility for Payment of Deductible.

11.7.1 Damage to Common Area. Subject to the provisions of Section 9.10 ("Owner's Liability to Association for Negligent Damage"), in the event of damage to the Common Area that is covered by the hazard insurance policy maintained by the Association pursuant to Section 11.2 ("Master Hazard Insurance to Be Maintained by Association"), the deductible shall be paid by the Association.

11.7.2 Damage to Lot. In the event of damage to a Lot that is covered by the blanket hazard insurance policy maintained by the Association pursuant to Section 11.2 ("Master Hazard Insurance to Be Maintained by Association"), the Owner of the damaged Lot shall pay the deductible. In the event of earthquake damage to a Lot that is covered by an earthquake insurance policy maintained by the Association for the benefit of the Lots, the deductible under such earthquake insurance policy shall be assessed as a Reimbursement Assessment equally against all Owners.

11.7.3 Allocation of Deductible. In the event of a single casualty that results in damage to Common Area and to one (1) or more Lots which damage is covered by the hazard insurance carried by the Association pursuant to Section 11.2 ("Master Hazard Insurance to Be Maintained by Association"), the obligation to pay the deductible shall be allocated between the Association and the affected Lot Owner(s) in proportion to the claim settlement amount received by each party.

11.7.4 Tort Damages. Nothing in this Section 11.7 shall be deemed to affect any person's right to recover the amount of any deductible paid by such person from any other person responsible for the loss under tort or other theories of liability.

- 11.8 Owner's Liability for Conditions Affecting Insurance. As provided in Section 5.11 ("Conditions Affecting Insurance"), the responsible Lot Owner shall be liable to the Association if anything is done, placed, or kept within the Development that increases the rate of insurance or results in the cancellation of insurance under any insurance policy maintained by the Association.
- 11.9 Insurance Carriers. All insurance policies carried by the Association shall be written by companies that are not prohibited from doing business in the State of California.
- 11.10 Annual Review of Policies. The limits and coverage of all insurance policies carried by the Association shall be reviewed at least annually by the Board and increased or decreased in its discretion.
- 11.11 Coverage Not Available; Disclaimer. In the event any insurance policy or any endorsement listed in Section 11.2 ("Master Hazard Insurance to Be Maintained by Association"), Section 11.3 ("General Liability Insurance to Be Maintained by Association"), and Section 11.4 ("Other Insurance to Be Maintained by Association"), is for any reason not available, then the Association shall obtain such other or substitute policy or endorsement as may be available which provides, as nearly as possible, the coverage described above. The Association, and its directors and officers, shall have no liability to any Lot Owner or Mortgagee if, after good faith effort, it is unable to obtain or maintain the insurance required pursuant to Section 11.2, Section 11.3, and Section 11.4 because the insurance is no longer available or, if available, can be obtained or maintained only at a cost that the Board in its sole discretion determines is unreasonable under the circumstances, or the Members fail to approve any Special Assessment or increase in the Annual Assessment needed to fund the insurance premiums. In accordance with *Civil Code* section 5810, as soon as reasonably practicable, the Association shall notify the Members by Individual Notice if any of the Association's policies described in the Association's annual budget report have lapsed or been canceled, and are not immediately renewed, restored, or replaced, or if there is a significant change, such as a reduction in coverage or limits or an increase in the deductible for any of those policies. If the Association receives any notice of non-renewal of an Association's policy described in the Association's annual budget report and replacement coverage will not be in effect by the date the existing coverage will lapse, the Association shall immediately notify the Members by Individual Notice.
- 11.12 Copies of Policies. Copies of all insurance policies (or certificates of insurance) and paid invoices showing that premiums have been paid shall be retained by the Association and shall be available for inspection by Owners at any reasonable time.
- 11.13 Adjustment of Losses. The Board is appointed attorney-in-fact by each Owner to file all claims and to negotiate and agree on the value and extent of any loss under any policy carried by the Association pursuant to Section 11.2 ("Master

Hazard Insurance to Be Maintained by Association”), Section 11.3 (“General Liability Insurance to Be Maintained by Association”), and Section 11.4 (“Other Insurance to Be Maintained by Association”). The Board is granted full right and authority to compromise and settle any claims or enforce any claim by legal action or otherwise and to execute releases in favor of any insured.

- 11.14 Premiums. The costs of insurance obtained by the Association shall be a common expense of the Association, shall be included in the Annual Assessment, and shall be paid for out of the operating fund of the Association.

ARTICLE 12 DAMAGE OR DESTRUCTION; CONDEMNATION

- 12.1 Emergency Repairs. Without waiting to obtain insurance settlements or bids, the Board may undertake such emergency repair work after a casualty as it may deem necessary or desirable under the circumstances including but not limited to mitigating or removing dangerous conditions and other actions that may be necessary to comply with applicable laws, ordinances, and regulations; and the Board may charge the operating account for the costs thereof.
- 12.2 Damage to Common Area. In the event of damage to or destruction of the Common Area including Exclusive Use Common Area, or other property of the Association or any part thereof, then the following provisions shall apply:
- 12.2.1 Amount of Insurance Proceeds. The Board shall obtain a determination of the amount of available insurance proceeds that will be recovered from the Association’s insurance carrier(s).
- 12.2.2 Bids. The Board shall obtain such bids from responsible licensed contractors as the Board deems appropriate to restore the damaged or destroyed property to its condition immediately prior to such damage or destruction (including compliance with current building code and ordinance requirements and any modifications approved by the Board), including provision for a completion bond.
- 12.2.3 Sufficient Proceeds. If the insurance proceeds paid to the Association are sufficient to cover the costs of restoration, the Board shall contract with such contractor as the Board in its discretion shall determine and proceed to perform the restoration.
- 12.2.4 Excess Insurance Proceeds. Any excess insurance funds shall be deposited in the operating account of the Association.
- 12.2.5 Insufficient Proceeds; Decision Not to Repair. If the insurance proceeds, together with reserve funds, if any, allocated for replacement of the damaged or destroyed improvement, are insufficient to cover the

costs of repair or replacement of the property damaged or destroyed, the Association may levy a Special Assessment against the Members of the Association up to the maximum amount permitted without a Member approval vote as provided in Section 8.8.2 ("Permitted Amount of Special Assessments") to cover the cost of the repair or replacement not covered by the insurance proceeds. If the sum of insurance proceeds, allocated reserve funds, and Special Assessment funds equals less than eighty-five percent (85%) of the cost of repair or replacement, the Members may elect not to cause such replacement or repair by the vote of at least seventy-five percent (75%) of the Total Voting Power of the Association. In that event, the damaged Common Area shall be cleared and landscaped; *provided, however*, that there shall exist in such Common Area adequate vehicular and pedestrian rights-of-way for Owners to ensure legal access to each Owner's Lot and the costs thereof shall be paid from the insurance proceeds, any allocated reserve funds and, if necessary, the other funds of the Association. Any remaining insurance proceeds shall be used in the manner determined by the Board, provided that such use shall not be inconsistent with the purposes of the Association.

- 12.2.6 Alternative Repair Plan. If a decision not to rebuild is approved pursuant to Section 12.2.5 ("Insufficient Proceeds; Decision Not to Repair"), the Board shall use such funds as are available to repair or stabilize the damaged Common Area according to such alternative plan as the Board shall deem appropriate under the circumstances.

12.3 Damage to a Single Lot.

- 12.3.1 Owner to Repair. If a single Lot is damaged or destroyed by fire or other casualty, the available insurance proceeds shall be paid to the Owner(s) of such Lot, or the Mortgagee(s) thereof, as their respective interests appear, and such Owner(s) or Mortgagee(s) shall use the same to rebuild or repair such Lot to its condition prior to the damage or destruction, or to such other condition as shall have been approved in advance by the Board pursuant to Article 7 ("Architectural Approval").
- 12.3.2 Commencement and Completion of Repair. Repair or rebuilding shall be commenced and completed within the times specified in Section 7.14 ("Commencement of Approved Work") and Section 7.16 ("Completion; Extension of Deadline").
- 12.3.3 Insufficient Insurance Proceeds. In the event the insurance proceeds are insufficient to complete such work, the Lot Owner shall pay such additional sums as may be necessary to complete such rebuilding and repair.

12.3.4 Failure to Timely Restore. In the case of total or substantially total destruction of a Dwelling, if restoration is not commenced within one (1) year after the occurrence of the destruction, the Board may require that the foundation and other installations be removed and the Lot restored to a safe, orderly, and natural condition. Nothing in the preceding sentence shall be deemed to limit the right of the Association to otherwise enforce the obligation of an Owner to restore or rebuild the damaged structures and restore the Lot as provided in Section 12.3.1 ("Owner to Repair").

12.4 Damage to Two or More Lots.

12.4.1 Restoration by Association. If two (2) or more Lots are damaged or destroyed by fire or other casualty, the amount of available insurance proceeds shall be paid to the Association. If the estimated cost of repair is in excess of Five Thousand Dollars (\$5,000), the Board shall obtain bids from three (3) or more qualified contractors. The Board shall thereupon contract to repair or rebuild the damaged portions of the Lots to their condition prior to the damage or destruction, or to such other condition as shall have been approved in advance by the Board pursuant to Article 7 ("Architectural Approval").

12.4.2 Insufficient Insurance Proceeds. In the event the insurance proceeds, if any, together with reserve funds, if any, allocated for replacement of the damaged or destroyed improvement (for example, roof reserves allocable to the damaged Lot), are insufficient to pay all of the costs of repairing and/or rebuilding the non-earthquake damage, the Board shall levy a Reimbursement Assessment against each affected Owner in the amount of the deficiency for his or her Lot; *provided, however,* that in the event of earthquake damage that is covered by an earthquake insurance policy maintained by the Association for the benefit of the Lots, the deductible under such earthquake insurance policy shall be assessed as a Reimbursement Assessment equally against all Owners as provided in Section 11.7 ("Responsibility for Payment of Deductible").

12.4.3 No Obligation of Association to Advance Funds. Nothing in this Declaration shall be deemed to require the Association to contract for or perform any repair or rebuilding upon a Lot unless and until sufficient funds therefor have been remitted to the Association.

12.4.4 Excess Insurance Funds. In the event any excess insurance proceeds other than earthquake insurance remain, such proceeds shall be distributed to the Owners of the damaged Lots and their Mortgagees as their interest shall appear. In the event of excess earthquake insurance proceeds, such proceeds shall be deposited in the

Association's operating account or reserve account, as the Board shall determine.

12.5 Condemnation of Common Area.

12.5.1 Association to Represent Owners. If at any time all or any portion of any Common Area, or any interest therein, shall be taken for any public or quasi-public use under any statute, by right of eminent domain, or by private purchase in lieu of eminent domain, the Association shall represent the interests of all Owners in any proceedings relating to such condemnation to the extent such Owners have any interest in the Common Area.

12.5.2 Condemnation Award. The entire compensation or award in condemnation, to the extent such award is not apportioned among the Owners by court judgment or by agreement between the condemning authority and each of the affected Owners in the Development, shall be paid to the Association and shall be used in the manner determined by the Board, provided that such use shall not be inconsistent with the purposes of the Association.

12.6 Condemnation of Lots.

12.6.1 Total Condemnation of Lot. If an entire Dwelling or Lot, or so much thereof as to render the remainder unfit for use as a Dwelling, is condemned or taken for a public or quasi-public use pursuant to any statute, by right of eminent domain, or by private purchase in lieu of eminent domain, the Owner's membership in the Association shall terminate as of the last day of the month in which the condemner obtains the right to possession, or upon the Owner vacating the Lot, whichever occurs last.

12.6.2 Partial Condemnation of Lot. If only a portion of a Dwelling or Lot is taken and the remainder is fit for use as a Dwelling, the Owner shall continue to be a Member of the Association.

12.6.3 Rights of Association. In any condemnation action involving an Owner's Dwelling or Lot, the Association shall have the right to seek compensation for any damages incurred by the Association.

12.7 Revision of Documents. In the event of (i) a partial or complete condemnation of the Common Area or the taking of all or a portion of the Common Area by right of eminent domain or by private purchase in lieu of eminent domain, (ii) condemnation or taking of one (1) or more Lots, or (iii) a decision by the Association by affirmative act or failure to act, not to repair damaged Common Area, the Association shall have the power and authority to resurvey the remaining portion of the Development and to execute and record, on behalf of

itself and the individual Owners, all necessary documents to show the altered status of the Development, including but not limited to a revised Subdivision Map and an amended Declaration and readjustment of the percentages of undivided interest of the remaining Owners in the Development, if applicable.

ARTICLE 13 RIGHTS OF MORTGAGEES

- 13.1 Mortgages Permitted. Any Owner may encumber his or her Lot with a Mortgage. Any Owner who encumbers his or her Lot with a Mortgage shall notify the Association in writing of the name and address of his or her Mortgagee and Mortgage insurer, if any.
- 13.2 Intention to Conform to Mortgagees' Requirements. It is intended that the Declaration, the Bylaws, the Articles of Incorporation and the Development in general shall be able to meet the requirements necessary to purchase, guarantee, insure, or subsidize any First Mortgage of a Lot in the Development by the Federal Home Loan Mortgage Corporation and the Federal National Mortgage Association or any other or successor institution(s) serving the same or similar function. To that end, the Board is authorized, but not obligated, to take such action or adopt such resolution required by any Institutional Mortgagee to bring the Declaration or the Bylaws or the Development into conformity with the requirements of any of these entities or agencies as the Board in its discretion shall determine is reasonably achievable and consistent with the interests of the Association and of its Members as a whole.
- 13.3 Subordination of Assessment Lien. Assessment liens shall be subordinate to the lien of First Mortgages to the extent provided in Section 8.22 ("Subordination to Lien of First Mortgage").
- 13.4 Notice of Mortgage Default. Each Mortgagee of a Lot shall give the Association written notice of default by its mortgagor under the Mortgage within ten (10) days following recordation of a notice of default in accordance with the provisions of *Civil Code* section 2924b or any amendment or superseding statute.
- 13.5 Mortgage Protection. No breach of any of the covenants, conditions and restrictions nor the enforcement of any lien provisions contained in this Declaration shall render invalid the lien of any First Mortgage made in good faith and for value on any Lot, but all of the covenants, conditions, and restrictions shall be binding upon and effective against any Owner whose title is derived through foreclosure, trustee's sale or otherwise.

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ARTICLE 14 ENFORCEMENT; NOTICE; HEARINGS

- 14.1 Violations As Nuisance. Every act or omission constituting or resulting in a violation of any of the provisions of the Governing Documents shall be deemed to constitute a nuisance and, in addition to any other remedies which may be available, such nuisance may be abated or enjoined by the Association or its officers or Board of Directors or by any Owner; *provided, however*, that the Board shall not be obligated to take action to abate or enjoin a particular violation if, in the exercise of its discretion, the Board determines that acting to abate or enjoin such violation is not likely to foster or protect the interests of the Association and its Members as a whole. Notwithstanding the preceding sentence and without limiting the generality of the proviso therein, nothing in the Governing Documents shall be deemed to impose upon the Association, the Board, or the officers, employees, or agents of the Association a duty to intervene in any physical dispute or altercation or any criminal or alleged criminal activity other than to notify law enforcement officials.
- 14.2 Violation of Law Is a Violation of the Declaration. Any violation of a state, municipal, or local law, ordinance or regulation pertaining to the ownership, occupancy, or use of any property within the Development is hereby declared to be a violation of this Declaration and subject to any and all of the enforcement procedures set forth herein.
- 14.3 Owner's Responsibility for Conduct and Damages. Each Owner shall be fully responsible for informing members of his or her household, Contract Purchasers, tenants, invitees, and guests of the provisions of the Governing Documents, and shall be fully responsible for the conduct, activities, and any Governing Document violation of any of them, and for any damage to the Development or the Association resulting from the negligent or intentional conduct of any of them or the conduct of any pet belonging to any of them. If a Lot is owned jointly by two (2) or more persons, the liability of each Owner in connection with the obligations imposed by the Governing Documents shall be joint and several; that is, each co-Owner individually shall be fully liable and responsible and all co-Owners collectively shall be fully liable and responsible. The foregoing provisions of this Section 14.3 are in addition to and shall not limit the generality of the provisions of Section 5.8.2 ("Indemnification Regarding Business Activity"), Section 5.14 ("Animals"), Sections 6.8 ("Association As Third Party Beneficiary"), Section 6.9 ("Indemnification Regarding Tenant's Actions"), and Section 7.21 ("Disclaimer of Liability").
- 14.4 No Avoidance. No Owner may avoid the burdens or obligations imposed by the Governing Documents through non-use of any Common Area facilities or by abandonment of his or her Lot.
- 14.5 Enforcement Rights Are Cumulative. To the fullest extent permitted by law, including *Civil Code* section 5975, the Association, its directors, officers, or

agents, and any Owner shall have the right to enforce any and all provisions of the Governing Documents by any proceeding at law or in equity, or, with respect to action by the Association, through the use of such other remedies (including self-help remedies that do not breach the peace or otherwise violate applicable law or this Declaration) as are available and deemed appropriate by the Board. Each remedy provided is cumulative and not exclusive.

- 14.6 Injunctions. Except for the nonpayment of any Assessment levied pursuant to the provisions of this Declaration, it is hereby declared that a remedy at law to recover damages for a default in the performance of any of the terms and provisions of any of the Governing Documents or for the breach or violation of any such provisions is inadequate and that the failure of any Owner, Contract Purchaser, member of his or her household, tenant, invitee, guest, or household pets or any other occupant or user of any of the property within the Development to comply with any provision of the Governing Documents may be enjoined in any judicial proceedings initiated by the Association, its officers or Board of Directors, or by any Owner or by their respective successors in interest.
- 14.7 Limitation on Association's Disciplinary Rights. To the extent provided in *Civil Code* section 4510, the Association shall not have the power and authority to cause a forfeiture or abridgment of an Owner's right to the full use and occupancy of his or her Lot as the result of the failure by such Owner, members of his or her household, Contract Purchaser, tenants, invitees, guests or pets to comply with any provision of the Governing Documents, except where such forfeiture or abridgment is the result of the judgment of a court of competent jurisdiction, a decision arising out of an arbitration proceeding, or a foreclosure or sale under private power of sale for failure of such Owner to pay Assessments levied by the Association pursuant to this Declaration and except to the extent of the Association's rights pursuant to Section 8.18 ("Assignment of Rents As Security for Payment"). The provisions of this Section 14.7 shall not affect the Association's right to impose other sanctions including imposing Enforcement Assessments as provided in Section 14.8 ("Imposing Sanctions").
- 14.8 Imposing Sanctions. Upon an explicit finding and for reasons specified by the Board following a hearing called by the Board and conducted in accordance with this Article 14, the Board shall have the power to impose sanctions on a Member who is in default in the payment of any Assessment or Additional Charge levied by the Board or is found to be in violation of any provision of the Governing Documents. Sanctions may include loss of Good Standing, suspension of other rights, and/or monetary penalties (fines), as described below.
- 14.8.1 Loss of Good Standing. The Board may suspend a Member's good standing for so long as the Member remains in default of such payment or until the violation is remedied. When a Member is not in good standing, the Member (or in the case of a Member that is not a natural person, its representative) shall be disqualified from serving on the Board.

- 14.8.2 Suspension of Other Rights. The Board may suspend a Member's or a Resident's right to use Common Area recreational facilities for so long as a Member remains in default of such payment, or for such period as may be specified by the Board if the violation involves misbehavior related to Common Area recreational facilities.
- 14.8.3 Monetary Penalties (Fines). The Board may adopt a policy imposing monetary penalties or fines (which shall constitute Enforcement Assessments) pursuant to *Civil Code* section 5850. Such policy, if adopted, shall be distributed to the Members in the annual policy statement pursuant to *Civil Code* section 5310. Multiple fines may be imposed for multiple violations. The schedule of fines may be changed by the Board by a Rule change pursuant to *Civil Code* section 4360 and following.
- 14.8.4 Monthly Sanctions for Continuing Violations. In the case of a continuing violation, such as an uncorrected architectural violation where an Owner fails to remedy the violation after notice from the Board to do so, the Board may impose sanctions, including monetary penalties, such sanctions to remain in effect for a period of one (1) month or until the continuing violation is remedied, whichever occurs sooner. (By way of example and not limitation, a violation in the nature of parking every day in a prohibited parking space would *not* constitute a "continuing violation" but each instance would constitute a separate violation.) If the continuing violation has not been remedied within the one-month period, the Board may impose separate and successive sanctions for the continuing violation, provided the Board conducts a separate hearing, not more frequently than once a month, before imposing each successive sanction. The Board may limit the scope of such hearing to facts and circumstances occurring subsequent to the previous hearing relating to the subject continuing violation.
- 14.8.5 Reimbursement Assessment Not a Sanction. The imposition of a Reimbursement Assessment pursuant to the Declaration does not constitute and shall not be deemed to be a sanction.
- 14.9 Investigation of Complaints. Upon receipt of a written complaint from an Owner or a Resident regarding an alleged violation of the Governing Documents, the Board shall conduct an investigation of the allegations in the complaint and shall make relevant findings upon which the Board shall base a decision to pursue or not pursue the matter. If the Board decides not to pursue a matter, it shall notify the complaining party in writing stating the reason(s) for its decision.
- 14.10 Written Notice of Violation. If the Board determines, whether on its own initiative or pursuant to a written complaint, that a violation of the Governing Documents

exists or has occurred, it shall notify the responsible Owner(s) by written notice in compliance with Section 14.11 ("Notices: Content, Delivery").

14.11 Notices: Content, Delivery. Any notice of violation required or given under this Article 14 shall be in writing and shall comply with *Civil Code* section 5855 as to content and time of service and with *Civil Code* section 4040 as to method of service.

14.11.1 Content of Notice of Violation. Any notice given by the Association to a Member shall comply with *Civil Code* section 5855 and shall, at a minimum, set forth a brief description of the act or omission constituting the alleged violation of the Governing Documents; a reference to the specific Governing Document provision or provisions alleged to have been violated; if applicable, a statement that the Member may request a hearing by the Board; the date, time, and location of any hearing called by the Board; and any sanction, disciplinary action, or other enforcement action being contemplated by the Board.

14.11.2 Delivery of Notice. Any notice may be given by any method provided for in *Civil Code* section 4040; *provided, however*, that (i) if notice is given by mail, it shall be sent postage prepaid by United States first-class mail and/or by certified mail, return-receipt requested; and (ii) if given by the Association to a Member, it shall be sent to the most recent address for the affected Member as shown on the records of the Association. Pursuant to *Civil Code* section 4050(b), if sent by United States mail, delivery of such is deemed complete upon deposit in the United States mail, postage prepaid. Pursuant to *Civil Code* section 4050(c), if such notice is sent by electronic means, delivery is deemed complete at the time of transmission.

14.11.3 Owner's Address for Notice. It shall be each Owner's responsibility to notify the Association in writing of any change in the Owner's address for the purpose of receiving notices from the Association. The fact that a different address appears on correspondence to the Association from an Owner shall not constitute such written notice, unless it is expressly stated that such address is a change of address for the purpose of receiving notice from the Association. Upon transfer of title to a Lot, the transferee shall be responsible for notifying the Association of such transfer. The notification shall set forth the address of the Lot, the names of the transferee and the transferor, and the date of sale or other transfer. Prior to receipt of such notification, any and all communications required or permitted to be given by the Association or the Board to the Lot Owner shall be deemed to be duly made and given to the transferee if duly and timely made and given to the person shown as the Owner of the Lot and at the address in the Association's records.

- 14.11.4 Notice to Co-Owners or Occupants. Unless otherwise provided by law, when a Lot is owned by two (2) or more co-Owners or is occupied by two or more occupants, notice to one (1) Owner or to one occupant shall be deemed notice to all Owners or to all occupants, as the case may be.
- 14.12 Hearing Called by the Board; Executive Session; Open Meeting. To the extent required by *Civil Code* section 5855, whenever the Board determines to conduct a hearing, it shall notify the affected Owner(s) and/or Resident(s) in writing by Individual Delivery, at least ten (10) days before the Board meeting at which the matter will be considered. If the matter concerns Member discipline or the imposition of sanctions, the Board shall meet in executive session if requested by the Member, *unless* (and then only to the extent) applicable law requires that certain actions by the Board be conducted at an open meeting of the Board, such as *Civil Code* section 5673 concerning a decision to record a lien for delinquent Assessments. If the matter concerns compliance with architectural approval requirements, the hearing shall be conducted in open meeting pursuant to *Civil Code* section 4765. In the Board's discretion, other interested person(s) may attend a hearing and may present information relevant to the subject matter of the hearing. If a notified Owner or Resident fails to attend a noticed hearing, the Board may nevertheless conduct its deliberations and make a determination based on its own investigation and any other information supplied to it that the Board deems reasonably reliable.
- 14.13 Owner's Request for Hearing. An Owner who has received a notice of violation sent pursuant to Section 14.10 ("Written Notice of Violation") or a notice of corrective action sent pursuant to Section 14.15 ("Enforcement by Association in Emergency Situations") or as otherwise provided in the Governing Documents, may request a hearing before the Board by submitting a written request to the Board. If an Owner requests a meeting to discuss a payment plan for a past due debt owed to the Association, the meeting shall be scheduled and conducted as provided in Section 8.15.3 ("Owner's Right to Discuss Payment Plan"). If the Owner is requesting a hearing concerning a notice of violation sent pursuant to Section 14.10 or a notice of corrective action sent pursuant to Section 14.15, the request for hearing must be submitted within ten (10) days after the date of such notice. The Board shall schedule a hearing at its next regular meeting that is at least five (5) days after its receipt of an Owner's request for hearing or, in the Board's discretion, at another time agreed by the Board and the Owner. Hearings shall be conducted in executive session or at an open meeting as provided in Section 14.12 ("Hearing Called by the Board; Executive Session; Open Meeting").
- 14.14 Notice of Hearing Decisions. Within fifteen (15) days after a hearing is conducted, the Board shall notify the Owner or Resident in writing as to its decision. If the Board decides to impose sanctions, the notice shall describe the sanctions imposed and, if applicable, their effective dates.

14.15 Enforcement by Association in Emergency Situations.

14.15.1 Definition of Emergency Situation. For purposes of this Section 14.15, the following shall constitute emergency situations:

- (i) an immediate and unreasonable infringement of or threat to the safety or peaceful enjoyment of Residents of the Development,
- (ii) a traffic or fire hazard,
- (iii) a threat of material damage to or destruction of the Development or any portion thereof,
- (iv) a violation of any provision of the Governing Documents that is of such a nature that there is no material question regarding the identity of the violator or whether the violation has occurred (such as parking violations).

14.15.2 Immediate Corrective Action. Notwithstanding any other provisions of the Governing Documents, under circumstances that constitute an emergency, the Board or its duly-authorized agents may undertake immediate corrective action. The Board shall promptly thereafter send written notice of corrective action to the affected Owner including notice of any Reimbursement Assessment assessed to the Owner for costs incurred by the Association in connection therewith. If the Owner requests a hearing pursuant to Section 14.13 ("Owner's Request for Hearing"), enforcement of any Reimbursement Assessment imposed by the Board shall be held in abeyance and shall be pursued only if affirmed by the Board at the hearing.

14.16 Internal Dispute Resolution.

14.16.1 Fair, Reasonable, and Expeditious Procedure. The provisions of Article 7 ("Architectural Approval") and of Section 14.9 ("Investigation of Complaints") through Section 14.15 ("Enforcement by Association in Emergency Situations") are intended to provide a fair, reasonable, and expeditious procedure for resolving disputes between the Association and any Member that are subject to *Civil Code* sections 5900 through 5920 (which apply to, among other things, enforcement of applicable provisions of the *Corporations Code* and enforcement of the Governing Documents). The above-referenced provisions of the Declaration shall constitute the Association's "internal dispute resolution" process as required by *Civil Code* section 5905.

14.16.2 Statutory Default Procedures. If the Association fails to comply with the Association's internal dispute resolution process, then the

Association and the affected Member shall abide by the statutory default procedures provided in *Civil Code* section 5915, or successor statute. Any resolution so agreed upon by the parties thereto, that is not in conflict with the law or the Governing Documents, shall bind the parties and shall be judicially enforceable as provided in *Civil Code* section 5910.

14.16.3 Alternative Dispute Resolution May Also Apply. If (a) the subject matter of the dispute (including, among other things, enforcement of applicable provisions of the *Corporations Code* and enforcement of the Governing Documents) and the remedy sought (including certain kinds of declaratory, injunctive, or writ relief, which may be in conjunction with certain limited monetary relief, but excluding small claims actions and excluding Assessment disputes) are subject to *Civil Code* sections 5925 through 5965 and (b) the Association and the affected Member do not agree on a resolution through the foregoing internal dispute resolution process provided for in Section 14.16.1 ("Fair, Reasonable, and Expeditious Procedure"), then no party to the dispute may pursue a civil remedy that is subject to *Civil Code* sections 5925 through 5965, without first complying with the "alternative dispute resolution" (hereinafter, "ADR") procedures set forth in that statute and referenced in Section 14.17 ("Alternative Dispute Resolution Before Initiating Lawsuit").

14.16.4 Annual Description of Internal Dispute Resolution Process. The Association shall annually provide the Members with a description of the internal dispute resolution process required by *Civil Code* section 5920 as part of the annual policy statement prepared pursuant to *Civil Code* section 5310. Such description may consist of a copy of Article 7 ("Architectural Approval") and Section 14.9 ("Investigation of Complaints") through this Section 14.16 ("Internal Dispute Resolution").

14.17 Alternative Dispute Resolution Before Initiating Lawsuit.

14.17.1 Annual Disclosure of ADR Process. As provided in *Civil Code* section 5965, the Association shall annually provide to its Members a summary of the provisions concerning ADR contained in *Civil Code* sections 5925 through 5965 as part of the annual policy statement prepared pursuant to *Civil Code* section 5310. Such summary may consist of a copy of this Section 14.17. Such summary shall include the following language:

"Failure of a member of the association to comply with the alternative dispute resolution requirements of Section 5930 of the *Civil Code* may result in the loss of the member's right to sue the association or another member of the association regarding enforcement of the governing documents or the applicable law."

- 14.17.2 When ADR Applies. The requirements of this Section 14.17 apply to civil action or proceedings as defined in *Civil Code* section 5925(b) when the remedy sought is solely for declaratory, injunctive, or writ relief or if for the foregoing relief in conjunction with monetary damages not in excess of the jurisdictional amount for a small claims action as stated in California *Code of Civil Procedure* sections 116.220 and 116.221, all as provided in *Civil Code* section 5930(b). *Civil Code* sections 5925 through 5965 apply to disputes between Members as well as to disputes between the Association and a Member. The ADR requirements of this Section 14.17 do not apply to Assessment disputes or to an action in small claims court.
- 14.17.3 Statutory ADR Process. In accordance with *Civil Code* sections 5925 through 5965, the Association or a Member may not file an "enforcement action" as defined in the statute unless the parties have endeavored to submit their dispute to "alternative dispute resolution" as the term is defined in *Civil Code* section 5925(a) and as the process is specified in *Civil Code* sections 5935, 5940, and 5945.
- 14.18 Non-waiver of Enforcement. Failure to enforce any provision of the Governing Documents at any time shall not be deemed a waiver of the right to do so thereafter with respect to the same or any other violation of any provision of the Governing Documents.
- 14.19 Costs and Attorney Fees. In an action to enforce the Governing Documents, the prevailing party shall, to the fullest extent permitted by law, including *Civil Code* section 5975, be entitled to recover the full amount of all costs including attorney fees incurred in responding to and/or in enforcing any Governing Document provision. Without limiting the generality of the foregoing, in the event an Owner pursuant to *Civil Code* section 4605 brings a civil action for violation of *Civil Code* section 4600 (concerning the granting of exclusive use of a portion of the Common Area to a Member) or pursuant to *Civil Code* section 4955, a civil action for violation of the Common Interest Open Meeting Act (*Civil Code* sections 4900 through 4955) if the Association shall prevail in any such action, the Association shall be entitled to recover reasonable attorney fees except to the extent prohibited by law. The remedies of the prevailing party to recover the amount of such costs, expenses, and attorney fees shall include, but shall not necessarily be limited to, the imposition of a Reimbursement Assessment.

ARTICLE 15 AMENDMENT

- 15.1 Required Approval. Subject to Section 15.2 ("Review and Optional Veto By City"), this Declaration may be amended by the affirmative vote of Members representing at least a majority of the Total Voting Power of the Association;

provided, however, that, upon advice of legal counsel licensed to practice law in the State of California including the drafting by legal counsel of appropriate amendatory provisions, the Board shall have the authority without the requirement of Member approval to amend any provision of the Declaration (i) to resolve any conflict between the Declaration and applicable law which may arise due to the enactment or amendment of a statute or due to a development in applicable case law or (ii) to conform the provisions of the Declaration to changes in applicable statutory law that impose requirements that are non-discretionary in nature. Notwithstanding the foregoing, the percentage of the voting power necessary to amend a specific provision shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that provision.

- 15.2 Review and Optional Veto by City. In accordance with City Code Chapter 18.54 entitled "Regulations for PD – Planned Development and Combined Zoning Districts," and more particularly as set forth in Section 18.54.080(c), or any future City ordinances or amendments related thereto, the City, at its option, has the right and authority to veto any amendment to the organizational documents that would adversely affect the long-term maintenance of the Development's structures or the Common Area. To enable the City to exercise said optional veto, and pursuant to the aforementioned ordinance, any amendment to this Declaration shall not become effective until sixty (60) days after notice of such proposed action is filed with the City Council and the Council has not vetoed the amendment.
- 15.3 Amendment Must Be Recorded. Any amendment of the Declaration shall be signed and acknowledged by the duly-authorized officer(s) of the Association and recorded in the Office of the County Recorder.
- 15.4 Presumption of Validity. There will be a presumption subsequent to the recording of an amendment to this Declaration pursuant to Section 15.3 ("Amendment Must Be Recorded") that all votes and consents required to pass the same pursuant to Section 15.1 ("Required Approval") were duly obtained in accordance with the Governing Documents and applicable law. Such presumption may be rebutted by an action commenced within one (1) year from the date the amendment is recorded. In the absence of any such action, such presumption shall thereafter become conclusive.

ARTICLE 16 GENERAL PROVISIONS

- 16.1 Headings. The headings used in this Declaration are for convenience only and are not to be used in interpreting the meaning of any of the provisions of this Declaration, or otherwise.

- 16.2 Severability. The provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any provision hereof shall not invalidate any other provisions hereof.
- 16.3 Liberal Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of fostering a plan of community ownership and occupancy and of management of the Development for the benefit of the community.
- 16.4 Amendment to Referenced Statutes; Time for Performance. References in the Declaration to particular statutes, including sections of the *Civil Code* or the *Corporations Code*, shall be deemed to include any successor statute and any amendments to existing or successor statutes. Whenever this Declaration states a time for the performance of any act by the Association which by law (as it may exist from time to time) must be performed at or within a specified time, the time for the performance of such act shall be deemed to be the widest timeframe permitted under then-applicable law.
- 16.5 Number; Gender. The singular shall include the plural and the plural the singular unless the context requires the contrary, and the masculine, feminine, and neuter shall each include the masculine, feminine, or neuter, as the context requires.
- 16.6 Exhibits. All exhibits attached to this Declaration are incorporated by this reference as though fully set forth herein.
- 16.7 Power of Attorney. To the extent necessary to carry out and enforce the provisions of this Declaration, an irrevocable power of attorney coupled with an interest is granted to the Association by the Owners and each of them.
- 16.8 Term. The covenants, conditions, restrictions, limitations, reservations, grants of easement, rights, rights-of-way, liens, charges, and equitable servitudes contained in this Declaration shall run with and shall benefit and burden all of the real property subject to this Declaration, including without limitation the Lots and Common Areas, and shall inure to the benefit of and be binding upon the Owners, the Association, its Board of Directors and officers, and their respective agents and successors in interest, for a term of twenty (20) years from the date of recordation of this Declaration and thereafter the term shall be automatically extended for successive periods of ten (10) years each, unless within the six (6) months prior to the expiration of the initial twenty-year term or that date or within six months prior to the expiration of any ten-year extension period a written instrument, approved by Owners entitled to vote and holding at least a majority of the Total Voting Power of the Association, terminating the effectiveness of this Declaration shall be recorded in the Office of the County Recorder of Santa Clara County, State of California.

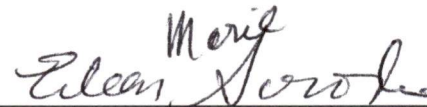
IN WITNESS WHEREOF, we, the Members of CASA DEL REY HOA OF SANTA CLARA, pursuant to the requisite approval, and by means of the signatures of the President and the Secretary, do hereby affirm, approve, and adopt the foregoing Amended and Restated Declaration of Covenants, Conditions and Restrictions of Casa del Rey HOA of Santa Clara, which Amended and Restated Declaration of Covenants, Conditions and Restrictions shall be recorded with the County Recorder of Santa Clara County, State of California.

DATED: February 3, 2023

CASA DEL REY HOA OF SANTA CLARA, a California nonprofit mutual benefit corporation



Keith S. Stattenfield, President



Eileen Marie Scrodin, Secretary

EXHIBIT A

(Recital Paragraphs A & B)

**List of Recorded Documents Superseded by
This Amended and Restated Declaration**

1. DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS, dated January 4, 1978, and recorded on January 13, 1978, in Book D404, at Page 359, as Document No. 5900662, Official Records of Santa Clara County, State of California;
2. FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS, dated August 18, 1980, and recorded on October 27, 1980, in Book F687, at Page 152, as Document No. 6882768, Official Records of Santa Clara County, State of California; and
3. SECOND AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS, dated May 3, 1982, and recorded on June 2, 1982, in Book G820, at Page 627, as Document No. 7379860, Official Records of Santa Clara County, State of California.

CERTIFICATE OF ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
COUNTY OF Santa Clara) ss.

On 2/3/2023, before me, Lauren Waters, Notary Public, personally appeared **KEITH S. STATENFIELD**, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature Lauren Waters (Seal)



