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1375

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Association

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AMENDED AND RESTATED

DECLARATION OF RESTRICTIONS

FOR

VISTA PARK VILLAS CONDOMINIUMS
A Residential Condominium Development

*Lots 2 and 3, Tract No. 72-6, Map No. 7537
City of Vista, County of San Diego, State of California*

FILE COPY

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EXHIBIT "B" - RECORDED RESTRICTIONS

EXHIBIT "C" - CONDOMINIUM PLANS

EXHIBIT "D" - MAINTENANCE LIST

AMENDED AND RESTATED DECLARATION OF RESTRICTIONS**FOR****VISTA PARK VILLAS CONDOMINIUMS**

THIS AMENDED AND RESTATED DECLARATION OF RESTRICTIONS is made on the day and year hereinafter written, by Vista Park Villas Condominium Association, a California nonprofit mutual benefit corporation ("Declarant"), with reference to the following Recitals.

RECITALS

A. Declarant is a corporation whose Members are the Owners of all the Condominium Units within that certain real property in the City of Vista, County of San Diego, State of California, more particularly described in Exhibit "A," attached hereto and incorporated herein by reference, hereinafter referred to as "Property."

B. The Property was developed as a Condominium Project, as defined in Section 1351(f) of the California Civil Code, and consists of ninety-two (92) Condominium Units, Association Common Area and Phase Common Areas.

C. Ownership of the Property is currently subject to the covenants, conditions, restrictions, rights, reservations, easements, equitable servitudes, liens and charges set forth in those certain Declaration of Restrictions and Enabling Declarations Establishing a Plan for Condominium Ownership more particularly described in Exhibit "B," attached hereto and incorporated herein by reference, hereinafter referred to together as "Declaration," unless the context clearly indicates otherwise.

D. Exhibit "A" to the Original Declaration contains the Condominium Plan, as hereinafter defined, showing the Units and Common Areas. Exhibit "A" to the Original Declaration is hereby incorporated herein by reference.

E. With the exception of Exhibit "A" to the Original Declaration, Declarant now desires to amend and restate the remaining provisions of the Declaration and replace them in their entirety with this Restated Declaration. Declarant further desires that, upon recordation of this Restated Declaration, the Property shall be subject to the covenants, conditions, restrictions, rights, reservations, easements, equitable servitudes, liens and charges contained herein and the provisions of the Exhibit "A" Condominium Plan of the Declaration, and that this Restated Declaration take the place of and relate back in time to the recording of the original Declaration.

F. The Declaration, in Paragraph W, provides that it may be amended by the affirmative vote or written consent of seventy-five

percent (75%) of the total voting power of the Association. The undersigned President and Secretary of the Association certify that, to the best of their knowledge, the affirmative vote or written consent of at least the required percentage of Association Members has been obtained.

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

ARTICLE 1 - DEFINITIONS

1.1 **"Articles"** means the Articles of Incorporation of Vista Park Villas Condominium Association, filed in the Office of the Secretary of State of the State of California on April 3, 1973 as File No. 0677996, and any amendments thereto now existing or hereafter adopted.

1.2 **"Association" and "Declarant"** means Vista Park Villas Condominium Association, a California nonprofit mutual benefit corporation created for the purpose of managing a common interest development.

1.3 **"Board"** means the Board of Directors of the Association.

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

1.5 **"Common Area"** means all real property and improvements in the Project, excluding any Units therein. The term "Common Area" shall include the following:

1.5.1 **"Phase Common Area."** Phase Common Area shall be all real property and improvements located in a Phase with the exception of the Units. Phase Common Area are owned by Owners of Units in such Phase in undivided fractional interests.

- 1.5.2 "Association Common Area." Association Common Area shall be all real property and improvements located on Lot 3. The Association Common Area is owned by the Association for the use and benefit of all Owners and their tenants, guests and invitees.

1.6 "*Condominium*" means an estate in real property consisting of a separate interest in a Unit, the boundaries of which are shown and described on the Condominium Plan, a fractional undivided interest as a tenant-in-common in the Common Area, a membership in the Association, and the right to use any Exclusive Use Common Area appurtenant to each Unit as shown on the Condominium Plan or deed of conveyance.

1.7 "*Condominium Plan*" means that certain condominium plan attached as Exhibit "A" to the original Declaration, which is incorporated herein by reference. The recording information of the Condominium Plan is set forth in Exhibit "C," attached hereto and incorporated herein by reference. Condominium Plan shall include any amendments to such plan.

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

1.9 "*Exclusive Use Common Area*" means those portions of the Common Area designated for the exclusive use of one (1) or more, but fewer than all, of the Owners and which is appurtenant to a Unit or Units as shown on the Condominium Plan or deed of conveyance and pursuant to the provisions herein. As described in Section 1351(i) of the Civil Code, Exclusive Use Common Areas shall consist of any shutters, awnings, window boxes, doorsteps, stoops, porches, exterior doors, door frames, and hardware incident thereto, screens and windows and other fixtures, and internal and external telephone wiring designed to serve a Unit but located outside the boundaries of the Unit.

1.10 "*Governing Documents*" means this Restated Declaration and any other documents such as the Articles, Bylaws, Condominium Plan or Rules and Regulations which govern the operation of the Association.

1.11 "*Lot*" means a certain portion of real property described as a "Lot," and each of them, on that certain tract map of Vista Tract No. 72-6, Unit No. 1, in the City of Vista, County of San Diego, State of California, according to the Map thereof No. 7537 filed in the Office of the County Recorder of San Diego County on January 31, 1973.

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

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

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

1.15 **"Mortgagor"** means a Person who mortgages his, her, or its property to another (i.e., the maker of a mortgage), and shall include the trustor of a deed of trust. The term "Trustor" shall be synonymous with the term "Mortgagor."

1.16 **"Owner"** means the record holder or holders of record fee title to a Condominium, including Declarant, and any contract sellers under recorded contracts of sale. "Owner" shall not include any persons or entities who hold an interest in a Condominium merely as security for performance of an obligation.

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

1.18 **"Phase"** means certain portions of the entire Property that were developed, annexed into the Project and sold to individual purchasers thereof from time to time on an incremental basis.

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

1.20 **"Property"** means the real property described in Exhibit "A" attached hereto.

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

1.22 *"Rules and Regulations"* means any Rules and Regulations for the Association regulating the use of the Units, Exclusive Use Common Areas, Common Areas, the Project and any facilities located thereon adopted by the Board pursuant to Subsection 3.6.2 herein.

1.23 *"Unit"* means that portion of a Condominium that consists of a separate interest. "Unit" does not include the other elements of the Project. Each Unit is to be a separate freehold estate, as separately shown, numbered, and designated on the Condominium Plan. Each Unit consists of the following spaces:

1.23.1 The air space of the residential portion of the Unit bounded by and contained within the interior surfaces of the perimeter walls, floors, ceilings, windows and doors thereof.

1.23.2 The air space of the garage, designated on the Condominium Plan by the suffix "g," bounded by the interior surfaces of the ceiling, floor, walls and inside surface of the garage door.

1.23.3 The air space of the patio or deck, designated on the Condominium Plan by the suffix "p" or "d," bounded by the interior surfaces of the railing or fence walls of the building, the horizontal elevations of which extend from the ground or deck level to a height level with the ceiling of the corresponding Unit.

ARTICLE 2 - THE PROPERTY

2.1 *Description of Project Subject to Declaration.* The entire Project, including all Units and Common Area, shall be subject to this Declaration upon recordation hereof.

2.2 *Common Area; Ownership and Easements.* The Common Area consists of Phase Common Area and Association Common Area. The Phase Common Area is owned by Owners of Units in such Phase as tenants in common in equal undivided interests. The Association Common Area is owned by the Association. The Owners of Units have appurtenant nonexclusive rights for ingress, egress and support through the Common Area subject to the conditions and restrictions of the Governing Documents, including:

2.2.1 Nonexclusive easements over Phase Common Area, excluding any Exclusive Use Common Areas, for the benefit of Owners in other Phases subject to the provisions of the Governing Documents, which are

appurtenant to ownership of a Unit and may not be severed therefrom.

- 2.2.2 Nonexclusive easements over the Association Common Area for the benefit of Owners in each Phase, subject to the provisions of the Governing Documents, which are appurtenant to ownership of a Unit and may not be severed therefrom.

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

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

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

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

ARTICLE 3 - ASSOCIATION

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

3.2 *Board of Directors.* The affairs of the Association shall be managed and its duties and obligations performed by an elected Board of Directors, as provided in Section 1 of Article IV of the Bylaws.

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

3.4 *Membership Class; Voting Rights.* The Association shall have one class of membership and the rights, duties, obligations and privileges of the Members shall be as set forth in the Governing Documents. Each Member shall be entitled to cast one (1) vote for each Unit owned, subject to the provisions set forth in the Bylaws.

3.5 *Membership Meetings.* Meeting of Members shall be held in accordance with Article III of the Bylaws.

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

3.6.1 The power to establish, fix, levy, collect, and enforce the payment of Assessments against the Owners in accordance with the procedures set forth in Article 4 herein.

3.6.2 The power to adopt reasonable rules and regulations governing the use of the Units, the Common

Area, any common facilities and Association owned property, and the conduct at Board and Members' meetings, in accordance with the following:

- (a) The Rules and Regulations may include, but are not limited to: reasonable restrictions on use by the Owners and their families, guests, employees, tenants and invitees; rules of conduct; the setting of reasonable fees, deposits and use fees for any recreational facilities; and reasonable hearing procedures and a schedule of monetary penalties and fines which may be imposed for violations of any provisions of the Governing Documents, subject to Section 3.9 herein.
- (b) A copy of the current Rules and Regulations, if any, and all modifications, revisions and updates shall be given to each Owner.
- (c) If any provision of the Rules and Regulations conflicts with any provision of this Restated Declaration, the Articles, or the Bylaws, the Restated Declaration, Articles, or Bylaws shall control to the extent of the inconsistency.

3.6.3 The right to institute, defend, settle, or intervene in litigation, arbitration, mediation, or administrative proceedings in its own name as the real party in interest and without joining with it the Owners, in matters pertaining to:

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

- 3.6.4 The right to discipline Owners for violation of any of the provisions of the Governing Documents by (i) suspending the Member's membership rights, including the Member's voting rights and the rights and privileges to use the Common Area and facilities appurtenant to the Members' Unit, (ii) by imposing monetary fines, and (iii) by recording of a notice of noncompliance encumbering the Unit of the Owner, subject to the limitations set forth in Section 3.9, herein.
- 3.6.5 The right for its agents and employees to enter any Unit when necessary in connection with any maintenance, landscaping, or construction work for which the Association is responsible. This entry shall be made only upon reasonable notice to the Owner (except in the case of an emergency) and with as little inconvenience to the Owner as is practicable. Any damage caused thereby shall be repaired by the Association at its own expense.
- 3.6.6 The right for its agents and employees to enter any Unit when necessary in connection with any inspection, maintenance, or repair of the fire alarm and fire sprinkler systems. This entry shall be made only upon reasonable notice to the Owner (except in the case of an emergency) and with as little inconvenience to the Owner as is practicable. Any damage caused thereby shall be repaired by the Association at its own expense.
- 3.6.7 Notwithstanding any nonexclusive easement rights to the Common Area granted herein or by any deed or other conveyance, the Board shall have the right to allow one or more Owners to exclusively use portions of the Common Area, provided that such portions of the Common Area are nominal in area and adjacent to the Owner's Unit, and, provided further, that such use does not unreasonably interfere with any other Owner's use or enjoyment of the Project.
- 3.6.8 The Board shall have the power to remove any vehicle within the Project parked in violation of this Restated Declaration or the Rules and Regulations in accordance with the provisions of California Vehicle Code Section 22658.2 and any amendments thereto.

3.7 *Duties of the Association.* In addition to the duties of the Association, its agents and employees set forth elsewhere in

the Governing Documents, the Association shall be responsible for the following:

- 3.7.1 The Association, acting through the Board, shall operate, maintain, repair, and replace those components described in Section 6.3, or contract for the performance of that work, subject to the provisions of the Governing Documents.
- 3.7.2 The Association shall use the maintenance fund described in Article 4 herein to, among other things, acquire and pay for goods and services for the Project, including, but not limited to:
 - (a) Water, sewer, refuse, electrical, telephone, gas, and other necessary utility service for the Common Area and, to the extent not separately metered and charged, for the Units.
 - (b) The insurance policies described herein.
 - (c) The services of any personnel that the Board determines are necessary or proper for the operation of the Common Area and the Association.
 - (d) Legal and accounting services necessary or proper in the operation of the Common Area and the Association or the enforcement of the Governing Documents.

3.8 *Inspection of Accounting Books and Records.* The rights of Owners and Directors to obtain and inspect the accounting books and records of the Association shall be in accordance with Article IV of the Bylaws.

3.9 *Disciplinary Actions Against Owners.* In connection with the general power of enforcement, the Association may discipline Owners for violation of any of the provisions of the Governing Documents by one or more of the following: (1) suspending the Member's membership rights, including the Member's voting rights, (2) by imposing monetary fines, and (3) recording of a notice of noncompliance encumbering the Unit of the Owner, subject to the following limitations:

- 3.9.1 The accused Owner shall be given notice of the intention of the Board to meet and consider imposition of a suspension, monetary fine, notice of noncompliance or any combination of these, with respect to any alleged violation not less than fifteen (15) days prior to the meeting date

to consider the proposed imposition of the discipline.

- 3.9.2 The accused Owner shall be given an opportunity for a hearing before the Board at the Board meeting to consider the imposition of the discipline.
- 3.9.3 Notwithstanding the foregoing, under circumstances involving conduct that constitutes (a) an immediate and unreasonable infringement of, or threat to, the safety or quiet enjoyment of neighboring Owners; (b) a traffic or fire hazard, (c) a threat of material damage to, or destruction of, the Common Area; or (d) a violation of the Governing Documents that is of such a nature that there is no material question regarding the identity of the violator or whether a violation has occurred (i.e. delinquent assessment payment or parking violations), the Board or its agents may undertake immediate corrective or disciplinary action and conduct a hearing as soon thereafter as reasonably possible, if either (1) requested by the offending Owner within five (5) days following the Association's actions, or (2) on its own initiative;
- 3.9.4 The amount of any monetary penalty shall be established from time to time for each type of violation in an amount to be determined by the Board, and a schedule thereof shall be distributed to the Members by personal delivery or first class mail. Distribution of additional schedules is not required unless there are any changes to an existing schedule;
- 3.9.5 Any suspension of an Owner's membership privileges shall not exceed thirty (30) days for each violation. Suspension of membership privileges shall include suspension of the right of a Member to vote at meetings of the Association; and
- 3.9.6 Any notice of noncompliance shall identify the subject Unit, describe the nonconforming use, and specify the provision of the Governing Documents that is being violated. Upon the elimination of any nonconforming use, the Association shall execute and record an estoppel certificate, which shall reference any previously recorded notice of noncompliance, rescind said notice and confirm that the Unit is in compliance with all applicable Governing Documents provisions referenced in the notice of noncompliance.

- 3.9.7 Except as provided in Article 4 of the Restated Declaration relating to foreclosure for failure to pay Assessments, or as a result of the judgment of a court or a decision arising out of arbitration, the Association shall in no way abridge the right of any Owner to the full use and enjoyment of his or her Unit.

ARTICLE 4 - ASSESSMENTS AND COLLECTION PROCEDURES

4.1 *Covenant to Pay.* Each Owner by acceptance of the deed to the Owner's Condominium is deemed to covenant and agree to pay to the Association regular, special and individual assessments, and all other charges duly levied by the Association pursuant to the provisions of this Restated Declaration. A regular, special or individual assessment and any late charges, reasonable costs of collection, and interest, as assessed in accordance with the provisions of this Article, shall also be a personal debt of the Owner of the Condominium at the time the assessment or other sums are levied. The Owner may not waive or otherwise escape liability for these assessments by nonuse of the Common Area or abandonment of the Owner's Condominium.

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

4.3 *Regular Assessments.* Concurrently with preparation of the financial documents and budget, the Board shall estimate the net charges to be paid during that next fiscal year, including a reasonable provision for contingencies, replacements and reserves, with adjustments made for any expected income and surplus from the prior year's fund. The resulting amount shall constitute the regular assessments for the budgeted year. Regular assessments shall be allocated among, assessed against and charged to each Owner according to the ratio of the number of Units owned by the assessed Owner to the total number of Units subject to assessment. Each Unit shall bear an equal share of the total assessment. Failure of the Board to estimate the net charges within the time period stated herein shall not void any assessment imposed by the Board. Regular assessments for fractions of any month shall be prorated. Each Owner is obligated to pay assessments to the Association in equal monthly installments on or before the first day of each month unless the Board adopts an alternative method for payment.

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

4.5 *Individual Assessments.* Subject to the limitations of the Governing Documents and in addition to regular and special assessments, the Board may levy individual assessments against Owners and Units in accordance with the following:

- 4.5.1 The Board may levy an individual assessment for reconstruction, capital improvements, maintenance, or for any other cost or expense for which one or more, but fewer than all Owners are responsible, with the approval of at least fifty-one percent (51%) of the Owners of the Units benefitted and burdened by the individual assessment. Each such individual assessment shall be segregated in the account(s) of the Association and attributed solely to the Units for which the individual assessment was paid. In the event that the Association obtains income directly related to an item which has been assessed as an individual assessment, such income shall be allocated so as to reduce or offset such individual assessment.
- 4.5.2 The Board may levy an individual assessment whenever the Association (i) performs any service or accomplishes any item of repair or maintenance which is the duty of any Owner to accomplish, but which has not been accomplished by such Owner, or (ii) incurs any costs which by law or as required by the Governing Documents must be reimbursed by an Owner. Such individual assessment shall include the cost thereof, together with any financing costs and administrative costs incurred by the Association. Prior to levying such an individual assessment, the Board shall provide the Owner with notice and a hearing in accordance with Section 3.9, herein. The notice and hearing regarding the levy of an individual assessment may be combined with the notice and hearing regarding the underlying violation.
- 4.5.3 Duly levied individual assessments shall be subject to the provisions in the Governing Documents regarding costs, late charges and

interest for delinquent payment, and may become a lien on the Unit, in the same manner as regular and special assessments.

4.6 Monetary Penalty Assessments. The Board of Directors may levy, subject to the limitations of the Governing Documents, monetary penalties or fines against an Owner and his or her Unit. In the event the Board of Directors imposes a monetary penalty or fine, that fine shall be subject to costs, late charges and interest as described in Section 4.11 for delinquent payment, and may become a lien on the Unit, collectable by the Association as allowed by Section 4.14 herein.

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

4.8 Limitations on Assessments. Except in emergency situations, the Board may not, without the approval of Owners constituting a quorum of the Owners and casting a majority of the votes at a meeting or election of the Association conducted in accordance with Corporations Code Sections 7510 - 7527 and 7613, impose a regular assessment per Unit that is more than twenty percent (20%) greater than the regular assessment for the preceding fiscal year, or levy special assessments that in the aggregate exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year. A special assessment imposed pursuant to Section 1365.5(c) of the California Civil Code is not subject to the five percent (5%) limitation stated above. For purposes of this Section, a "quorum" means more than fifty percent (50%) of the Owners of the Association. These limitations shall not apply to assessment increases that are necessary for emergency situations. An emergency situation is an extraordinary expense that is:

- 4.8.1 Required by a court order.
- 4.8.2 Necessary to repair or maintain the Project or any part of it for which the Association is responsible when a threat to personal safety in the Project is discovered.
- 4.8.3 Necessary to repair or maintain the Project or any part of it for which the Association is responsible that could not have been reasonably foreseen by the Board in preparing and distributing the pro forma operating budget. Before the Board may impose or collect an assessment in this emergency situation, it shall pass a resolution containing written findings as to the necessity of the extraordinary expense and

why the expense was not or could not have been reasonably foreseen in the budgeting process, and shall distribute the resolution to the Owners with the notice of assessment.

4.9 Owner Notice of Assessments. The Association shall provide notice by first-class mail to the Owners of any increase in the regular assessments or the imposition of a special assessment not less than thirty (30) nor more than sixty (60) days prior to the increase in the regular assessment or special assessment becoming due.

4.10 Limitation on Assessment Increases. Unless the Board has complied with subdivision (a) of Section 1365 of the California Civil Code with respect to that fiscal year, the Board shall not be permitted to increase the regular assessments without first obtaining the approval of Owners, constituting a quorum, casting a majority of the votes at a meeting or election of the Association conducted in accordance with Chapter 5 (commencing with Section 7510) of Part 3 of Division 2 of Title 1 of the California Corporations Code and Section 7613 of the California Corporations Code. For the purposes of this Section, "quorum" means more than fifty percent (50%) of the Owners of the Association.

4.11 Costs, Late Charges and Interest. Late charges may be levied by the Association against an Owner for the delinquent payment of regular, special and individual assessments, fines and monetary penalties. An assessment, including any installment payment, is delinquent fifteen (15) days after its due date. If an assessment is delinquent the Association may recover all of the following from the Owner:

- 4.11.1 Reasonable costs incurred in collecting the delinquent assessment, including actual attorneys' fees.
- 4.11.2 A late charge not exceeding ten percent (10%) of the delinquent assessment or ten dollars (\$10.00), whichever is greater, or the maximum amount allowed by law.
- 4.11.3 Interest on the foregoing sums, at an annual percentage rate of twelve percent (12%) commencing thirty (30) days after the assessment becomes due.

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

4.12 Priority of Payments. Payments received by the Association from Owners shall be applied towards (1) Collection costs, including attorneys fees, (2) monetary penalties, (3) interest, (4) late charges, (5) individual assessments, (6) special assessments, and (7) regular assessments, in that order.

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

4.14 Enforcement of Assessments and Late Charges. A delinquent regular, special or individual assessment, fine, monetary penalty, and any related late charges, reasonable costs of collection (including actual attorneys' fees), penalties, and interest assessed in accordance with Section 4.11 herein shall become a lien upon the Condominium when a Notice of Assessment Lien is duly recorded as provided in Section 1367 of the California Civil Code or applicable statute. The Notice of Assessment Lien shall describe the amount of the delinquent assessment or installment, the related charges authorized by this Declaration, a description of the Condominium, the name of the purported Owner, and, if the lien is to be enforced by power of sale under nonjudicial foreclosure proceedings, the name and address of the trustee authorized by the Association to enforce the lien by sale. The Notice may be signed by any officer or director of the Association, or any employee or agent of the Association authorized to do so by the Board.

Unless the Board considers the immediate (without notice) recording of the Notice of Assessment Lien to be in the best interests of the Association, the Notice of Assessment Lien may not be recorded until ten (10) calendar days after the Association has mailed, via first-class mail, a written demand for payment to the delinquent Owner. If the delinquent assessment or installment and related charges are paid or otherwise satisfied in accordance with the demand for payment, the Association shall not record the Notice of Assessment Lien.

Any lien described herein may be enforced in any manner permitted by law, including judicial foreclosure or nonjudicial foreclosure. Any nonjudicial foreclosure shall be conducted by the trustee named in the Notice or by a trustee substituted pursuant to Section 2934(a) of the California Civil Code, in accordance with the provisions of Sections 2924, 2924(b), and 2924(c) of the California Civil Code.

If all sums specified in the Notice of Assessment Lien are paid before the completion of any judicial or non-judicial foreclosure, the Association shall (i) record a notice of satisfaction and release of lien, and (ii) upon receipt of a written

request by the Owner, shall also record a notice of rescission of any recorded notice of default and demand for sale.

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

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

- 4.15.1 Only the judicial or non-judicial foreclosure of the First Mortgage shall operate to transfer title free of the assessment lien or obligation for any assessment lien, and then only as to payments which became due prior to the date of sale, and excluding those assessment liens recorded prior to the recording of the First Mortgage.
- 4.15.2 Should any person or entity other than a First Mortgagee foreclose on a Condominium, the new Owner shall be personally liable for all unpaid assessments whether or not a lien has been recorded if such new Owner expressly assumed such personal liability. In the event the new Owner assumes such liability, the Association may elect to collect such unpaid assessments, including late charges, interest and other costs, from the new Owner, either personally or against the Condominium, upon the transfer of title.
- 4.15.3 Neither the transfer of a Condominium pursuant to a foreclosure of any Mortgage, nor an election by the Association to proceed against any new Owner for payment, shall serve to cancel the personal obligation of the prior Owner for payment of the delinquent assessments and charges which accrued during such Owner's period of ownership. The personal obligation of any Owner for payment of delinquent assessments and charges may only be satisfied, and therefore discharged, by payment of the entire amount of the delinquent

assessments and charges, whether or not such Owner remains in possession of his or her Unit.

- 4.15.4 No sale or transfer of any Condominium shall relieve such Condominium or its new Owner from liability for any future assessments which accrue during such Owner's period of ownership.

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

ARTICLE 5 - USE RESTRICTIONS AND COVENANTS

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

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

- 5.2.1 The Association shall have an easement in, to, and throughout the Common Area and the improvements thereon to perform its duties and exercise its powers.
- 5.2.2 Except as provided in this Restated Declaration, there shall be no judicial partition of the Common Area, nor shall Declarant or any person acquiring an interest in all or any part of the Project seek any judicial partition.
- 5.2.3 Subject to the provisions of this Restated Declaration, each Owner has non-exclusive rights of ingress, egress, and support through the Common Area. These rights shall be appurtenant to any deed of conveyance. However, these rights shall not interfere with, and shall be subordinate to, any exclusive right to use an area.
- 5.2.4 The Owners' rights of use and enjoyment of the Common Area shall be subject to the restrictions set forth in the Governing Documents, and the

right of the Association, subject to the limitations of any laws or the Governing Documents, to:

- (a) Adopt and enforce reasonable rules and regulations for the use of the Common Area and the Project.
- (b) Reasonably limit the number of persons using the Common Area.
- (c) Charge a fee or deposit for use of any recreational facilities.
- (d) Assign or otherwise control the use of any unassigned parking spaces within the Common Area.
- (e) Remove any vehicle within the Project parked in violation of this Restated Declaration or the Rules and Regulations of the Board in accordance with the provisions of California Vehicle Code Section 22658.2 and any amendments thereto.
- (f) Suspend the voting rights of any Owner, and the rights of any Owner, and the Persons deriving rights from any Owner, to use and enjoy the Common Area for any period during which the Owner is delinquent in the payment of any Assessment, fine or monetary penalty, or as otherwise provided in the Governing Documents.
- (g) Cause the construction of additional improvements in the Common Area, or to cause the alteration or removal of existing improvements on the Common Area.
- (h) Grant, dedicate, consent to, or join in the grant or conveyance of easements, licenses, or rights-of-way in, on, or over the Common Area, including a grant or consent to allow one or more Owners to exclusively use portions of the Common Area subject to the Governing Documents with the approval of two-thirds (2/3) of the total voting power of the Association.
- (i) Reasonably restrict access to roofs, maintenance facilities or areas, landscaped areas, and similar areas of the Project.

(j) Approve any proposed alteration of or modification to the Common Area or any Unit.

- 5.2.5 The Association, with the approval of two-thirds (2/3) of the total voting power of the Association, may grant to third parties easements in, on, and over the Common Area for the purpose of constructing, installing, or maintaining necessary utilities and services, or other purposes reasonably related to the operation of the Project, and each Owner, in accepting his or her deed to the Unit, expressly consents to these easements. However, no such easement may be granted if it would unreasonably interfere with any exclusive easement, or with any Owner's use, occupancy, or enjoyment of his or her Unit.
- 5.2.6 Notwithstanding the easement rights or other rights contained herein, an Owner who has sold his or her Condominium to a contract purchaser or who has leased or rented the Condominium shall be deemed to have delegated his or her rights to use and enjoy the Common Area to the contract purchaser or tenant who resides in the Owner's Condominium, subject to reasonable regulation by the Board. If the Owner is deemed to have delegated such rights, the Owner and the Owner's family, guests, employees, and invitees shall not be entitled to use and enjoy the Common Area for so long as the delegation remains effective.
- 5.2.7 All internal and external telephone wiring designed to serve a single Unit, but located outside the boundaries of the Unit, is allocated exclusively to that Unit. The Owner of the Unit shall be entitled to reasonable access to the Common Area for the purpose of maintaining this wiring, subject to the consent of the Association and to any other conditions reasonably imposed by the Association. The Association's consent shall not be unreasonably withheld.
- 5.2.8 The Board shall have the right, with the approval of two-thirds (2/3) of the total voting power of the Association, to allow one or more Owners to exclusively use portions of the Common Area, provided that such portions of the Common Area are nominal in area and adjacent to the Owner's Unit, and, provided further, that such use does not unreasonably interfere with any other Owner's use or enjoyment of the Project.

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

- 5.3.1 Attempt to further subdivide a Unit without obtaining the prior approval of the Association.
- 5.3.2 Occupy or use a Unit, or permit all or any part of a Unit to be occupied or used without Board approval for any purpose other than as a private residence. The Board may establish guidelines in the Rules and Regulations to allow certain home occupations which (a) are consistent with the normal residential usage of the Project, (b) do not cause any external effects which are detrimental to neighboring Units or the Project, or (c) are compatible with the characteristics of residential use in the Project.
- 5.3.3 Lease a Unit in derogation of the following:
 - (a) All leases must be in writing.
 - (b) All leases must be for the entire Unit and not merely parts thereof, unless the Owner remains in occupancy.
 - (c) No lease shall be for a period of less than thirty (30) days.
 - (d) All leases shall be subject in all respects to the Governing Documents, and shall provide that failure to comply with the requirements of the Governing Documents shall constitute a default under the lease which may be cured by eviction of the tenant either by the Owner or the Association.
 - (e) An Owner who leases his or her Unit shall promptly notify the manager, if any, and if none, the Association in writing of the names of all tenants and members of a tenants' family occupying such Unit within thirty (30) of inception of the tenancy.
 - (f) Any Owner leasing his or her Unit shall promptly notify the manager, if any, and if none, the Association of the address and telephone number where such Owner can be reached.

- 5.3.4 Permit anything to obstruct the Common Area or store anything on the Common Area without the prior written consent of the Board, except as otherwise provided in the Governing Documents.
- 5.3.5 Perform any act or keep anything on or in any Unit or in the Common Area that will increase the rate of insurance on the Common Area without the Board's prior written consent. Further, no Owner shall permit anything to be done or kept in his or her Unit or in the Common Area that would result in the cancellation of insurance on any Unit or on any part of the Common Area or that would violate any law.
- 5.3.6 Disconnect, damage, tamper with or otherwise modify any protection system, including, but not limited to fire sprinklers, fire alarms and fuse boxes.
- 5.3.7 Store gasoline, kerosene, cleaning solvents, or other flammable liquids or substances, or any toxic or hazardous materials on the Common Area or in any Lot, provided, however, that reasonable amounts of these liquids, substances or materials may be placed in appropriate containers and properly stored.
- 5.3.8 Erect or display any sign on or from any Unit except as allowed by Sections 712 and 713 of the California Civil Code. No signs may be erected or displayed on the Common Area except (i) those signs allowed by this provision, and (ii) with the prior written approval of the Board.
- 5.3.9 Erect or display any radio or television antenna, satellite dish or other equipment or apparatus for transmitting or receiving transmissions without Board approval.
- 5.3.10 Raise or keep pet(s) or other animal(s) in or on the Project except as permitted by regulations adopted by the Board. Notwithstanding the foregoing, no Owner or other occupant of a Unit may raise or keep pets which interfere with, or have a reasonable likelihood of interfering with, the rights of any Owner or other occupant of a Unit to the peaceful and quiet enjoyment of the Unit. In the event the Board determines that any such pet(s) or other animal(s) create an unreasonable annoyance or nuisance to any Owner or other occupant of a Unit, the raising or keeping thereof shall be discontinued within a reasonable time

after such determination. No pets or other animals shall be permitted in the common Area except as specifically permitted by regulations adopted by the Board. No owners may raise or keep animals for commercial purposes. The Association, its Board, officers, employees and agents shall have no liability to any Owner, their family members, guests, invitees, tenants and contract purchasers, or any other person on the Project, for any damage or injury to persons or property caused by any pet, absent any willful or wanton negligence on the part of the Association, or its Board, officers, employees and agents.

- 5.3.11 Engage in any illegal, noxious or offensive activity in any part of the Project, or do any act which unreasonably threatens the health, safety and welfare of other residents of the Project.
- 5.3.12 Alter, attach, construct, or remove anything on or from the Common Area, except upon the written consent of the Board.
- 5.3.13 Park any automobile or other motor vehicle in the Common Area or in any garage except in a space designated for the Owner by the Board or the Governing Documents. The Board, in its discretion, may adopt reasonable rules governing the operation, maintenance, storage and parking of any vehicle, including trucks, campers, trailers, boats or commercial vehicles on the Common Area. Any vehicles violating the rules may be removed as provided in Section 3.6.8.
- 5.3.14 Keep or maintain any fixture, personal property or other object upon any patio or deck which interferes with the enjoyment of adjacent Units, patios or decks, or which may be in derogation of any Rules and Regulations duly adopted by the Board.

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

5.5 Vacating Unit; Costs. The Association shall have the power to temporarily remove any Unit resident for such periods and at such times as may be necessary in connection with any maintenance or repair work performed by the Association. The costs of any temporary relocation during such maintenance or repair work shall be paid by the Unit owner affected. The Association shall give notice of the need to temporarily vacate a Unit to the record Owners and occupants not less than fifteen (15) days nor more than thirty (30) days prior to the date of the temporary relocation. The notice shall state the reason for the relocation, the date and time of the beginning of work, the anticipated date and time of termination of work and that the occupants will be responsible for all necessary accommodations during the relocation.

ARTICLE 6 - REPAIR AND MAINTENANCE

6.1 General. The Association and all Owners are required to fulfill the maintenance requirements imposed by the Governing Documents. For purposes of this Article "maintenance" shall include without limitation painting, weatherproofing and cleaning to keep a clean, safe and sanitary condition necessary to preserve the attractive appearance of each Condominium and the Project and protect the values thereof. The Board shall have the power to determine the standards of such maintenance.

6.2 Failure to Maintain. In the event an Owner fails to maintain the areas described herein pursuant to the standards set by the Board, the Board may notify the Owner of the work required and request that the same be done within a reasonable time from the giving of such Notice. In the event the Owner fails to carry out such maintenance within said time period, the Board may, following notice and a hearing, cause such work to be done and the cost thereof shall immediately be paid by such Owner to the Association and until paid shall bear interest at the rate of twelve percent (12%) per annum (but no greater than the maximum rate authorized by law).

6.3 Division of Responsibility. Each Owner shall be responsible for the maintenance, repair and replacement of his or her Unit, Exclusive Use Common Areas appurtenant to the Unit, and those items located anywhere within the Project which are used exclusively by that Owner, in a clean manner, consistent with the surrounding properties, and to ensure that such area does not pose a threat to the health, safety or welfare of other Owners. The replacement of exterior items shall be subject to the requirements of Article 7, herein. The Association shall be responsible for the maintenance, repair and replacement of the Common Area, excluding those items (i) for which the maintenance, repair and replacement is allocated to the Owners by Exhibit "D" and (ii) which are used exclusively by one Owner. Attached hereto as Exhibit "D," and incorporated herein by reference, is a listing of the allocation of responsibility for various components in the Project. In the event

of any inconsistency between the general provisions of this Section and the specific provisions of Exhibit "D," the provisions of Exhibit "D" shall prevail. Provided any item is not listed in Exhibit "D," the responsibility for its maintenance shall be determined in accordance with the provisions of this Section or as otherwise provided by statute or law. Except as otherwise provided in the Governing Documents, the costs of maintenance, repair and replacement shall be borne by the party responsible for the maintenance, repair and replacement.

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

- 6.4.1 Each Owner shall be responsible for the maintenance and repair of their personal property and their Unit as required to control the presence of or damage caused by wood-destroying pests or organisms.
- 6.4.2 The Association shall be responsible for the maintenance and repair of the Common Area as required to control the presence of or damage caused by wood destroying pests or organisms in accordance with the provisions of Civil Code Section 1364.
- 6.4.3 The Association shall have the power to temporarily remove any Unit resident for such periods and at such times as may be necessary for prompt, effective treatment of such pests or organisms. The costs of any temporary relocation during such maintenance or repair shall be paid by the Unit owner affected. The Association shall give notice of the need to temporarily vacate a Unit to the record Owners and occupants not less than fifteen (15) days nor more than thirty (30) days prior to the date of the temporary relocation. The notice shall state the reason for the relocation, the date and time of the beginning of treatment, the anticipated date and time of termination of treatment and that the occupants will be responsible for all necessary accommodations during the relocation.
- 6.4.4 Neither the Association, the Board, officers, agents and employees shall have any liability, absent willful or wanton negligence, to any Owner, family member, guest, invitee or tenant for any damage caused by the treatment.
- 6.4.5 Notwithstanding anything else herein, in the event that an Owner wishes to obtain a termite clearance certificate for any purpose, the Owner

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

6.5 Damage Caused by Owner or Item Under Control of Owner. Should any damage to the Common Area or any Unit result from the willful or negligent act or neglect of any Owner, or such Owner's tenants, guests, invitees, pets or other person or entity deriving any interest through such Owner, or from any item the maintenance, repair or replacement of which an Owner is responsible, the cost of all repairs shall be borne solely by the culpable Owner.

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

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

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

6.6 Water Intrusion Damage. The Association shall not be liable to any Owner or his or her tenants, guests or others, for damage to personal property, decorations, floor or wall coverings, appliances, fixtures and other similar items within a Unit

resulting from water which may leak or flow from outside of any Unit or from any part of the building, or from any pipes, drains, conduits, appliances or equipment or from any other place or cause, unless caused by the gross negligence of the Association, its Board, officers, agents or employees. An Owner may obtain and maintain such insurance, at his or her sole expense, to protect against any damage or loss of property due to water intrusion, or the cost of repair or replacement of damaged items for which such Owner is responsible.

ARTICLE 7 - ARCHITECTURAL AND DESIGN CONTROL

7.1 *General.* Any change or improvement to the exterior of a Unit, or to the interior which affects the exterior of Unit, or any mechanical or service systems (HVAC systems, gas, water or electrical pipes or wires, etc.), or the structural integrity of any building, shall be governed by this Article. Changes or improvements to the Common Area by the Association do not need to comply with the requirements of this Article. The powers and duties set forth in this Article shall be vested in, and exercised by, the Board. The Board may establish an architectural committee as provided herein to assist the Board in reviewing architectural submittals, and to provide recommendations to the Board with regard to approval or disapproval of any submittal. The foregoing notwithstanding, the Board shall be solely responsible for approving or rejecting any architectural submittal.

7.2 *General Changes Requiring Prior Approval.* Nothing may be erected, placed or planted on the exterior of any Unit, or on the Common Area by any Owner, including any building, fence, wall, pool, spa, obstruction, outside or exterior wiring, balcony, screen, patio, patio cover, tent, awning, carport, carport cover, trellis, tree, grass, shrub or other landscaping, any improvement or structure of any kind without the prior written approval of the Board. Modifications to the interior of Units which have the potential to affect the Common Area walls, roofs or other areas also shall require prior approval. Additionally, and except as provided in Section 7.3 below, prior written Board approval shall be required for any alteration, modification, painting or other change or addition to any existing improvement or landscaping.

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

- 7.3.1 Modifications or alterations of the exterior of any Unit must have the prior written consent of the Board or duly appointed architectural committee, including any modifications to facilitate handicapped access as provided by Section 1360 of the California Civil Code. Any approval of such handicapped access modification may be condi-

tioned on such modification's removal, by the owner at his or her sole expense, once the handicapped access is no longer necessary for the Unit.

- 7.3.2 In deciding upon floor coverings, Owners shall take all reasonable measures to choose floor coverings that mitigate sound transfer between Units.
- 7.3.3 No Owner may install any shutter, screen, blind, curtain, drape or other appurtenance in or on any window or door except those items which are in conformance with standards established by the Board.
- 7.3.4 No Owner may cover his or her Unit's patio or deck without the prior written consent of the Board, provided, however, that no Owner may enclose his or her patio or deck.
- 7.3.5 Except as provided by the Governing Documents, Owners shall not have the right to paint, decorate, remodel or alter any Exclusive Use Common Area or the Common Area without the prior written consent of the Board.

7.4 Changes Not Requiring Prior Approval. Notwithstanding Section 7.2 above, no permission or approval shall be required to repaint in accordance with the original color scheme or as previously approved by the Board, or to rebuild or replace in accordance with plans and specifications previously approved by the Board. Nothing contained herein shall be construed to limit the right of an Owner to paint the interior of his or her Unit any color desired, or to improve or alter any improvements within the interior of the Unit, provided such improvement or alteration does not impair or alter the Common Area, any utilities, or other systems servicing the Common Area or other Units.

7.5 Architectural Rules. The Board may, from time to time and in its sole discretion, adopt, amend and repeal, by unanimous vote, rules and regulations to be known as "Architectural Rules." Said Architectural Rules shall set forth the standards and procedures for review by the Board and guidelines for architectural design, placement of improvements, landscaping, color schemes, exterior finishes and materials and similar features which are recommended for use in the Project, provided, however, that said Architectural Rules shall not be in derogation of the standards required by this Restated Declaration.

7.6 Liability. Neither the Board, any member thereof nor the architectural committee shall be liable to the Association or to any Owner for any damage, loss or prejudice suffered or claimed on

account of: (a) the approval or disapproval of any plans, drawings and specifications, whether or not defective, (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings, and specifications, (c) the development of any property within the neighborhood, or (d) the execution and filing of an estoppel certificate whether or not the facts therein are correct, provided, however, that such member has acted in good faith on the basis of such information as may be possessed by him or her.

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

7.8 Approval by City. Prior to commencing any alteration or improvements approved by the Board, the Owner shall comply with all appropriate governmental laws and regulations. Approval by the Board shall not be considered to satisfy the appropriate approvals that may be required by any governmental entity with appropriate jurisdiction. The Association shall not be obligated to enforce the provisions of this Section. An Owner's failure to obtain such governmental approval may subject such Owner to certain penalties imposed by the governmental entity, notwithstanding the approval of the Board, which penalties shall be the responsibility of such Owner.

ARTICLE 8 - INSURANCE

8.1 Fire and Casualty Insurance. The Association shall obtain and maintain a policy or policies of fire and casualty insurance with an extended coverage endorsement for the full insurable replacement value of the improvements in the Common Area. The amount of any deductible shall be determined by the Board. This insurance shall be maintained for the benefit of the Association, the Owners, and their Mortgagees, as their interests may appear as named insured, subject, however, to any loss payment requirements set forth in this Restated Declaration. If required by any First Mortgagee who notifies the Association of its requirement, and if economically feasible and available, such policies shall contain an agreed amount endorsement, an inflation guard endorsement, and a Construction code endorsement.

8.2 General Liability Insurance. The Association shall obtain and maintain a policy or policies insuring the Association, its officers, directors, agents and employees, the Owners, and the Owners' relatives, invitees, guests, employees, and their agents against any liability for bodily injury, death, and property damage

arising from the activities of the Association and its Members, with respect to the Common Area and any Units owned by the Association. Limits of liability under the insurance shall not be less than one million dollars covering all claims for death, personal injury, and property damage arising out of a single occurrence.

The limits and coverage shall be reviewed at least annually by the Board and increased or decreased in its discretion. Such policies shall include a provision for at least ten (10) days' prior written notice to the Association, and to each First Mortgagee which is listed as a scheduled holder of a First Mortgage in the insurance policy, of any cancellation or substantial modification by any party.

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

8.4 Fidelity Bond Coverage. The Association shall also purchase and maintain fidelity bond coverage which names the Association as an obligee, for any person or entity handling funds of the Association, whether or not such persons or entities are compensated for their services. If there is a management agent who handles Association funds, such agent shall also be covered by a fidelity bond. This coverage may be in an amount that is at least equal to the estimated maximum of funds, including reserve funds, in the custody of the Association or its managing agent at any given time during the term of each bond. However, in no event may the aggregate amount of these bonds be less than a sum equal to three (3) months' aggregate assessments on all units plus reserve funds. The bonds must contain a provision that they may not be cancelled or substantially modified without at least ten (10) days' prior written notice to the Association.

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

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

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

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

8.9 *Individual Insurance.* An Owner shall separately insure his or her real and personal property, and shall obtain and maintain personal liability and property damage insurance for his or her Unit, provided that the insurance contains a waiver of subrogation rights by the carrier as to the other Owners, the Association, and the institutional First Mortgagee of the Owner's Unit. Each Owner is responsible for integrating his or her personal insurance with the Association's insurance to confirm that such Owners' property will be protected in the event of a loss.

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

8.11 *Insurance Policy Deductibles.* As provided in Section 8.1 above, the Board of Directors shall have the power, in its sole discretion, to determine the amount of any deductible applicable to any insurance policy carried by the Association. In the event of a loss for which Association insurance coverage is used, the responsibility for payment of any deductible shall be as follows:

- 8.11.1 Owners shall be responsible for the cost of any deductible if the damage or loss occurs to an item of personal property, or for which the Owner is responsible.

8.11.2 The Association shall be responsible for the cost of any deductible if the damage or loss occurs to any item owned by the Association, or for which the Association is responsible.

8.11.3 The foregoing notwithstanding, if the damage or loss is caused by the negligence or misconduct of any Owner, or resident, guest, tenant or invitee of an Owner, the responsible Owner shall be liable for the cost of the deductible.

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

ARTICLE 9 - DAMAGE OR DESTRUCTION

9.1 *Duty to Restore.* A portion of the Project for which insurance carried by the Association is in effect, that is damaged or destroyed, must be repaired or replaced promptly by the Association unless:

9.1.1 The Project is terminated.

9.1.2 Repair or replacement would be illegal under a state statute or municipal ordinance.

9.1.3 Eighty percent (80%) of Owners, including each Owner of a Unit or Exclusive Use Common Area that will not be rebuilt, vote not to rebuild.

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

9.3 *Repair Plans.* The Project must be repaired and restored in accordance with either (a) the original plans and specifications, updated as required to reflect applicable building codes, or (b) other plans and specifications which have been approved in writing by the Board, a majority of Owners, and at least fifty-one percent (51%) Eligible Mortgagees holding Mortgages on Units subject to the repair.

9.4 *Replacement of Less Than Entire Project.*

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

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

- (a) The insurance proceeds attributable to a Unit and Exclusive Use Common Area that are not rebuilt must be distributed to the Owner of that Unit and the Owner of the Unit to which the Exclusive Use Common Area is appurtenant, or to lien holders, as their interests may appear.
- (b) The remainder of the proceeds must be distributed to each Unit Owner or lien holder, as their interests may appear, in proportion to the interests of all the Units.
- (c) If the Owners vote not to rebuild a Unit, the common interest portions of the Unit shall be reallocated among all other Units, and the Association shall prepare, execute and record an amendment to the Declaration reflecting the reallocations.

9.5 *Minor Repair.* The Board shall have the duty to repair and reconstruct all Common Areas without the consent of Members and regardless of the amount of available insurance proceeds, in all cases of partial destruction when the estimated cost of repair and reconstruction does not exceed \$5,000.00. In the case of damage to Common Areas which does not exceed \$5,000.00, all Units shall be assessed for an equal portion of any uninsured expense, if necessary. The Board may waive this absolute duty to repair by a unanimous vote, which shall be duly noted in the minutes of the meeting at which the vote was taken, and shall be communicated to Owners.

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

9.7 *Disbursements to Owners and Mortgagees.* Any insurance proceeds distributed to Owners and Mortgagees shall be distributed proportionately according to the fair market values of the Units at the time of the destruction as determined by an independent appraisal. That appraisal shall be performed by an independent

appraiser who shall be selected by the Board and who shall be a member of, and apply the standards of, a nationally recognized appraiser organization.

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

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

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

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

ARTICLE 10 - EMINENT DOMAIN

10.1 *Representation by Association.* The Association shall represent the Owners in any condemnation proceedings or in negotiations, settlements and agreements with the condemning authority for acquisition of the Common Area(s), or any part thereof. In furtherance of this purpose, each Owner, by acceptance of a deed to his or her Condominium, irrevocably appoints the Association as their attorney-in-fact to represent the Owners in any such condemnation proceeding(s). In the event of a taking or acquisition of part or all of the Common Area(s) by a condemning authority, the award or proceeds of settlement, less any fees or costs incurred in collection thereof, shall be payable to the Association, or any trustee appointed by the Association, for the use and benefit of the Owners and their Mortgagees as their interests may appear.

10.2 *Common Area Taking.* In the event of a taking by eminent domain of any part of the Common Area, the Association shall participate in the negotiations, and shall propose the method of division of the proceeds of condemnation, where Condominiums are not valued separately by the condemning authority or by the court. Proceeds of condemnation, less any costs and fees incurred in collection thereof, shall be distributed among Owners of Condominiums and their respective Mortgagees according to the relative values of the Condominiums affected by the condemnation.

10.3 *Condominium Unit Taking.* In the event of an award for the taking of any Condominium in the Project by eminent domain, the Owner of such Condominium shall be entitled to receive the award

for such taking, less any fees and costs incurred in collecting such amount and only up to the fair market value of his or her Condominium, and after acceptance thereof he or she and the Mortgagee shall be divested of all interest in the Project if such Owner shall vacate his Condominium as a result of such taking. The remaining Owners shall decide by majority vote whether to rebuild or repair the Project, or take other action. The remaining portion of the Project shall be resurveyed, if necessary, and the Declaration shall be amended to reflect such taking and to readjust proportionately the percentages of undivided interest of the remaining Owners in the Project based on the number of Units remaining in the Project.

10.4 Substantial Taking. If there is a substantial taking of the Project (more than fifty percent), the Owners may terminate the legal status of the Project and, if necessary, bring a partition action under California Civil Code Section 1359 or any successor statute, on the election to terminate by fifty-one percent (51%) of the total voting power of the Association. The proceeds from the partition sale, less any costs or fees incurred in collection thereof, shall be distributed to the Owners and their respective Mortgagees in proportion to the fair market values of the Condominiums.

ARTICLE 11 - RIGHTS OF MORTGAGEES

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

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

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

shall be deemed to be common expenses collectible from all of the Units including such acquirer, his successors and assigns.

11.4 Action Requiring Mortgagee Approval. Except as provided by statute in case of condemnation or substantial loss to the Condominiums and Common Area, unless at least two-thirds (2/3) of the First Mortgagees (based upon one (1) vote for each mortgage owned), or two-thirds (2/3) of the Owners have given their prior written approval, the Association and/or the Owners shall not be entitled to:

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

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

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

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

- 11.7.1 Any condemnation loss or any casualty loss which affects a material portion of the Project or the Unit insured or guaranteed by such Eligible Mortgagee;
- 11.7.2 Any default in the performance by an Owner of any obligation under the Governing Documents not cured within sixty (60) days;
- 11.7.3 Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and
- 11.7.4 Any proposed action which would require the consent of a specified percentage of Eligible Mortgagees as required by the Governing Documents.

11.8 Termination of Professional Management. Provided professional management has previously been required by any Eligible Mortgagee, any decision to establish self-management by the Association shall require the consent of at least sixty-seven percent (67%) of Owners and at least fifty-one percent (51%) of Eligible Mortgagees; provided that so long as any Mortgage which is a lien on a Unit is insured or guaranteed by the Federal Housing Administration, any termination and failure to replace professional management shall require the prior written approval of the Federal Housing Administration.

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

11.10 Non-Curable Breach. Any Mortgagee who acquires title to a Residential Unit by foreclosure or by deed in lieu of foreclosure or assignment-in-lieu of foreclosure shall not be obligated to cure

any breach of this Declaration that is non-curable or of a type that is not practical or feasible to cure.

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

11.12 *Mortgagees Furnishing Information.* Any Mortgagee can furnish information to the Board concerning the status of any Mortgage.

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

11.14 *Termination without Substantial Destruction.* Except as provided by statute or by other provision of the Governing Documents in case of substantial destruction or condemnation of the Project, the consent of at least sixty-seven percent (67%) of Owners and the approval of fifty-one percent (51%) of Eligible Mortgagees shall be required to terminate the Project; provided that if termination is for reasons other than substantial destruction or condemnation, the agreement of sixty-seven percent (67%) Eligible Mortgagees is required.

ARTICLE 12 - ENFORCEMENT

12.1 *Right to Enforce.* The Association or any Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the Governing Documents. Each Owner of a Condominium shall have a right of action against the Association or any Owner for failure to comply with the provisions of the Governing Documents.

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

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

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

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

ARTICLE 13 - AMENDMENTS

13.1 *Approval of Amendments.* This Restated Declaration may be amended by the vote or written consent of Owners representing not less than fifty-one percent (51%) of the voting power of the Association. Notwithstanding the above, the percentage of the voting power necessary to amend a specific clause or provision of this Restated Declaration shall not be less than the percentage of affirmative votes prescribed for action to be taken under that clause or provision.

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

13.2 *Approval of Specified Amendments.* Notwithstanding Section 13.1 above, and except as provided by statute or by other provision of the Governing Documents in case of substantial destruction or condemnation of the Project, the consent of sixty-seven percent (67%) of the voting power of the Association and the approval of fifty-one percent (51%) of Eligible Mortgagees shall be required to add or amend (i) any provision of this Restated Declaration which is for the express benefit of holders or insurers of First Mortgages and (ii) any material provisions of this Restated Declaration which establish, provide for, govern or regulate:

- 13.2.1 Voting rights.
- 13.2.2 Assessments, assessment liens or subordination of such liens.
- 13.2.3 Reserves for maintenance, repair and replacement of the Common Area.
- 13.2.4 Insurance or fidelity bonds.

- 13.2.5 Rights to use the Common Area.
- 13.2.6 Responsibility for maintenance and repair of the several portions of the Project.
- 13.2.7 Expansion or contraction of the Project, or the addition, annexation or withdrawal of property to or from the Project.
- 13.2.8 Boundaries of any Unit.
- 13.2.9 An Owners' interest in the Common Area.
- 13.2.10 Convertibility of Units into Common Area, or Common Area into Units.
- 13.2.11 Leasing of Units.
- 13.2.12 Imposition of any rights of first refusal or similar restriction on the right of an Owner to sell, transfer or otherwise convey his or her Condominium.
- 13.2.13 Establishment of self-management by the Association when professional management has been required by an Eligible Mortgagee.

13.3 *Eligible Mortgagee Approval Response Time.* An Eligible Mortgagee who receives a written request to approve additions or amendments by certified or registered mail, return receipt requested, addressed to the address provided by such Eligible Mortgagee, who does not deliver or post to the requesting party a negative response within thirty (30) days after the notice of the proposed addition or amendment, shall be deemed to have approved such request.

ARTICLE 14 - GENERAL PROVISIONS

14.1 *Term.* The provisions of this Restated Declaration shall continue in effect for a term of fifty (50) years from the date of execution. Thereafter, it shall be automatically extended for successive periods of ten (10) years, until the membership of the Association decides to terminate it.

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

14.3 *Severability.* The provisions of this Restated Declaration shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one (1) provision

shall not affect the validity or enforceability of any other provision.

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

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

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

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

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

14.9 Attorneys' Fees. In the event an attorney is engaged by the Board to enforce the Governing Documents, the Association shall be entitled to recover from the adverse party to the controversy its actual attorneys' fees and costs so incurred. In the event litigation is commenced to enforce the Governing Documents, the prevailing party shall be entitled to its attorneys' fees and costs. Said costs and attorneys' fees shall constitute a lien on the Unit which is enforceable pursuant to Article 4 herein. This Section shall also apply to actual attorneys' fees incurred to collect any post-judgment costs.

IN WITNESS WHEREOF, the undersigned has executed this Amended and Restated Declaration of Restrictions this 28 day of March 28, 1996.

DECLARANT:

VISTA PARK VILLAS CONDOMINIUM ASSOCIATION,
a California nonprofit corporation

By:

Joyce Correll
President

By:

Ella Mae Pinehart
Secretary

STATE OF CALIFORNIA)

COUNTY OF SAN DIEGO)

On March 28, 1996, before me, KerryAnne DeWolfe,
Notary Public, personally appeared Joyce Correll
and _____,

[] personally known to me

- OR -

[X] proved to me on the basis of satisfactory evidence

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

WITNESS my hand and official seal.



KerryAnne DeWolfe
Notary Public

CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

1422

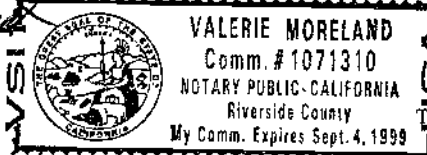
STATE OF CALIFORNIA)
COUNTY OF San Diego)

On APRIL 24th 1996 before me, Valerie Moreland
personally appeared ELLA MAE Rinehart
personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies) and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature

Valerie Moreland



This area for official notarial seal.

OPTIONAL SECTION CAPACITY CLAIMED BY SIGNER

Though statute does not require the Notary to fill in the data below, doing so may prove invaluable to persons relying on the document.

☒ INDIVIDUAL

☐ CORPORATE OFFICER(S) _____ TITLE(S)

☐ PARTNER(S) - ☐ LIMITED ☐ GENERAL

☐ ATTORNEY-IN-FACT

☐ TRUSTEE(S)

☐ GUARDIAN/CONSERVATOR

☐ OTHER _____

SIGNER IS REPRESENTING:

Name of Person or Entity

Name of Person or Entity

OPTIONAL SECTION

Though the date requested here is not required by law, it could prevent fraudulent reattachment of this form.

THIS CERTIFICATE MUST BE ATTACHED TO THE DOCUMENT DESCRIBED BELOW

TITLE OR TYPE OF DOCUMENT: Amended CC + R's

NUMBER OF PAGES _____ DATE OF DOCUMENT _____

SIGNER(S) OTHER THAN NAMED ABOVE 2

EXHIBIT "A" - PROPERTY LEGAL DESCRIPTION

The Project is comprised of the following real property in the City of Vista, County of San Diego, State of California, described as follows:

LEGAL DESCRIPTION

Lots 1 through 4, inclusive, of Vista Tract No. 72-6, Unit No. 1 in the City of Vista, County of San Diego, State of California according to Map thereof No. 7537 filed in the Office of the County Recorder of San Diego County on January 31, 1973.

EXHIBIT "B" - RECORDED RESTRICTIONS

As referenced in Recital "C," ownership of the Property is currently subject to the covenants, conditions, restrictions, rights, reservations, easements, equitable servitudes, liens and charges set forth in:

1. The First Amended Declaration of Restrictions and Enabling Declaration Establishing a Plan for Condominium Ownership for Vista Park Villas, recorded June 18, 1974, as File/Page No. 74-161781, which amended and replaced, in its entirety, that certain Declaration of Restrictions and Enabling Declaration Establishing a Plan for Condominium Ownership for Vista Park Villas recorded on August 8, 1973, as File/Page No. 73-221219 ("*Original Declaration*");
2. The Declaration of Annexation recorded July 5, 1974, as File/Page No. 74-181019; and
3. The Declaration of Annexation recorded July 9, 1974, as File/Page No. 74-183236;

including any amendments to the above, all of which are recorded in the Official Records of the County Recorder of San Diego County.

EXHIBIT "C" - CONDOMINIUM PLANS

As referred to in Section 1.7, the Condominium Plan recorded against the Property is as follows:

The Condominium Plan for Lots 1, 2 & 4, Vista Tract No. 72-6, Unit I, in the City of Vista, County of San Diego, State of California, recorded as Exhibit "A" to the First Amended Declaration of Restrictions and Enabling Declaration Establishing a Plan for Condominium Ownership for Vista Park Villas, recorded June 18, 1974, as File/Page No. 74-161781.

EXHIBIT "C" - CONDOMINIUM PLANS

EXHIBIT "D" - MAINTENANCE LIST

The following is a listing of the items within the Project, the maintenance, repair and replacement duty for which Owners and the Association are responsible in accordance with Section 6.3 of the Declaration.

COMPONENT(S)	OWNER	ASSOC
Air Conditioning System - Each Unit	X	
Appliances - Built-in	X	
Appliances - Free Standing	X	
Carpeting - in Units	X	
Carport/Parking Space - Concrete/Asphalt Surfaces		X
Caulking - Exterior		X
Caulking - Interior	X	
Common Area Improvements		X
Crawl Spaces in Attic		X
Doorbell - Exterior Components/Button Switch	X	
Doorbell - Interior Components	X	
Doors - Entry - Frame & Door		X
Doors - Entry - Locks and Hardware	X	
Doors - Entry - Painting - Exterior Surface		X
Doors - Entry - Painting - Interior Surface	X	
Doors - Entry - Weather Stripping/Waterproofing	X	
Doors, Screen/Storm/Security	X	
Drainage Systems (e.g. ditches, catch basins)		X
Drains - Bathtubs, Showers, Sinks	X	
Drains - Curb		X
Drains - Patio/Balcony		X
Drains - Yards/Planters		X
Electrical Panel/Circuit Breakers/Interior	X	

EXHIBIT "D" - MAINTENANCE LIST

COMPONENT(S)	OWNER	ASSOC
Electrical Switches, Sockets, Wall Plates - Interior	X	
Electrical Wiring ^{1/}		
Exterior Building Surfaces		X
Exterior Faucets, Handles, Washers		X
Exterior Lighting Fixtures		X
Fences - Painting (Inside/Outside Surfaces) ^{2/}		
Fences - Repair and Replace		X
Floor Coverings - Carpet, Vinyl and Tile	X	
Front Entry Landings		X
Furnace - Unit Systems	X	
Garbage Disposal	X	
Gas Lines - Below Ground		X
Glass	X	
Gutters & Downspouts		X
Hot Water Recirculating Systems & Pumps - Inside Unit	X	
Landscaping - Back Yards/Patio	X	
Landscaping - Balconies	X	
Landscaping - Beds		X
Landscaping - Common Area Patios/Courtyards		X
Landscaping - Front Yards		X
Landscaping - Lawns		X
Landscaping - Side Yards		X

^{1/}Owners are responsible for all electrical wiring in the interior of the Unit and that wiring in the interior walls. The Association is responsible for the wiring outside the Unit and in the Common Area Walls.

^{2/}Owners are responsible for painting the interior surfaces of the fences (the surfaces that face the Unit), and the Association is responsible for painting the exterior surfaces of the fences.

EXHIBIT "D" - MAINTENANCE LIST

COMPONENT(S)	OWNER	ASSOC
Landscaping - Slopes		X
Landscaping - Trees		X
Lighting Fixtures - Common Areas		X
Lighting Fixtures - Inside Units	X	
Lighting Fixtures - Outside - Front	X	
Lighting Fixtures - Outside - Patio	X	
Linoleum & Vinyl Flooring - Inside Units	X	
Painting - Interior	X	
Patio/Balcony Deck Membranes		X
Patio/Balcony Deck Painting		X
Patio/Balcony Deck Railings - Painting (Inside/Outside Surfaces)		X
Patio/Balcony Deck Waterproofing		X
Plumbing Fixtures - Interior (Toilets/Tubs/Sinks/Faucets, etc.)	X	
Plumbing Lines - Interior, if not located behind or within walls, floors or ceilings	X	
Plumbing Lines - Interior, located behind or within walls or ceilings		X
Plumbing Lines - Interior, located within floors		X
Repairs to Wall Coverings, Floor Coverings which the Association damages during repairs		X
Roof Decking		X
Roof Flashing & Other Roofing Components		X
Roof Shingles/Tiles		X
Roof Underlayment		X
Roof Vents		X
Sewer Lines - Below Ground		X
Sewer/Toilet Backups	X	
Sidewalks - Common Areas		X
Sidewalks - Entry		X

EXHIBIT "D" - MAINTENANCE LIST

COMPONENT(S)	OWNER	ASSOC
Sliding Patio Door Flashing/Waterproofing		X
Sliding Patio Door Frames & Tracks		X
Sliding Patio Door Hardware	X	
Sliding Patio Doors	X	
Spraying for Household Pests (Ants, Fleas, etc.)	X	
Spraying for Landscaping Pests		X
Streets		X
Stucco Painting/Coloring		X
Stucco Repair & Replacement		X
Termite Eradication - Indoor	X	
Termite Eradication - Outdoor		X
Toilet - Wax Ring	X	
Toilets - Fixture & Components	X	
Trim - Wood - Exterior - Maintenance & Replacement		X
Trim - Wood - Exterior - Painting		X
Wallpaper/Paneling	X	
Water Heater - Inside Unit	X	
Water Lines - Common - Below Ground		X
Water Lines - Common - In Crawl Spaces		X
Water Softeners	X	
Window and Door Glass	X	
Window and Slider Screens	X	
Window Flashing/Waterproofing		X
Window Frames		X
Window Hardware	X	
Wiring - Cable TV - Inside Unit	X	
Wiring - Cable TV - outside Unit		X
Wiring - Electrical - From Breaker to Interior		X

EXHIBIT "D" - MAINTENANCE LIST

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COMPONENT(S)	OWNER	ASSOC
Wiring - Electrical - From Outside To Breaker in Unit		X
Wiring - Telephone	X	

EXHIBIT "D" - MAINTENANCE LIST