

Recording Requested By:
THE MARIPOSA OF MISSION PACIFIC PROPERTY OWNERS
ASSOCIATION

When Recorded Return To:
Erik R. Basil, Esquire
The Basil Law Firm
3170 Fourth Avenue - Suite 400
San Diego, California 92103

THIS SPACE FOR RECORDER'S USE ONLY

RESTATED
DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS
for
THE MARIPOSA OF MISSION PACIFIC
PROPERTY OWNERS ASSOCIATION

A California Nonprofit Mutual Benefit Corporation

IF THIS DOCUMENT CONTAINS ANY RESTRICTION BASED ON RACE, COLOR, RELIGION, SEX, FAMILIAL STATUS, MARITAL STATUS, DISABILITY, NATIONAL ORIGIN OR ANCESTRY, THAT RESTRICTION VIOLATES STATE AND FEDERAL FAIR HOUSING LAWS AND IS VOID, AND MAY BE REMOVED PURSUANT TO SECTION 12956.1 OF THE GOVERNMENT CODE. LAWFUL RESTRICTIONS UNDER STATE AND FEDERAL LAW ON THE AGE OF OCCUPANTS IN SENIOR HOUSING OR HOUSING FOR OLDER PERSONS SHALL NOT BE CONSTRUED AS RESTRICTIONS BASED ON FAMILIAL STATUS.

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**RESTATED DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
THE MARIPOSA OF MISSION PACIFIC PROPERTY OWNERS ASSOCIATION
*A California Nonprofit Mutual Benefit Corporation***

THIS RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS is made on the day and year hereinafter written by THE MARIPOSA OF MISSION PACIFIC PROPERTY OWNERS ASSOCIATION, a *California Nonprofit Mutual Benefit Corporation* ("Declarant"), with reference to the following Recitals.

RECITALS

A. Declarant is a homeowners association whose Members are the Owners of Lots within that certain real property in the City and County of San Diego, State of California, more particularly described as:

Lots 148 through 360, inclusive, and Lots 362 through 365, inclusive, of MISSION PACIFIC UNIT NO. 2, according to Map thereof No. 10252 filed in the Office of the County Recorder of San Diego County, California on October 29, 1981

(hereinafter "Property").

B. The Property is known as MARIPOSA OF MISSION PACIFIC and/or MARIPOSA ("Project").

C. The Property is a *Planned Development*, as defined in *Civil Code* §1351(k), consisting of 210 Residential Lots and related Common Areas Lots.

D. The Common Area Lots are owned and maintained by Declarant -THE MARIPOSA OF MISSION PACIFIC PROPERTY OWNERS ASSOCIATION, a California Nonprofit Mutual Benefit Corporation, the Members of which are the owners of Residential Lots.

E. Ownership of a Residential Lot is currently subject to the covenants, conditions, restrictions, rights, reservations, easements, equitable servitudes, liens and charges set forth in the Declaration of Covenants, Conditions and Restrictions recorded on August 13, 1982 as Document 82-251484 of Official Records of the County Recorder of San Diego County, as may have from time to time been amended.

F. Declarant now desires to amend and restate the aforementioned Declaration and replace it in its entirety with this Restated Declaration. Declarant further desires that, upon recordation of this Restated Declaration, the Project shall be subject to the covenants, conditions, restrictions, rights, reservations, easements, equitable servitudes, liens and charges contained herein, and that this Restated Declaration take the place of and relate back in time to the recording of the original Declaration referenced in subparagraph D, above.

G. Article XI Section 3 of the original Declaration provides that it may be amended by the affirmative vote or written consent of seventy-five (75%) percent of the total voting power of the Association and at least fifty-one (51%) percent of the voting power of Association Members other than Declarant. 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 percentages have been obtained.

Now Therefore, Declarant hereby declares that Project shall be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied, and improved subject to the declarations, limitations, covenants, conditions, restrictions, reservations, rights, and easements set forth in this Restated Declaration, and as may be amended from time to time, all of which are declared and agreed to be in furtherance of a plan established for the purpose of enhancing and perfecting the value, desirability, and attractiveness of the 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 Lot.

ARTICLE 1: THE PROPERTY

1.1 DESCRIPTION OF LAND AND IMPROVEMENTS; PROJECT SUBJECT TO DECLARATION.

The Project is a planned unit residential development consisting of all real property described in Recital A herein, and any property which may be annexed thereto. The entire Project and Property shall be subject to this Declaration.

1.2 OWNERSHIP OF COMMON AREA.

The Common Area Lots are owned by the Association in fee simple interest and may include easements, covenants, conditions and restrictions as may be set forth in the Final Subdivision Map of which the Common Area Lots are a part and in the original Declaration.

1.3 OWNERS' EASEMENTS OF ENJOYMENT.

Every Owner of a Lot shall have a right and easement of ingress, egress and of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every such Lot, subject to the powers and duties of the Association described in this Declaration.

1.4 PROHIBITION AGAINST PARTITION; POWER OF ATTORNEY; DISTRIBUTION OF PROCEEDS.

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 *Civil Code* §1359.

The Board is granted an irrevocable power of attorney to sell the Common Area for the benefit of all the Owners thereof when partition of the Owners' interest in said Common Area may be had pursuant to the requirements of *Civil Code* §1359. The power of attorney may be exercised upon the vote or written consent of Owners holding in the aggregate at least two-thirds (2/3) of the interest in the Project by any two Members of the Board who are authorized to record a Certificate of Exercise in the Office of the San Diego County Recorder, which Certificate shall be conclusive evidence hereof in favor of any person not relying thereon in good faith; provided, however, that said power of attorney shall not apply to the Secretary of the U.S. Department of Veterans Affairs (VA) or to the United States of America.

However, in the event of sale of the entire Project as provided herein, the proceeds of sale shall be distributed to the Owners based upon the current fair market value of each Lot as compared to the value of all other Lots as established by an independent appraisal conducted by an M.A.I. appraiser selected by the Board.

1.5 ANNEXATION OF ADDITIONAL PROPERTY.

Additional property may be annexed and become subject to the Declaration only upon the vote or written assent of not less than two-thirds (2/3^{ds}) of the total votes residing in the Association members. Upon such approval, the Owners of the property wishing to be annexed may file of record a Declaration of Annexation which shall extend the scheme of this Declaration to such property.

1.6 PRESUMPTION REGARDING BOUNDARIES OF LOTS.

The boundaries of each Lot consists of the entire dwelling structure and appurtenant garage and patio areas, including the roof and exterior walls. In interpreting leases, declarations and plans, the existing physical boundaries of a Lot shall be conclusively presumed to be its boundaries rather than the description expressed in any deed, Plan or this Declaration. This presumption applies regardless of settling or lateral movement of the building and regardless of minor variances between boundaries shown on the original building plan or described in any lease and those of the building as constructed or reconstructed. In the event a structure is partially or totally destroyed and then repaired or rebuilt, or due to shifting, settlement or movement of any portion of the Project, the Owners agree that a valid easement for the minor encroachments over adjoining Lots 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.

1.7 PROHIBITION AGAINST SEVERANCE OF ELEMENTS.

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

ARTICLE 2: THE ASSOCIATION

2.1 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.

2.2 MEMBERSHIP.

Every record Owner (including a contract purchaser under a recorded contract of sale) of a Lot in the Project which is subject to assessment shall automatically become a Member of the Association. Ownership of a Lot is the sole qualification for Membership.

Each Member shall have the rights, duties, privileges and obligations as set forth in the Governing Documents. Membership shall automatically cease when the Owner no longer holds an Ownership interest in a Lot. All memberships shall be appurtenant to the Lot conveyed and cannot be transferred, assigned, conveyed, hypothecated, pledged or alienated except as part of a transfer of the Owner's entire Ownership interest, and then only to the transferee. Any transfer of the Owner's title to their Lot shall automatically transfer the appurtenant membership to the transferee.

2.3 MEMBERSHIP CLASS VOTING RIGHTS.

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. Members shall be entitled to one (1) vote for each Lot owned which is subject to assessment, as is further provided herein.

2.4 GENERAL POWERS AND AUTHORITY.

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. Subject to other provisions and limitations of the Governing Documents, *Corporations Code* and actions to be authorized or approved by the Members, the Association, through its Board, shall perform all acts necessary for or incidental to the performance of the obligations and duties imposed upon it for the operation, business and affairs of the Association. Its powers shall include, but are not limited to:

- (a) The power to establish, fix, levy, collect and enforce the payment of Assessments and against Owners in accordance with the procedures set forth in this Declaration.
- (b) The right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated on the Common Area.
- (c) The power to borrow money and incur indebtedness for the purposes of the Association and to cause to be executed and delivered therefore, in the corporate name, promissory notes, bonds, debentures, deeds of trust, mortgages, pledges, hypothecations or other evidences of debt and securities therefor, with the vote or the written consent of two-thirds (2/3) of the voting power of the Membership.
- (d) The right to dedicate or transfer all or part of the Common area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication or transfer shall be effective unless an instrument signed by two-thirds (2/3rd) of the voting Member agreeing to such dedication or transfer has been recorded.
- (e) 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 Owner's voting rights and the rights and privileges to use the Common Area and/or facilities appurtenant to the Member's Lot and (ii) by imposing monetary fines, subject to the limitations set forth in the Bylaws.
- (f) The right to delegate its powers to committees, officers or employees of the Association as expressly authorized by the governing documents.
- (g) The power to remove any vehicle within the Project parked in violation of this Declaration or the Rules and Regulations in accordance with the provisions of *Vehicle Code* §22758.2, any other powers granted to an association under California law, and any amendments thereto.
- (h) The authority to enter into or upon any Lot for the purpose of affecting repairs, improvements, replacements or maintenance which the Association is obligated to perform - with at least three (3) days prior written notice to the Owner or such greater notice as may be required by any provision hereof; provided, however, that such entrance shall be permitted without any prior notice whatsoever in the event of an emergency. Such entry shall be made with as little inconvenience as possible to the residence and any damage caused thereby shall be repaired by the Association.

- (i) The power to adopt reasonable rules and regulations governing the use of the Lots, Common Area, common facilities and Association-owned property, and the conduct at Board and Members' meetings, in accordance with the following:
 - (1) Reasonable restrictions related to use of the Common Area and all its facilities and the conduct of Owners and their families, guests, employees, tenants and invitees with respect to the Project and other Owners. Written copies of the Rules and any schedule of fines and penalties adopted by the Board shall be furnished to the Owners.
 - (2) Setting of reasonable administrative rules, fees, deposits; and the setting of reasonable hearing procedures and monetary penalties and fines in the event of a violation of any provisions of the Governing Documents, subject to the Board's authority for disciplinary actions against members as set forth the in the Association's Bylaws.
- (j) The right to institute, defend, settle or intervene in litigation, arbitration, mediation or administrative proceedings in the name of the Association as the real party in interest and without joining with it the Owners, in matters pertaining to:
 - (1) Enforcement of the Governing Documents.
 - (2) Damage to the Common Area.
 - (3) Damage to the Lots that arises out of, or is integrally related to, damage to the Common Area or Lots that the Association is obligated to maintain or repair.
 - (4) Enforcement of payment of Assessments pursuant to the provisions contained in this Declaration.
 - (5) Any other matter(s) in which the Association is a party, including, but not limited to contract disputes.
 - (6) Any action in which all, or substantially all, of the Owners have an interest.
- (k) The authority to take such action, whether or not expressly authorized by this Declaration, as may reasonably be necessary to enforce the governing documents of the Association and other instruments for the ownership, management and control of the Project and the provisions of any agreement to which the Association is a party.

2.5 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, acting through the Board of Directors, shall be responsible for the following:

- (a) Providing for the maintenance, management, repairs, replacement and preservation of the Common Area and improvements thereon, including the right to grant permits, licenses and easements over, under, upon and across the Common Area for utilities, roads and other purposes reasonably necessary or useful for the proper maintenance or operation of the Project, subject to the limitations listed herein.
- (b) The operation, maintenance, repair and replacement, or contract for the performance of that work, of those components for which Association is prescribed with the responsibility pursuant to the provisions of the Governing Documents.
- (c) Contracting for the services of any personnel that the Board determines are necessary or proper for the management, operation and security of the Project, of the Common Area and the Association.
- (d) The maintenance of such areas adjacent to the Project as the Board from time to time may determine to be desirable in order to enhance the appearance of the Project or as may be required from time to time by the City of San Diego or other applicable governmental agency.
- (e) Using the Association's funds as detailed herein to, among other things, acquire and pay for goods and services for the Common Area, facilities and interests of or for the Association, to fulfill any duty or responsibility of the Association imposed by this Declaration or as may be imposed by law, subject to, but not limited to:
 - (1) 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 Lots, provided, however, that the Association, acting through the Board of Directors, shall have the right to enter into agreements with public utilities and/or cable service providers to provide bulk services to the Lots.
 - (2) Payment of taxes and assessments levied or assessed against the Common Area, or against any Lot if resulting in a lien against the Common Area, and any other lien or encumbrance which affects the Common Area including, but not limited to, mechanics' liens. Such taxes, assessments, liens or encumbrances shall be paid by the Board from the Association's funds but shall not; however, include any levy or assessment against (or which affects) the interest of one or more, but less than all, of the Lots and not the interest of all of the Owners in the Common Area. The Board shall levy an enforcement assessment against any Unit for the amount of any such tax, assessment, lien or encumbrance that applies specifically to such Unit to the extent the amount is separately determinable.
 - (3) Contract for casualty, liability and other insurance on behalf of the Association; which insurance policies shall be reviewed annually to assure full insurance protection; however, nothing herein shall require the Board to provide casualty or liability insurance for the Owners or the Lots or structures thereon.

- (4) Legal and accounting services necessary or proper in the operation of the Common Area and the Association or the enforcement of the Governing Documents.
- (f) It shall be the duty of the Board to inspect the Common Area at least every three years for the purpose of determining the condition of the Common Area including, but not limited to, the state of adequacy of maintenance, the need for additional maintenance and/or refurbishment, replacement or repair. The Common Area to be inspected shall include but not limited to, the exterior of all buildings and structures, roofs, walkways, irrigation, landscaping, drainage and recreation facilities. Structural components of any building/structure, foundations and soils shall also be inspected if the inspection otherwise required by this Section would place a reasonable person on notice of any defect or need to maintain, repair or refurbish such item. The Board shall obtain a report of the inspection of the Common Area and maintain a copy of such report in the records of the Association.

2.6 LIMITATIONS OF THE ASSOCIATION.

The Board shall be prohibited from taking any of the following actions, except with the vote or written consent of a majority of the total voting power of the Association:

- (a) Enter into a contract with a third person wherein the third person will furnish goods or services for the Common Area or the Association for a term longer than one (1) year, with the following exceptions:
 - (1) A management contract, the terms of which have been approved by the FHA or VA; however, no agreement for the services of a person/firm to manage the Project shall exceed a term of one year and shall further provide for termination by either party without cause and without payment of a termination fee on ninety (90) days or less written notice.
 - (2) A contract with a public utility company if the rates charged for the materials or services are regulated by the Public Utilities Commission provided, however, that the term of the contract shall not exceed the shortest term for which the supplier will contract at the regulated rate.
 - (3) Prepaid casualty and/or liability insurance policies of not to exceed three (3) years duration provided that the policy permits short rate cancellation by the insured.
- (b) Incurring aggregate expenditures for capital improvements to the Common Area in any fiscal year in excess of five (5%) percent of the budgeted gross expenses of the Association for that fiscal year. This limitation does not apply to maintenance or repair of existing elements with the Common Area.
- (c) Selling during any fiscal year property of the Association having an aggregate fair market value greater than five (5%) percent of the budgeted gross expenses of the Association for that fiscal year.
- (d) Paying compensation to Directors or to Officers of the Association for services performed in the conduct of the Association's business provided, however, that the Board may cause a Director or Officer to be reimbursed for expenses incurred in carrying on the business of the Association.
- (e) Unless seventy-five (75%) percent of the Lenders holding first deeds of trust or mortgage liens on the Lots have given their prior written approval, the Board shall not use hazard insurance proceeds for losses to any Property for other than the repair, replacement or reconstruction of such property.
- (f) The rights of Owners and Directors to obtain and inspect the accounting books and records of the Association shall be in accordance with the Bylaws and applicable sections of the Davis-Stirling Common Interest Development Act (*Civil Code* §1350 - §1376) which govern the duty of the Association to maintain certain accounting books and records and the rights of Owners and Directors to obtain and inspect those accounting books and records.

ARTICLE 3: ASSESSMENTS

3.1 COVENANT TO PAY.

Each Owner by acceptance of the deed to the Owner's Lot, whether or not it shall be so expressed in any deed or other conveyance, is deemed to covenant and agree to pay to the Association Project Assessments, as defined hereinbelow, and all other charges duly levied by the Association pursuant to the provisions of this Declaration. Project assessments, and any late charges, reasonable costs of collection and interest, shall also be a personal debt of the Owner of the Lot 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 Lot.

3.2 PROJECT ASSESSMENTS.

Except as provided herein, the Association shall levy Regular, Special, Reimbursement and Enforcement assessments sufficient to perform its obligations under the governing documents and California law. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety 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 Declaration. Such assessments shall be as follows:

3.2.1 REGULAR (ANNUAL) ASSESSMENTS.

Concurrently with preparation of the financial documents and budget as required in the Bylaws, 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 or deficit from the prior year's fund. The resulting amount shall constitute the regular assessments for the budgeted year. 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.

3.2.2 SPECIAL ASSESSMENTS.

If it is determined that the annual 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 *Civil Code* §1366 or the Governing Documents. Special assessments shall be levied in the same manner as regular assessments and collected in such manner as may be established by the Board and noticed to the membership.

3.2.3 ENFORCEMENT ASSESSMENTS.

The Board of Directors may levy, subject to the limitations of the Governing Documents, enforcement assessments against an Owner and their Lot for failure to comply with the Governing Documents. Enforcement assessments shall be subject to costs, late charges and interest for delinquent payment as more particularly described in this Declaration. Enforcement assessments imposed to recover monetary penalties for failure of a Member to comply with the Governing Documents may not become a lien against the Member's Lot that is subject to foreclosure, unless otherwise allowed by law.

3.2.4 CAPITAL IMPROVEMENT ASSESSMENTS.

Capital Improvement Assessments may be levied by the Association in any fiscal year, applicable to that year only for the purpose of defraying in whole or in part the cost of any construction of a capital improvement on the Common Area; provided that any such assessment aggregating in excess of five (5%) percent of the gross of all other assessments budgeted for that fiscal year shall have the vote or written consent of more than fifty (50%) percent of the total voting power of the Association. Capital Improvement Assessments shall be assessed and allocated in the same manner as Regular Assessments.

3.2.5 REIMBURSEMENT ASSESSMENTS.

Subject to the limitations of the Governing Documents and in addition to regular and special assessments, the Board may levy reimbursement assessments against Owners and Lots in accordance with the following:

- (a) When 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 reimbursement assessment shall include the cost thereof, together with any financing costs and administrative costs incurred by the Association. Prior to levying a reimbursement assessment, the Board shall provide the Owner with notice and a hearing in accordance with the Bylaws. The notice and hearing regarding the levy of an individual assessment may be combined with the notice and hearing regarding the underlying violation.
- (b) Reimbursement assessments shall be subject to the provisions in the Governing Documents regarding costs, late charges and interest for delinquent payment, and may become a lien on the Lot. Except as specifically prohibited by law, it is the intent of this Declaration that reimbursement assessments (including without limitation those imposed to reimburse the Association for the cost of repairing damage to the Common Areas or Association Property for which the assessed Member is responsible and, if permitted by law, late payment penalties), if not paid prior to delinquency, may be

collected either in an action at law or by resort to the lien and foreclosure remedies below.

- (c) A monetary penalty imposed by the Association as a means of reimbursing the Association for costs incurred by the Association in the repair of damage to common areas and facilities for which the member or the member's guests or tenants were responsible may become a lien against the member's separate interest enforceable by the sale of the interest under *Civil Code* §2924, §2924b, and §2924c, as further provided herein.

3.2.6 RECONSTRUCTION ASSESSMENTS.

Reconstruction Assessments may be levied by the Board as specified in that Article herein entitled "*Damage or Destruction*".

3.3 PROJECT FUNDS.

The Association shall establish and maintain a "Reserve" and Operation Fund into which the Board shall deposit Regular Annual Assessments. The Association shall also establish and maintain such other funds as the Board deems appropriate for deposit and disbursement of other Project Assessments. All of said funds are generally referred to herein as the *Project Funds*. Project Funds received or collected by the Association, together with any interest or late charges thereon, shall be promptly deposited into one or more insured checking, savings, or money market accounts in a bank or savings and loan association selected by the Board of Directors and shall be maintained and handled as follows:

3.3.1 INVESTMENT OF FUNDS.

The Board shall be entitled to make prudent investment of reserve funds in insured certificates of deposit, money market funds, or similar investments consistent with the investment standards normally observed by trustees. The Board, and such officers or agents of the Association as the Board shall designate, shall have exclusive control over said account(s) and investments and be responsible to Association Members for the maintenance at all times of accurate records thereof.

3.3.2 WITHDRAWAL OF FUNDS.

Withdrawal of funds from Association accounts shall be subject to the minimum signature requirements imposed by *Civil Code* §1365.5 and the Bylaws, with specific designation that withdrawal of funds from the reserve accounts shall require the signature of each the President and the Secretary of the Association. The Board may, however, authorize the managing agent of the Association to sign/execute drafts issued from the general operational checking account.

3.3.3 SEPARATE RECORDS OF ACCOUNTING.

For the purposes of accounting, but without requiring any physical segregation of assets, the Association shall maintain a separate accounting of all funds received by it in payment of each assessment and of all disbursement made therefrom, provided that receipts and disbursement of Special Assessments made pursuant to this Article, shall be accounted for together with the receipts and disbursements of Regular Annual Assessments, and separate liability accounts shall be maintained for each capital improvement for which reserve funds for replacement are allocated.

3.3.4 COMMINGLING OF FUNDS.

To avoid a multiplicity of bank accounts, the proceeds of all Project Assessments may be commingled in one or more accounts and need not be deposited in separate accounts, so long as separate records of accounting are maintained as provided above. Any interest received on such deposits shall be credited proportionately to the balances of the various Project Funds accounts maintained on the books of the Association. Except as may be otherwise provided, the proceeds of each Project Assessment shall be used for the purposes for which such assessment was made, and such funds shall be received and held in trust by the Association for such purpose. Notwithstanding the foregoing, the Board, in its discretion, may make appropriate adjustments among the various line items in the Board's approved general operating budget if the Board determines that it is prudent and in the best interest of the Association and its Members to make such adjustments. If the proceeds of any Special Assessment exceed the amount required to accomplish the purpose for which such assessment was levied, such surplus may, in the Board's discretion, be returned proportionately to the contributors thereof, reallocated among the Association's reserve accounts if such account is, in the Board's opinion, under funded or credited proportionately on account of the contributing Owners' future Regular Annual Assessment obligations.

3.4 UNIFORM RATE OF ASSESSMENTS.

Both Annual and Special Assessments shall be fixed at a uniform rate for all Lots and may be collected on a monthly basis.

3.5 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 forty-five (45) nor more than sixty (60) days prior to the increase in the Regular assessment or Special assessment becoming due; provided, however, that failure to comply with the foregoing shall not affect the validity of any assessment levied by the Board.

3.6 LIMITATIONS ON ASSESSMENTS.

Except in emergency situations, any annual increases in regular assessments for any fiscal year, as authorized by this Declaration, shall not be imposed unless the Board has complied with *Civil Code* §1365(a) with respect to that fiscal year, or has obtained the approval of Owners constituting a quorum of the Owners and casting a majority of the votes through a ballot measure or meeting of the Association conducted in accordance with *Corporations Code* §§7510-7527 and §7613, impose a Regular Assessment per Lot

that is more than 20% greater than the regular assessment for the preceding fiscal year, or levy Special Assessments that in the aggregate exceed 5% of the budgeted gross expenses of the Association for that fiscal year. For purposes of this Section, a "quorum" means more than 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:

- (a) Required by a court order.
- (b) 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.
- (c) 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.

3.7 COSTS, LATE CHARGES AND INTEREST.

Regular and special assessment levied as provided for herein are considered delinquent fifteen (15) days after its due date. If an assessment is delinquent the Association may recover all of the following from the Owner:

- (a) Reasonable costs incurred in collecting the delinquent assessment, including reasonable attorneys' fees.
- (b) 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.
- (c) Interest on the foregoing sums, at an annual percentage rate of twelve percent (12%), or such higher rate as may be permitted by law, commencing 30 days after the assessment becomes due.

3.8 NONPAYMENT OF ASSESSMENTS.

Unless California law provides otherwise, delinquent Project Assessments and any related late charges, reasonable fees and costs of collection (including reasonable attorneys' fees), penalties, and interest shall be a debt of the Owner of a Lot at the time the assessment(s) and other sums are levied and may become a lien upon the delinquent Owner's Lot pursuant to the superseding provisions of this Declaration and/or *Civil Code* §1367.1 (as may be amended), if at least thirty (30) days prior to recording of such Lien upon a Lot, the Association notifies the delinquent Owner in writing by certified mail of the delinquency and such other provisions and statements as contained in *Civil Code* §1367.1(a), as amended, or applicable statute.

Unless otherwise provided by law or statute, or as may be amended by subsequent revisions to The Davis-Stirling Common Interest Development Act, any payments made by an Owner shall first be applied to the assessments owed and, only after the assessments owed are paid in full shall the payments be applied to the fees and costs of collection, attorney's fees, late charges or interest. An Owner, upon making a payment, may request a receipt, such receipt to contain the date of the payment and the name of the person who received such payment.

Unless otherwise amended by *Civil Code* §1367.1 or any superseding statute, an Owner may dispute a debt claimed by the Association to be delinquent if such dispute and explanation of same is provided to the Association *in writing* within fifteen (15) days of the Association's initial notice of delinquency; and the Association shall provide a written response to the Owner within fifteen (15) days of the postmark of such written dispute and explanation.

Notwithstanding the foregoing, and unless otherwise amended by *Civil Code* §1367.1 or any superseding statute, an Owner may also submit a written request to meet with the Board to discuss a payment plan for any debt noticed pursuant to this Section. The Owner shall be provided with the Association's standards for payment plans, if any, and be allowed to meet with the Board in Executive Session within forty-five (45) days of the postmark of Owners written request for such meeting, unless no regularly scheduled board meeting is to be held within that period, in which case the Board may designate a committee of one or more members to meet with the Owner.

3.9 NOTICE OF DELINQUENT ASSESSMENT ("LIEN").

Unless California law provides otherwise, delinquent Project Assessments and any related late charges, reasonable fees and costs of collection (including reasonable attorneys' fees), penalties, and interest shall become a lien upon a Lot when a Notice of Delinquent Assessment ("Lien") is duly recorded as provided in *Civil Code* §1367.1, as amended or superseded, or applicable statute, if at least thirty (30) days prior to recording of such Lien upon a Lot, the Association notifies the delinquent Owner in writing by certified mail of the provisions as contained in *Civil Code* §1367.1(a), as amended, or applicable statute.

Any Lien created in accordance with this Section or *Civil Code* §1367.1, as may be amended or superseded, shall state the amount of the delinquency and related charges as allowed herein, a legal description of the Lot which the assessment(s) and other sums are levied, the name of the record Owner(s) of such Lot against which said Lien shall be recorded, and the name and address of the trustee authorized by the Association to enforce the lien by sale. The Lien may be signed by any officer of the Board, or attorney, employee or agent of the Association as authorized by the Board. 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 Lien or by a trustee substituted pursuant to *Civil Code* §2934(a), in accordance with the provisions of *Civil Code* §2924, §2924(b) and §2924(c), as may be amended.

If all sums specified in the 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 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 Lien and said Lien may be foreclosed upon as set forth herein even though the delinquent Owner has made one or more partial payments.

3.10 PRIORITY OF ASSESSMENT LIEN.

The Lien created as provided in this Declaration or pursuant to *Civil Code* §1367.1, as may be amended or superseded, shall be prior 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:

- (a) 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.
- (b) Should any person /entity other than a First Mortgagee foreclose on a Lot, 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 which event 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 Lot, upon the transfer of title.
- (c) Neither the transfer of a Lot 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 their Lot.
- (d) No sale or transfer of any Lots shall relieve such Lot or its new Owner from liability for any future assessments which accrue during such Owner's period of Ownership.

3.11 CERTIFICATE OF PAYMENT.

The Association shall, upon demand, and for a reasonable charge, furnish a Certificate signed by an Officer of the Association setting forth whether Assessments on a specified Lot have been paid.

3.12 NO OFFSETS

All Assessments shall be payable in the amounts specified by the particular Project Assessment and no offsets shall be permitted for any reason including, without limitation, a claim that the Association is not properly exercising its duties.

3.13 ASSESSMENT ROLLS

The Association shall maintain and revise annually an Assessment Roll reflecting the name and address of each Owner and other data necessary to levy the Project Assessments.

3.14 NONEXCLUSIVE REMEDY.

Assessment liens and the rights to foreclose and sale thereunder shall be in addition to and not in substitution of all other rights and remedies which the Association and its assigns may have hereunder and by law, including a suit to recover a money judgment for unpaid Assessments.

3.15 DELEGATION OF AUTHORITY.

Each Owner, with the exception of the Secretary of Veteran's Affairs, hereby vests in and irrevocably delegates to the Board the right and power to bring all actions at law or equity, and lien foreclosures, whether judicially or by power of sale, or otherwise, against any Owner for the collection of delinquent Project Assessments in accordance herewith and hereby expressly waives any objection to the enforcement in accordance with this Declaration of the obligation to pay Project Assessments as set forth herein.

ARTICLE 4: USE RESTRICTIONS

4.1 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, the Association, through the Board of Directors, shall be responsible for the enforcement of these provisions.

4.2 RECREATION COMMON AREA.

Recreation Common Area shall be used only as a recreation facility for the benefit of the Members as provided in the definitions and the rules of the Board and are subject to the right of the Association to (i) charge reasonable admission, use and other fees for the use of any Recreational Facility situated upon the Common Area; and (ii) impose monetary penalties, temporary suspend an Owner's rights as a Member or other appropriate discipline for failure to comply with the Association's governing documents.

4.3 COMMON AREA.

The following provisions apply to the use and enjoyment of the Common Area:

- (a) Except as provided in this Declaration, there shall be no judicial partition of the Common Area nor shall any person acquiring an interest in all or any part of the Project seek any judicial partition.
- (b) Subject to the provisions of the governing documents, each Owner has non-exclusive rights of ingress, egress and support through the Common Area. These rights shall be appurtenant to any instrument of conveyance. However, these rights shall not interfere with, and shall be subordinate to, any exclusive right to use an area appurtenant to a Lot.
- (c) The Owner's 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 to act and conduct itself pursuant to the powers and authority enumerated in this declaration or as otherwise provided by law.
- (d) Notwithstanding the easement rights or other rights contained herein, Owners who have sold their Lot to a contract purchaser or have leased or rented the Lot shall be deemed to have delegated their rights to use and enjoy the Common Area to the contract purchaser or tenant who resides in the Owner's, subject to reasonable regulations by the Board.
- (e) 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 Lot and, provided further, that such use does not unreasonably interfere with any other Owner's use or enjoyment of the Project.
- (f) Easements, as follows:
 - (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;
 - (2) The Association may grant to third parties easements in, on and over the Common Area for the purpose of constructing, installing or maintaining utilities and services, or other purposes reasonably related to the operation of the Project; and each Owner, in accepting a deed to a Lot, 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 a Lot.
 - (3) Each Owner of a Lot served by utility connections, lines or facilities, including those for water, electric, gas, sanitary sewer, telephone, drainage and Project communication services shall have the right and is hereby granted an easement across and through the Common Area for entry to the full extent necessary for the appropriate utility companies to access, where such connections, lines or facilities may be located for repair, replacement and maintenance thereof which is the responsibility of the separate Lot Owner. Whenever utility connections, lines or facilities installed within the Project serve more than one Lot, the Owner of each Lot served thereby shall be entitled to full use and enjoyment over the portions thereof which serves the Lot;
 - (4) Each Owner of a Lot adjacent to the Common Area shall have an easement over said Common Area for the use and maintenance of encroachments thereon due to settlement or shifting of buildings or other improvements, original construction errors or any other similar causes, so long as said encroachments exist. However, no such easement or encroachments shall exist if an encroachment occurred due to the willful conduct of the Owner of a Lot. The rights and obligations of Owners in the Project shall not otherwise be altered or affected by any such encroachment.
 - (5) All easements for streets, sewers, utilities and storm drains imposed on the Project pursuant to the Final Subdivision Map, Final Parcel Map, Declaration and Deeds conveying Lots.
 - (6) Wherever easements granted to the County/City are, in whole or in part, coterminous with any other easements, the easements of the County/City shall have priority over said other easements in all respects.

4.4 GENERAL RESTRICTIONS ON USE.

In exercising the right to occupy or use a Lot or the Common Area and its improvements, and unless otherwise expressly permitted by the Board, no Owner, Owner's family, guests, employees, tenants and invitees shall do any of the following:

4.4.1 SINGLE-FAMILY RESIDENTIAL USE.

Each Lot shall be used for single-family residential purposes only. No Owner shall be permitted to occupy or use a Lot, or permit all or any part of a Lot to be occupied or used for transient or hotel purposes.

4.4.2 BUSINESSES / COMMERCIAL ACTIVITY.

No Owner, guest, employee, tenant or invitee shall conduct, maintain or permit on any part of the Project any industry, business, trade, occupation or profession of any kind, whether commercial, religious, educational, or otherwise, except for home occupation use in compliance with this Declaration.

4.4.3 INSURANCE; HAZARD AND WASTE.

No act may be performed nor may anything be kept on or in any Lot 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 a Lot or in the Common Area that would result in the cancellation of insurance on any Lot or on any part of the Common Area or that would violate any law.

4.4.4 PROTECTION SYSTEMS.

Protection system including, but not limited to fire extinguishers, fire sprinklers, fire alarms and fuse boxes, shall not be disconnected, damaged, tampered with or otherwise modified in any way.

4.4.5 NO OBSTRUCTION.

No fence, structure, improvement, vegetation, or other obstruction shall be constructed, planted, or maintained upon any entry, patio deck or yard in the Project of such a height as to unreasonably obstruct the view of any other residence in the vicinity thereof. In the event of a dispute between Owners as to the obstruction of a view from a residence, such dispute shall be submitted to the Architectural Control Committee, whose decision in such matters shall be binding. Upon the request of the Committee, any obstruction shall be removed or otherwise altered at the Owner's expense to the satisfaction of the Committee and the Owner of the residence upon which obstruction is located. Any item or vegetation maintained upon any entry, patio deck or yard in the Project which is exposed to the view of any other Owner shall be removed or otherwise altered upon the request of the Architectural Control Committee if it is determined that the maintenance of such items or vegetation in its then existing state is contrary to the purposes or provisions of this Declaration.

4.4.6 FLAMMABLE, TOXIC, HAZARDOUS MATERIALS.

Gasoline, kerosene, cleaning solvents, or other flammable liquids or substances, or any toxic or hazardous materials shall not be stored 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.

4.4.7 RUBBISH.

All rubbish, trash, recyclable items and garbage shall be stored within the Lot except after nightfall of the day preceding trash collection (as determined by the Board), which trash may be placed outside the Lot in a location designated for trash pick up and shall be in containers as approved by the City of San Diego. All rubbish, trash, recyclable items and garbage shall be regularly removed from the Lot and shall not be allowed to accumulate anywhere within the Project. No oil or other refuse shall be allowed to enter storm drains.

4.4.8 SIGNS.

No sign may be erected or displayed on or from any Lot except as allowed by *Civil Code* §712 and §713. No signs of any nature, except house numbers indicating the street address of such Lots, may be erected or displayed on the Common Areas and/or Residential Lots, except as permitted in the Rules and Regulations.

4.4.9 SATELLITE DISHES; ANTENNAS.

No alteration or modification of the installed cable television system shall be permitted. Residents may maintain satellite dishes and antennas which are designed for customary television and radio broadcast reception and are no more than one meter (39") in diameter, subject to compliance with the Association's rules and regulations. No activity shall be conducted within any Lot which causes an unreasonable broadcast interference with television or radio reception by any neighboring Lot. The Board shall have the authority to adopt rules and regulations regarding the locations of antennas and dishes, required camouflaging (*if any*), and the running of cables, pursuant to the authority granted to it under *Civil Code* §1376 and §1378, and the FCC Telecommunications Act of 1996 and its Second Report and Order, and any amendments.

4.4.10 WINDOW COVERINGS.

Windows shall not be covered either in whole or in part with paper, newspaper, aluminum foil, metallic or reflective tinting or materials not specifically intended for such purpose. Each Owner shall install permanent draperies or other suitable window treatments in all exterior windows within sixty (60) days after initial occupancy of the residence.

4.4.11 FENCES, SCREENS, AWNINGS, ETC.

No fences, awnings, ornamental screens, sunshades or walls of any nature shall be erected or maintained on or around any portion of any structure, including patios, on or around any portion of the Common Area, nor shall any objects be placed or maintained on the exterior of any building, except such as are installed, placed or maintained in accordance with the original construction of the Project, and any replacement thereof, or as are authorized and approved by the Association.

4.4.12 PETS.

The Association regulates pets and domestic animals as follows:

- (a) Each Lot may maintain domesticated pets (i.e., dog, cat, bird, or other commonly accepted legal household pet), provided they are not kept, bred or raised for commercial purposes and do not cause an odor or noise such as would unreasonably disturb the use and enjoyment of the properties by other Owners. Any pets of a nature which may be licensed or registered with the City or County of San Diego, or the State of California, must be so licensed or registered.
- (b) Except as may otherwise be allowed by the rules and regulations adopted by the Board, pets shall not be permitted in the Common Areas. No household pet shall be left leashed or otherwise tethered in the front of an Owner's Lot or in the Common Area. Pet owners shall be responsible for the prompt disposal of pet feces in the Common Area.
- (c) Association shall make reasonable accommodations for qualified service animals. Where an accommodation for a service animal is sought for a resident, the Unit Owner is absolutely responsible for verification and transmission to Association as soon as reasonably possible after the service animal arrives at the Association of (i) the identify of the service animal, (ii) the identity of the person served by the animal, and (iii) the nature and extent of the animal's "services."
- (d) Each person bringing or keeping a pet on Association property shall be solely responsible for the conduct of such pet. The Association, its Board, officers, employees, and/or agents shall have no liability whatsoever (whether by virtue of this Declaration or otherwise) to any Owner, their family members, guests, invitees, tenants, and contract purchasers for any damage or injury to persons or property caused by any pet.

4.4.13 NUISANCE.

No illegal, noxious or offensive activity shall be engaged in or on any part of the Project, nor shall any act which unreasonably threatens the health, safety and welfare of other residents of the Project be committed.

4.4.14 PATIOS; ENTRYWAYS

No fixture, personal property or other object may be kept or maintained upon any patio which interferes with the enjoyment of adjacent Lots or courtyards. Patios shall not be used as storage areas and shall at all times be kept in a neat and orderly condition, free of litter and debris, provided that they may contain appropriate plants, barbecues and patio furniture. No patio or entryway may be enclosed without prior written consent of the Board.

4.4.15 GARAGE DOORS.

No garage door shall remain open except for purposes of ingress and egress, or as may be otherwise provided for in §4.7, below. Each garage door shall have in good working condition with an automatic garage door opener/closer.

4.4.16 ADJACENT BLASTING.

Each Owner acknowledges that there may be explosive blasting on property adjacent to the Property and shall not have any rights against either the City of San Diego or the Association by reasons therefore.

4.4.17 CLOTHESLINES; FLAG POLES, EXTERIOR APPEARANCES.

Except as authorized by the Board in writing or by specific provision of prevailing statute, no flag poles, clotheslines or external fixtures other than those originally installed or thereafter approved by the Association and any replacements thereof, shall be constructed, erected or maintained on or within the Common Area or on the exterior of the buildings of the Project or that protrudes through the walls or the roof of the buildings. No wiring, insulation, air-conditioning or other machinery or equipment, other than that originally installed or approved by the Association, if any, and any replacements thereof, shall be constructed, erected or maintained. There shall be no drying or laundering of clothes on the patio areas.

4.4.18 STORAGE.

Garages shall be used only for the parking of motor vehicles and general storage and shall not be converted for living or recreational activities. There shall be no storage of any item in or upon any Lot except in an area not visible from the Common Area, other Lots, or adjoining streets. No item of any sort may be stored by Owners, renters, lessees or residents in the Common Area. Storage of items in garages shall not impede the use of said garage for parking of the number of vehicles for which it was designed.

4.4.19 TEMPORARY STRUCTURES.

No trailer, tent, shack or other outbuilding or temporary structure shall be kept on the Common Area or any Lot as a residence, either temporarily or permanently, nor shall any residence of a temporary character be constructed, placed or erected on any Lot within the Project except in connection with work or construction diligently pursued.

4.4.20 WELLS

No well for the production of, or from where there is produced, water, oil or gas, shall be operated upon any Lot, nor shall any machinery, appliance or structure be placed, operated or maintained thereon for use in connection with any trading, manufacturing or repairing business. No slant drilling shall be permitted on any Lot above a plane of 500 feet below the surface of the land.

4.4.21 DRAINAGE

No Owner shall in any way interfere with or change the established drainage pattern over his/her Lot from adjoining or other lots; provided, however, each Owner shall make adequate provisions for proper drainage in the event it is necessary to change the established drainage over his/her Lot. For the purposes hereof, "established drainage" is defined as the drainage which occurred at the time the overall grading of the Lot was initially completed. Any change in grading or drainage on any Lot shall first be approved by the Board and by the county of San Diego. Each Lot Owner shall permit free access by Owners of adjacent or adjoining Lots to slopes or drainageways located on his/her Lot when such access is necessary for the maintenance of permanent stabilization on said slopes or of the drainage facilities to protect property other than the Lot on which the slope or drainageway is located.

4.4.22 ASSESSMENT DISTRICT

No Owner shall oppose the creation of an assessment district by the City of San Diego which includes the Property for purposes of constructing and maintaining pedestrian and bikeway bridges.

4.4.23 MAILBOXES

Mailboxes shall not be attached to the dwelling structure on any Lot without prior written approval of the Board or Architectural Control Committee, or unless the United States Postal Service so requires.

4.4.24 TREES; HEDGES & PLANTS

All trees, hedges and other plant materials shall be trimmed by the Owner of the lot upon which the same are located so that such foliage shall not exceed the height of the dwelling structure on the Lot; provided, however, that where trees do not obstruct the view from any other of the Lots in the Project, which determination shall be within the sole judgment of the Board or Architectural Control Committee, they shall not be required to be so trimmed. No tree, hedge or plant materials shall be located or allowed to reach a size or height which will interfere with the view from any Lot. Notwithstanding the foregoing, before the planting of any trees, hedges and plant materials, the proposed locations shall first be submitted to and approved pursuant to the Architectural Control procedures detailed in this Declaration.

4.5 LEASING.

- (a) All leases must be in writing and must be for a term of at least sixty (60) days and must be for the entire Lot not merely parts thereof, unless the Owner remains in occupancy.
- (b) 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.
- (c) Owners who lease/rent their Lots shall promptly notify the Association in writing of the names of persons occupying such Lot, furnish the Association with a copy of any lease/rental agreement, provide Association with the address and telephone number where the non-resident Owner may be reached.
- (d) No Lot shall be allowed to be leased, subleased, occupied, rented, let, sublet or used for or in connection with any time-sharing agreement, plan, program or arrangement, including, without limitation, any so-called "vacation license," "travel club," "extended vacation," or other membership or time-interval ownership arrangement; provided, this Section shall not be construed to limit the personal use of any Lot by any Owner or his social or familial guests or his tenants under leases created in accordance with this Declaration.

4.6 HOME OCCUPATION.

Owner or tenant may operate a business within the Lot ("Home Occupation"), provided that the home occupation is (a) specifically limited to the use of the Lot through the means of telephone, modem and reasonable mail as described below and for no other purpose or (b) a family day care home as defined by *Health and Safety Code* §1597.30. Any activity conducted in compliance with home occupation shall not be visible from the exterior of the dwelling, through any modification to the Lot or residence, or through the operation of any business activity. All home occupations shall comply with any rules and regulations adopted by the Board of Directors, but shall include at a minimum the following:

- (a) Employees working, or with a workplace. within the residence must be members of the resident family and reside on the premises;
- (b) There shall be no displays or direct sales of products or merchandise or an inordinate amount of delivery of mail or merchandise;
- (c) Pedestrian and vehicular traffic will be limited to that normally associated with residential districts;

- (d) The home occupation shall not involve the use of commercial vehicles for the delivery of materials to or from the premises beyond those commercial vehicles normally associated with residential uses;
- (e) No more than 25% of the living space or 250 square feet, whichever is greater, of the home may be used for storage of materials and supplies related to the home occupation;
- (f) There shall be no outdoor storage of materials or equipment, nor shall merchandise be visible from outside the home;
- (g) The home occupation shall be confined within the main building of the dwelling area of the Lot; garages shall not be used for home occupation;
- (h) The appearance of the structure shall not be altered nor the occupation within the residence be conducted in a manner which would cause the premises to differ from its residential character either by the use of colors, materials, construction, lighting, signs, or the emissions of sounds, noises and vibrations;
- (i) No use shall create or cause noise, dust, vibration, odor, smoke, glare, or electrical interference or other hazards or nuisances;
- (j) Activities conducted and equipment or material used shall not change the fire safety or occupancy classifications;
- (k) If the home occupation is to be conducted on rental property, the property owner's written authorization for the proposed use shall be obtained prior to the approval of the home occupation.
- (l) The home occupation shall not involve the use of common area and/or recreational facilities by persons not a member of the Association.
- (m) A home occupation must be abated or modified upon thirty (30) days' written notice by the Association if a majority of the Board of Directors, at its discretion, determine any one of the following findings can be made:
 - (1) That the use has become detrimental to the quiet enjoyment of any homeowner within the Project and/or constitutes a nuisance;
 - (2) That the use has become detrimental to the Association and/or any homeowner based on any health or safety concern;
 - (3) That the home occupation is generating pedestrian or vehicular traffic and/or parking concerns;
 - (4) That the Owner/Resident is advertising the home occupation by identification of the street address either in a telephone book or other periodical or flyer;
 - (5) That the use is in violation of any statute, ordinance, law or regulation.

4.7 PARKING AND VEHICLE RESTRICTIONS.

- (a) No recreational vehicle, boat, camper, or trailer shall be permitted upon the property other than an enclosed garage.
- (b) No vehicle shall be kept or stored on the Common Area or on any street within the Project for accomplishing repairs thereto or the reconstruction thereof, except as permitted by resolution of the Board.
- (c) Inoperable vehicles may not be permitted to remain on the Property other than within an enclosed garage. For the purpose of this Declaration, "inoperable" shall include vehicles without current registration, with flat tire(s) and/or not licensed for operation on public streets.
- (d) Commercial type vehicles not greater than one-ton van or pickup are permitted subject only to prior Board approval. Commercial type vehicles which display signs or markings of a commercial nature shall be unobtrusive and inoffensive as determined by the Board. Commercial type vehicles permitted shall not be parked on the exclusive use or common driveway area so as to restrict the view of any adjacent Lot.
- (e) No unlicensed motor vehicle shall be operated or maintained within the development.
- (f) Temporary parking by commercial and other vehicles, for purposes of making deliveries or service calls and for purposes of loading and unloading shall be permitted in accordance with the Association rules.
- (g) Parking is not permitted on any grass area.
- (h) Garages shall be used to park the number of vehicles for which the particular garage was designed and for storage purposes only, and shall not be converted for living or recreational purposes. Storage shall be allowed only to the extent that there remains space for the appropriate number of vehicles for that size garage.
- (i) The Board may establish further vehicular and parking regulations, as well as rules for enforcement and establish fees for both registration and removal of vehicles in violation of this Declaration.

ARTICLE 5: REPAIR & MAINTENANCE

5.1 GENERAL

Association and all Owners have a shared responsibility 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 Lot and the Project and protect the values thereof. The Board shall have the power to determine the standards of such maintenance. Attached hereto as Exhibit A, 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 Article and the specific provisions of Exhibit A, the provisions of Exhibit A shall prevail. Provided any item is not listed in Exhibit A, the responsibility for its maintenance shall be determined in accordance with the provisions of this Article 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. The foregoing shall not be deemed to permit any Owner to interfere with or damage the structural integrity of any building or to interfere with the use or enjoyment of the Common Area or any of the other Lots in the Project nor permit or obligate any Owner to maintain, repair or repaint the exterior of any building or structure.

5.2 MAINTENANCE BY OWNER.

Each Owner shall have the exclusive right and obligation, at their own cost and expense, to maintain, repair and replace their Lot and improvements thereon (other than that portion the maintenance of which is the responsibility of the Association). Each Owner shall be responsible, as their own cost and expense, to keep their Lot and improvements thereon 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 architectural control requirements.

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 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 be assessed as a Reimbursement Assessment, as described in this Declaration. Upon approval by two-thirds (2/3rd) vote of the Board, the Association, its agents and/or employees shall have the right to enter onto any Lot as may be necessary to maintain, repair and restore the Lot or the exterior of the residential unit and any other improvement thereon.

5.3 MAINTENANCE BY ASSOCIATION.

The Association shall be responsible for the maintenance, repair and replacement of the Common Area, excluding those items for which the maintenance, repair and replacement is allocated to the Owners by Exhibit A. No work, other than that related to landscape maintenance, which substantially alters any Common Area from its natural or existing state after the date such Common Area was conveyed by the Developer to the Association shall be made without approval of a majority of the ownership. The Association shall reconstruct, replace or refinish any improvement or portion thereof situated within the Common Area and such work shall be in accordance with the original design, finish or standard of construction for such improvement when such Common Area was originally conveyed to the Association or in a different manner if approved by the Architectural Control Committee.

5.4 TERMITE CONTROL.

Responsibility for control of wood destroying pests or organisms shall be pursuant to *Civil Code* §1364, as may from time to time be amended, and shall further include, but not be limited by, the following:

- (a) Notwithstanding the means by which termites have entered onto any structure within an Owner's Lot (*i.e.*, regardless whether they are subterranean or otherwise), each Owner shall be responsible for the maintenance and repair of their personal property, as well as improvements and betterments within the Lot (*e.g.*, floor tile, wall treatments, carpet), as required to control the presence of or damage caused by wood-destroying pests or organisms or repairs for same.
- (b) Owner shall be responsible for the cost of termite treatment by the pest control company. The cost to repair or replace any item which has been damaged by the presence of wood-destroying pests or organisms and/or which requires repair because of the access needed to facilitate termite treatment (hereinafter "termite damage and repair costs") shall be the responsibility of the Owner of the Lot impacted.
- (c) In the event the Owner(s) of units comprising at least 75% of any particular building desire to fumigate or treat the structure for termites in a manner which requires the building to be vacated as part of the treatment: (i) The Owners shall be required to provide notice of their intent to all owners and residents of the building, at least 30 days in advance of fumigation; (ii) The Owners must acquire at least two (2) qualified bids for fumigation and provide copies of all bids to every other Owner in the affected building, upon request; (iii) The Owners must solicit approval for the cost, method and time for fumigation from every Owner of the affected building, and must acquire written approval from at least 75% of the ownership of the affected building prior to setting a firm date for fumigation; (iv) Each Owner shall be responsible

for an equal share of the total fumigation cost, said share to be determined by dividing the total cost of fumigation (not including personal costs for relocation, etc...) by the number of units within the affected building; (v) Each Owner shall be responsible for their own costs of relocation, relocation or accommodation of tenants and/or damage repair, except that this shall in no way limit the liability of the fumigation contractor for damage caused; and (vi) Each Owner may be compelled to vacate the unit and/or pay or reimburse for their share of fumigation costs by enforcement of these Covenants, Conditions & Restrictions through an individual action by the affected Owners.

- (d) The Association shall have the power to temporarily close and vacate Common Area structures, such as the clubhouse and pool area, as may be necessary for prompt, effective treatment of such pests or organisms. The Association shall give notice of the need to temporarily close or vacate the areas to be treated by posting in the affected areas at least ten (10) days in advance. The notice shall state the reason for the relocation, the date and time of the beginning of treatment and the anticipated date and time of termination of treatment.
- (e) Neither Association, the Board, officers, agents or employees shall have liability, absent willful or wanton negligence, to any Owner, family member, guest, invitee or tenant for any damage caused by the treatment of Common Areas, nor for any treatment of individual units or entire buildings that is performed pursuant to subparagraph (c), above.

5.5 DAMAGE CAUSED BY OWNER OR ITEM UNDER CONTROL OF OWNER.

Each owner shall be liable to the Association for any damage to the Common Area or other Association-owned property, or any Lot or structure or improvement thereon resulting from the willful, negligent, unauthorized or improper act of an Owner or their family, tenants, guests, invitees, pets or other person deriving any interest therein, or from any item the maintenance, repair or replacement of which an Owner is responsible, and 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. An Owner shall be responsible for performing the repair of any damage to their Lot for which such Owner has control. The Owner of any other Lot 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 the costs of repair, the Association, after reasonable notice and hearing procedures as provided for the imposition of enforcement assessments or suspensions, may charge the cost of such repair to such Owner as a reimbursement assessment or special assessment, with the full authority to lien on such amount in the event of non-payment. Following reasonable notice and hearing procedures, the Board's determination of responsibility for damage or repair shall be deemed conclusive and binding upon the culpable Owner.

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 of repair.

5.6 INTERIOR DAMAGE.

Notwithstanding any other provision in the Governing Documents, each Owner shall be solely responsible for causing the repair or replacement of any damage to any and all interior items of the living residence, and the cost thereof, including, but not limited to, any personal property, decorations, interior surfaces, floor and wall coverings, appliances, fixtures or other items therein, caused by water intrusion from whatever source. An Owner should obtain and maintain such insurance, at their sole expense, to protect against any damage or loss of property, or the cost of repair or replacement of damaged items for which such Owner is responsible. Association shall not be liable for damage to property in the Project resulting from water which may leak or flow from outside of any living area 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.

5.7 PARTY WALL.

Each wall which is built as a part of the original construction of the homes upon the Properties and placed on the dividing line between the Lots shall constitute a party wall and, to the extent not inconsistent with the following provisions, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts of omission shall apply thereto. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the other Owners under any rule of law regarding liability for negligent or willful acts or omissions. Notwithstanding any other provision herein, an Owner who by negligence or willful act causes a party wall to be exposed to the elements shall bear the whole cost of furnishing necessary protection against such elements. In the event of any dispute arising concerning a party wall, each party shall choose one arbitrator and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators. The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors in title.

ARTICLE 6: ARCHITECTURAL CONTROL

6.1 GENERAL.

Any change or improvement to a Lot or the exterior of a residential building or other improvement thereon, 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. The powers and duties set forth in this Article shall be vested in, and exercised by, the Board of Directors, which shall serve as the Architectural Control Committee unless the Board elects to form a separate Architectural Control Committee consisting of not less than three (3) but not to exceed five (5) members of the Association, one of which must be a member of the Board. The Architectural Control Committee shall be solely responsible for approving or rejecting any architectural submittal in conformance with the Architectural Rules. Any architectural submission which does not conform to and is a variance of the Association's Architectural Rules shall require approval by the Architectural Control Committee.

6.2 ARCHITECTURAL CHANGES REQUIRING PRIOR APPROVAL.

- (a) Other than work performed by the Association in connection with the development of common area, no work which in any way alters Common Area property from its natural or existing state after the date such Common Area was conveyed by the developer to the Association shall be made or done except by the Association or its Members without the express written approval of the Board or Architectural Control Committee; provided, however, that changes or improvements to the Common Area by the Association do not need to comply with the requirements of this Article provided that such work shall be in accordance with the original design, finish, or standard of construction of such improvement when the Common Area was conveyed by Declarant and which was approved by the City or other governing body.
- (b) Nothing may be erected, placed, maintained or planted on any Lot or the exterior of a residential building or other improvement thereon 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, atrium cover, courtyard cover, front yard landscaping, garage, any improvement or structure of any kind without the prior written approval of the Architectural Control Committee and appropriation of any required governmental permits.
- (c) Except as otherwise provided herein, Owners shall not have the right to paint, decorate, remodel or alter any Common Area, nor shall any Owner alter, attach, construct or remove anything from the Common Area, including the roofs and the exterior surfaces of the windows and walls of the building structures.
- (d) Modifications or alterations of the exterior walls of any Lot, including any modifications to facilitate handicapped access as provided by the *Civil Code* §1360, must have prior written approval. Any approval of handicapped access modification may be conditioned on such modification's removal by the Owner at their sole expense, once the handicapped access is no longer necessary for the Lot. Any Owner who intends to make such authorized changes shall first submit complete plans and specification to the Architectural Control Committee for review to determine whether the modifications comply with the provisions of *Civil Code* §1360. Modifications to the interior of residences which have the potential to affect Party Walls or Common Area roofs other areas also shall require Association prior approval.

6.3 ARCHITECTURAL CHANGES NOT REQUIRING PRIOR APPROVAL.

Nothing contained herein shall be construed to limit the right of an Owner to (a) make minor exterior repairs on any Lot; (b) paint the interior any color desired; or (c) improve or alter any interior improvements, provided such improvement or alteration does not impair or alter the Common Area, any utilities, or other systems servicing the Common Area or other Lots or residences.

6.4 PROCEDURE FOR OBTAINING APPROVAL OF ARCHITECTURAL CHANGES.

- (a) Complete plans and specifications showing the nature, kind, shape, color, size, height, materials to be used and location of any proposed improvements, alterations or landscaping, as well as the proposed contractor and any other information as required by the Board, shall be prepared by the requesting Owner and submitted to the Architectural Control Committee for approval as to quality of workmanship and design and harmony of external design with existing structures and as to location in relation to surrounding structures, topography and finish grade elevation.
- (b) The Architectural Control Committee shall review the submission and provide a written approval or disapproval of any such submission, including the reasons for any decision, to the requesting Owner within forty-five (45) days of receipt of such submission. If the Architectural Control Committee disapproves the request, it shall give written notice to the Owner setting forth the reasons for the disapproval. The Architectural Control Committee shall not deny approval of any proposed modifications except for good cause. In the event the Architectural Control Committee fails to provide a written response to a complete and proper application for architectural review to the requesting Owner within forty-five (45) days of receipt of the request from the Owner, approval will not be required and the related covenants shall be deemed to have been fully satisfied. The Architectural Control Committee shall have the right to extend this forty-five (45) day timeline for an additional forty-five (45) days upon written notice to the Owner.

- (c) If the Architectural Control Committee denies an Owner's architectural request, the requesting Owner shall have a period of ten (10) days to submit, in writing, a formal appeal of the Architectural Control Committee denial. The Owner's statement of appeal shall set forth the reasons for such appeal. Using the standard guidelines previously adopted by the Architectural Control Committee regarding reasonable rules for hearing and deciding appeals, the Architectural Control Committee shall hear and render its decision sustaining or denying the requesting Owner's architectural submission within forty-five (45) days of receipt of a timely filed appeal. The Architectural Control Committee decision shall be stated in writing.
- (d) Once an Owner has obtained approval for an architectural submittal, work on such approved submittal shall promptly commence and shall be completed within a reasonable time in a good and workmanlike manner, completely free and clear of the liens and claims of all mechanics and materialmen.

6.5 INSPECTION OF WORK; NOTICE OF COMPLIANCE, NONCOMPLIANCE.

The Architectural Control Committee may require that final approval of an architectural submittal be conditioned upon an inspection of the completed work. Provided a final inspection is required, the Owner shall be responsible for the costs associated therewith. After such inspection, the Architectural Control Committee shall provide the Owner with written notice of either a letter of completion or a letter of noncompliance, setting forth either: (a) all improvements made and other work completed by said Owner complies with the Governing Documents or (b) such improvements or work do not so comply, in which event the notice shall identify the non-compliance improvements or work and set forth with particularity the basis of such non-compliance. In the event the work is found not to comply with the Governing Documents, the Owner shall promptly correct such deficiency and reapply for another inspection or shall remove the proposed improvement and return the area to its original condition. Members of the Architectural Control Committee and/or appropriate Association staff, after giving due notice, may enter upon any Lot without liability of the owner for the purpose of enforcing any and all provisions of this Article.

6.6 STANDARD OF ARCHITECTURAL REVIEW.

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

6.7 ARCHITECTURAL RULES.

The Architectural Control Committee may, in its discretion and subject to review by the Board of Directors, adopt, amend and repeal, as it deems necessary and by majority vote, rules and regulations to be known as "Architectural Rules." Said Architectural Rules shall interpret and implement the provisions of this Article by setting forth the standards for review by the Architectural Control Committee and guidelines for architectural design, placement of buildings, landscaping, color schemes, exterior finishes and materials and similar features which are recommended for use in the Project, provided, however, that said Architectural Rules shall not be in derogation of the standards required by this Declaration. The Architectural Rules may also address the information which is required to be presented in connection with an architectural submittal.

6.8 VARIANCES FROM ARCHITECTURAL RULES.

Where circumstances such as topography, location of property lines, location of trees, configuration of Lots or other matters require, and upon application by an affected Owner, the Architectural Control Committee, by vote or written consent of a majority of the members thereof, may grant variances from the requirements of the Architectural Rules provided that such variance is reasonably necessary in order to carry out the general purpose and intent of the Governing Documents or is necessary to avoid extensive hardship, expense or impossibility of conformance provided, however, that all such variances shall be in keeping with the general plan of improvement and development. Any variance shall be in writing and shall not constitute a waiver of any Architectural Rule or hinder the enforcement thereof.

6.9 COMPENSATION.

No member serving on the Board or an established Architectural Control Committee shall receive compensation for services rendered other than reimbursement for expenses incurred by them in the performance of their duties hereunder.

6.10 LIABILITY; INDEMNIFICATION.

Plans and specifications are not approved for engineering design, soils suitability, drainage or setbacks, and by approving such plans and specifications neither the Board, Architectural Control Committee or any members or designated representatives thereof, shall be liable to the Association or to any Owner for any damage, loss or prejudice suffered or claimed on account of: (a) any mistake in judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such plans and specifications; (b) the approval or disapproval of any plans, drawings and specifications, whether or not defective; (c) the construction or performance of any work, whether or not pursuant to approved plans, drawings, and specifications; and (d) the development of any property within the neighborhood. Each Owner(s) of any property agrees that he/she/it will not bring any action against any of the members or designated representatives or agents of the Board of Directors, the Architectural Control Committee or the Association to recover any such damages.

6.11 NON-COMPLIANCE WITH LAWS.

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

6.12 ENFORCEMENT.

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

- (a) No work for which approval is required shall be deemed to be approved simply because it has been completed without a complaint, notice of violation or commencement of a suit to enjoin such work.
- (b) The Board or Committee shall have the authority to order an abatement of any construction, alteration or other matter for which approval is required to the extent that it has not been approved by the Board or Committee or if it does not conform to the plans and specifications submitted to the Board or Committee.
- (c) If the Owner fails to remedy any noticed noncompliance within thirty (30) days from the date of such notification, the Committee shall notify the Board in writing of such failure.
- (d) The Board shall set a date on which a hearing before the Board shall be held regarding the alleged noncompliance. The hearing date shall not be more than thirty (30) days nor less than fifteen (15) days after the notice of the noncompliance is issued to the Owner and to any other interested party.
- (e) At the hearing, the Owner, a representative(s) of the Committee and, at the Board's discretion, any other interested person may present information relevant to the alleged noncompliance. After considering all such information, the Board shall determine whether there is a noncompliance.
- (f) If a noncompliance is determined to exist, the Board shall require the Owner to remedy or remove the same within such period or within any extension of such period as the Board, at its discretion, may grant.
- (g) If the Owner fails to take corrective action after having a reasonable opportunity to do so, the Board at its option, may pursue all legal and equitable remedies available to remedy or remove the non-complying improvement and the Owner shall reimburse the Association for all expenses incurred in connection therewith upon demand. If such expenses are not properly repaid by the Owner to the Association, the Board shall recover such expenses through the levy of a reimbursement assessment against such Owner. In addition to all of the remedies available to the Association (including but not limited to an Enforcement Assessment and/or suspension of privileges), and to the extent permitted by California law, the Association has the right to record in the office of the San Diego County Recorder a Notice of Non-Compliance against the Lot of the Owner who fails to take the corrective action as described above. This Notice shall remain against the Lot until the corrective action has been taken, as determined by the Board of Directors, at which time the Association will record a Release of said Notice.
- (h) Approval by the Board of Directors or Architectural Control Committee of any plans, drawings or specifications for any work of improvement done or proposed, or for any other matter requiring the approval of the Board of Directors under this Declaration, or any waiver thereof, shall not be deemed to constitute a waiver of any right to withhold approval of any similar plan, drawing, specification or matter subsequently submitted for approval by the same or some other Owner. Different location for improvements, the size of the structure, proximity to other residences or the Common Area and other factors may be taken into consideration by the Board or Committee in reviewing a particular submittal.
- (i) If any legal proceeding is initiated to enforce any of the provisions hereof, the prevailing party shall be entitled to recover reasonable attorneys' fees in addition to the costs of such proceeding.

6.13 APPROVAL BY CITY.

Prior to commencing any alteration or improvements approved by the Association, the Owner shall comply with all appropriate governmental laws and regulations and all local building and zoning ordinances. The Association shall not be obligated to enforce the provisions of this Section. Approval by the Association shall not be considered to satisfy the appropriate approvals that may be required by any governmental entity with appropriate jurisdiction, nor shall the approval of any governmental entity be considered to completely satisfy the requirement of Association approval. 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 Association, which penalties shall be the responsibility of such Owner.

6.14 APPOINTMENT AND DESIGNATION.

The Architectural Control Committee may, from time to time, by a majority of the members thereof, delegate any of its rights or responsibilities hereunder to one or more duly licensed architect or other qualified persons(s) who shall have full authority to act on behalf of the Architectural Control Committee in all matters delegated.

ARTICLE 7: INSURANCE REQUIREMENTS

7.1 GENERAL.

The Board shall obtain and maintain in force the following policies of insurance for the Common Area:

7.1.1 FIRE AND C (PROPERTY) INSURANCE.

The Association shall obtain and maintain a master or blanket policy of fire and casualty (property) insurance in an amount equal to the full replacement value (i.e., one-hundred [100%] percent of current "replacement costs" exclusive of land, foundation, excavation and other items normally excluded from coverage) of the Common Area and all structures located thereon, with an "Agreed Amount Endorsement" (or its equivalent), a "Demolition Endorsement" (or its equivalent), such insurance to afford protection against at least the following: Loss or damage by fire and other hazards covered by the standard extended coverage endorsement and by sprinkler leakage, debris, removal, costs of demolition, vandalism, malicious mischief, windstorms and water damage. 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 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.

7.1.2 GENERAL LIABILITY INSURANCE.

The Association shall obtain and maintain a policy(ies) insuring the Association, its officers, directors, agents and employees, the Owners, and the Owner's 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 property owned by the Association, including but not limited to General Liability and Business Automobile Liability Insurance, with a "Severability of Interest Endorsement" (or equivalent) coverage which would preclude the company from denying the claim of an Owner because of the negligent acts of the Association or another Owner.

Coverage should include protection against water damage liability, liability for non-owned and hired automobile, liability for property of others and, if applicable: garage-keeper's liability, host liquor liability and such other risks as shall customarily be covered with respect to improvements similar in construction, location and use. 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. All property and liability insurance policies shall be subject to the following provisions and limitations:

- (a) The named insured under any such policies shall be the Association or their authorized representative, including any trustee with which the Association may enter into any insurance Trust Agreement, or any successor trustee, each of which shall be herein elsewhere referred to as the "Insurance Trustee" who shall have exclusive authority to negotiate losses under said policies;
- (b) In no event shall insurance coverage obtained and maintained pursuant to the requirement of this Article be brought in contribution with insurance purchased by the Owners or their Lender;
- (c) Such policies shall provide that coverage shall not be prejudiced by (i) any act or neglect of the Owners which is not within the control of the Association; (ii) failure of the Association to comply with any warranty or condition with regard to any portion of the Project over which Association has no control; and (iii) making a cash settlement, such option shall not be exercisable without prior written approval of the Association (or Insurance Trustee) or which is in conflict with the provisions of an Insurance Trust Agreement which Association is a party or any requirement of law.
- (d) The limits and coverage shall be reviewed at least annually by the Board and increased or decreased in its discretion, but in no event shall the limits be less than \$1,000,000.00 in indemnity against the claims of one or more persons for a single occurrence or less than \$100,000.00 for damage to property; nor shall the limits of liability under the insurance be less than the minimum amounts required by *Civil Code* §1365.7 and §1365.9.

7.1.3 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, provided, however, that said limits shall not be less than the minimum amounts required by *Civil Code* §1365.7.

7.1.4 WORKER'S COMPENSATION.

A policy of workmen's compensation insurance to the extent necessary to comply with applicable laws, in form and amounts satisfactory to the Board.

7.1.5 EARTHQUAKE COVERAGE.

Association shall have the authority to obtain earthquake insurance coverage for the property provided that the prior approval of majority of the members has been received before canceling any existing earthquake insurance policy.

7.1.6 FIDELITY BOND COVERAGE.

Association shall maintain fidelity bond coverage to protect against dishonest acts on the part of Officers, Directors, trustees and employees of the Association and others who handle or are responsible for Association funds, whether or not such persons are compensated for their services. If there is a management agent who handles Association funds, such agent may also be covered by a fidelity bond. Such bonds shall meet the following requirements: (i) name the Association as an obligee; (ii) be written in an amount equal to the gross value of the Associations Reserve Accounts, plus the gross value of three (3) month's Association dues; (iii) contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression; and (iv) provide that they may not be canceled or substantially modified (including cancellation for nonpayment) without at least 30 days prior written notice to Lenders.

7.2 FNMA / FHLMC REQUIREMENTS.

So long as FNMA and/or FHLMC holds a mortgage or beneficial interest in a trust deed encumbering a Lot or owns a Lot, Association shall continuously maintain in effect at least the master property insurance, general liability insurance and fidelity bond coverage provided herein, except if such requirements may have been waived in writing by FNMA and/or FHLMC.

7.3 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 entitled to notice that the specific insurance will not be obtained or renewed.

7.4 TRUSTEE FOR POLICIES.

The Association, acting through its Board, is appointed and shall be deemed trustee of the interests of all named insured under all insurance policies purchased and maintained by the Association.

7.5 INSURANCE PROCEEDS.

Insurance proceeds 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 of damage or destruction as described herein. Pursuant to the limitations of the Association as described in this Declaration, unless seventy-five (75%) percent of the Lenders holding first deeds of trust or mortgage liens on the Lots have given their prior written approval, the Board shall not use hazard insurance proceeds for losses to any Property for other than the repair, replacement or reconstruction of such Property.

7.6 INSURANCE PREMIUMS

Insurance premiums 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.

7.7 INSURANCE POLICY DEDUCTIBLES.

The Board shall have the power, in its sole discretion, to determine the amount of any deductible for 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: (i) Owners shall be responsible for the cost of any deductible if damage or loss occurs to items of personal property or any property damage based upon an occurrence located in an area for which the Owner is responsible to maintain; and (ii) the Association shall be responsible for the cost of any deductible if damage or loss occurs to items owned by the Association or for any property damage which is based upon an occurrence located in an area for which the Association is responsible to maintain. Notwithstanding the foregoing, if 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.

7.8 OWNER NOTIFICATION OF INSURANCE.

In accordance with *Civil Code* §1365.9, or any successor statute or law, the Association shall, upon issuance or renewal of insurance, but no less than annually, notify the Owners as to the amount and type of insurance carried by the Association. The notice shall include a statement regarding whether the Association is or is not insured to the levels specified by §1365.9, and that if not so insured, Owners may be individually liable for the entire amount of a judgment, and if the Association is insured to the levels specified, then Owners may be individually liable only for their proportional share of assessments levied to pay the amount of any judgment which exceeds the limits of the Association's insurance.

7.9 INDIVIDUAL INSURANCE.

Association is not responsible and does not maintain insurance to cover the individual Lots. Owners should separately insure their home, structure and personal property, and obtain and maintain personal liability and property damage liability insurance for their Lot, 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 Lot.

ARTICLE 8: DAMAGE OR DESTRUCTION

8.1 DUTY TO RESTORE.

In the event of damage or destruction to any Lot, the Owner thereof shall reconstruct same as soon as reasonably practicable and substantially in accord with the original plans and specifications thereof; provided, however, that any such Owner may, with the written consent of the Architectural Control Committee, reconstruct or repair the same pursuant to new or changed plans and specifications.

If any portion of the Project for which insurance carried by the Association is damaged or destroyed, then Association shall be responsible to restore same unless (i) the Project is terminated, (ii) repair or replacement would be illegal under a state statute or municipal ordinance, or (iii) 75% of Owners, including each Owner of a Lot that will not be rebuilt, vote not to rebuild.

8.2 REPAIR PLANS.

The Project must be repaired and restored in accordance with either (i) the original plans and specifications, updated as required to reflect applicable building codes, or (ii) other plans and specifications which have been approved in writing by the Board, a majority of Owners, and at least 51% Eligible Mortgagees holding Mortgages on Lots subject to the repair.

8.3 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 five (5%) percent of the Association's gross annual budget. In the case of damage to Common Areas which does not exceed five (5%) percent of the Association's gross annual budget, all Lots 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.

8.4 COST OF REPAIR LESS THAN FIVE (5%) PERCENT.

If the cost of repairing or rebuilding does not exceed the amount of available insurance proceeds by more than five (5%) percent of the Association's gross annual budget, the Board shall thereupon contract to repair or rebuild the damaged portions of the Common Area substantially in accordance with the original plans and specifications therefore. If the insurance proceeds exceed the costs of repairs, surplus proceeds shall be distributed pursuant to this Article. If a bid to repair or rebuild is accepted, the Board shall levy a reconstruction assessment upon the Lots directly affected on the basis of the ratio of the square footage of the floor area of the Lot being assessed to the total square footage of the floor area of all Lots to be assessed to make up any deficiency between the total insurance proceeds and the contract price for such repair and rebuilding, and such assessment shall be paid to the Association to be used for rebuilding.

8.5 COST OF REPAIRS MORE THAN FIVE (5%) PERCENT.

If the cost of repairing or rebuilding exceeds the amount of insurance proceeds by more than five (5%) percent of the Association's gross annual budget, and if the Owners holding an aggregate more than 50% interest in the Common Area elect to repair or restore the Project, then the Board shall contract as provided hereinabove. If said Owners elect not to repair or restore, then all insurance proceeds shall be paid to the Association as provided in this Article.

8.6 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 lienholders as their interests may appear. The proceeds shall be disbursed first for the repair or restoration of the damaged property. Association, Owners and lienholders 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. Insurance proceeds distributed to Owners and Mortgagees shall be distributed proportionately according to the fair market value of each Lot as compared to all other Lots in the Project at the time of the destruction as determined by an independent appraisal conducted by an M.A.I. appraiser selected by the Board.

8.7 CERTIFICATES.

The trustee, if any, may rely on the following certifications in writing made by the Board: (i) whether or not damaged or destroyed property is to be repaired or restored and/or (ii) 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. 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 9: CONDEMNATION

9.1 REPRESENTATION BY ASSOCIATION.

The Association shall, subject to the right of all Mortgagees who have requested the right to join the Board in the proceedings, 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. Each Owner, by acceptance of a deed to their Lot, 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.

9.2 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 Lots 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 Lots and their respective Mortgagees according to the relative values of the Lots affected by the condemnation. In the event that the taking is by judgment of condemnation and said judgment apportions the award among the Owners and their respective Lenders, the Board shall distribute the amount remaining after such deductions among such Owners and Mortgagees on the allocation basis set forth in such judgment. In the event that the taking is by sale under threat of condemnation, or if the judgment of condemnation fails to apportion the award, the Board shall distribute the award among the Owners in the Project and their respective Mortgagees based upon the fair market value of all other Lots affected by such taking as established by an independent appraisal conducted by an M.A.I. appraiser selected by the Board. The determination of the Board as to the degree each Lot has been affected by the taking shall be final and binding on all owners and Mortgagees. In no event shall any portion of such award be distributed by the Board to an Owner and/or the Mortgagees of a Lot in a total amount greater than the portion allocated hereunder to such Lot.

9.3 LOT TAKING.

In the event of an award for the taking of any Lot in the Project by eminent domain, the Owner of such Lot 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 their Lot, 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 Lot 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 Lots remaining in the Project.

9.4 SUBSTANTIAL TAKING.

If there is a substantial taking of the Project upon which more than 75% of the Lots in any phase are rendered incapable of being restored to at least 95% of their floor area and substantially their condition prior to the taking, the Owners may terminate the legal status of the Project and, if necessary, bring a partition action under *Civil Code* §1359 or any successor statute, on the election to terminate by 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 Lots.

9.5 NOTICE TO MORTGAGEES.

If any Lot or the Common Area, or portion thereof, is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, the Mortgagee of such Lot, or all the Mortgagees in the case of the Common Area, shall be entitled to timely written notice of any such proceeding or proposed acquisition and, notwithstanding anything to the contrary herein contained, no Owner of a Lot or other party shall be entitled to priority over such Mortgagee(s) with respect to the distribution to such Lot of the proceeds of any award or settlement.

9.6 FHLMC NOTICE.

If there is any loss to or taking of the Common Area exceeding \$10,000.00 or if any damage to a Lot exceeds \$1,000, notice shall be provided in writing to the FHLMC in care of the servicers of FHLMC loans, provided the servicer of such loan requests, in writing, to be informed and further provided that such servicers provide the Association, in writing, of its appropriate address.

ARTICLE 10: RIGHTS OF MORTGAGEES

10.1 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 Lot made in good faith and for value, but all of said covenants, conditions and restrictions shall be binding upon and effective against any Owner whose title is derived through foreclosure or trustee's sale, or otherwise.

10.2 NO RIGHT OF FIRST REFUSAL.

This Declaration neither contains nor shall be amended to contain any provision creating a "right of first refusal" to the Association before a Lot can be sold. Should any such rights nevertheless be created in the future, such rights shall not impair the rights of any First Mortgagee to:

- (a) Foreclose or take title to a Lot pursuant to the remedies provided in the mortgage,
- (b) Accept a lease (or assignment) in lieu of foreclosure in the event of a default by a mortgagor, or
- (c) Sell or lease a Lot acquired by the Mortgagee.

10.3 NOTICE UPON DEFAULT.

Upon the written request of the holder of any first Mortgage encumbering any Lot, written notification shall be provided of any default specified in the Declaration by the Owner of such Lot in the performance of Owner's obligations which are not cured within thirty (30) days.

10.4 UNPAID DUES OR CHARGES.

Except as otherwise provided by statute, where the Mortgagee of a first Mortgage of record or other purchaser of a Lot obtains title to the same pursuant to the remedies in the Mortgage or as a result of foreclosure, such acquirer of title, his successors and assigns, shall not be liable for the share of the common expenses or assessments made by the Association chargeable to such Lot which became due prior to the acquisition of title to such Lot by such acquirer. Such unpaid share of common expenses or assessments shall be deemed to be common expenses collectible from all of the Lots including such acquirer, his successors and assigns.

10.5 ACTION REQUIRING MORTGAGEE APPROVAL.

Except as provided by statute in case of condemnation or substantial loss to the Lots and Common Area, unless at least seventy-five (75%) percent of the First Mortgagees (based upon one (1) vote for each mortgage owned) have given their prior written approval, the Association and/or the Owners shall not be entitled to:

- (a) By act or omission seek to abandon, partition, subdivide, encumber, terminate, sell or transfer the Project as a 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).
- (b) Change the pro rata interest or obligations of any individual Lot for the purpose of levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards.
- (c) Make amendments to this Declaration or to the Bylaws which would change the percentage interest of the Owners in the Project, or to amend the Article of this Declaration relating to termination of professional management, or the Article relating to the proceeds of hazard insurance.
- (d) Partition or subdivide any Lot.
- (e) By act or omission seek to abandon, partition, or subdivide 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).
- (f) Use hazard insurance proceeds for losses to any of the Project (whether to Lots or to Common Area) for other than the repair, replacement or reconstruction of such property.

10.6 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.

10.7 NOTIFICATION OF MORTGAGEE.

Upon written request to the Association, identifying the name and address of the holder, insurer or guarantor and the Lot number or address, any Eligible Mortgagee will be entitled to timely written notice of any: (a) Condemnation or casualty loss which affects a material portion of the Project or the Lot insured or guaranteed by such Eligible Mortgagee; (b) Default in the performance by an Owner of any obligation under the Governing Documents not cured within 30 days; (c) Lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and (d) Proposed action which would require the consent of a specified percentage of Eligible Mortgagees as required by the Governing Documents.

10.8 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 and upon payment of Association's costs and expenses.

10.9 LOAN TO FACILITATE.

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

10.10 FINANCIAL STATEMENT.

Any First Mortgagee shall be entitled, upon written request, 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.

10.11 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.

10.12 RIGHT TO APPEAR AT MEETINGS

Any Eligible Mortgagee may appear (but can not vote) at meetings of the Owners and the Board to draw attention to violations of this Declaration that have not been corrected or that have been made the subject of remedial proceedings or assessments.

ARTICLE 11: ENFORCEMENT

11.1 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 Lot shall have a right of action against the Association or any Owner for failure to comply with the provisions of the Governing Documents. 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. All activities to enforce the provisions of the governing documents shall be conducted in accordance with all applicable laws, statutes and ordinances

11.2 NUISANCE.

The result of every act or omission, whereby any provision, condition, restriction, covenant, easement, or reservation contained in the Governing Documents is violated in whole or in part, is declared to be and constitute a nuisance, and every remedy allowed by 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.

11.3 VIOLATION OF LAW.

Any violation of any state, municipal/local law, ordinance or regulation pertaining to the Ownership, occupation or use within the Project is declared to be a violation of the Governing Documents and subject to any or all of the enforcement procedures herein.

ARTICLE 12: AMENDMENTS

12.1 OWNER APPROVAL OF AMENDMENTS.

This Declaration may only be amended by the affirmative vote or written consent of at least 51% of the voting power of the Association.

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.

In addition to the foregoing, this Declaration may be amended by petition as provided in *Civil Code* §1356.

12.2 ELIGIBLE MORTGAGEE APPROVAL.

Except as may otherwise be provided in case of substantial destruction or condemnation of the Project, approval of 51% of Eligible Mortgagees holding First Mortgages on Lots shall be required to amend any material provisions of this Declaration which establish, provide for, govern or regulate (a) voting; (b) assessments, assessment liens or subordination of liens; (c) reserves for maintenance, repair and replacement of the Common Area; (d) insurance or fidelity bonds; (e) rights to use Common Area; (f) responsibility for maintenance and repair of portions of the Project; (g) expansion or contraction of the Project or the addition, annexation or withdrawal of property to or from the Project; (h) boundaries of any Lot; (i) interests in the Common Area.; (j) convertibility of Lots into Common Area, or Common Area into Lots; (k) leasing of Lots; (l) rights of first refusal or similar on the right of an Owner to sell, transfer or otherwise convey their Lot; and (m) any provisions which are for the express benefit of mortgage holders, eligible mortgage holders or eligible insurers or guarantors of First Mortgages on Lots.

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 13: GENERAL PROVISIONS

13.1 TERM.

The provisions of this 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.

13.2 NON-WAIVER OF REMEDIES.

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

13.3 NOTICES.

Any notice permitted or required to be delivered as provided in this Declaration may be delivered either personally or by mail. If delivery is made by mail, such notice shall be deemed to have been delivered to a person twenty-four (24) hours after a copy of it was deposited in the United States mail, postage prepaid, addressed to such person at the address given by him/her to the Association for the purpose of such service of notice, or at the address of the owned or represented by such person(s) if no other address has been provided to the Association. Such address may be changed from time to time by written notice delivered to the Association in accordance with the foregoing or the Bylaws of the Association.

13.4 SEVERABILITY.

The provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one provision shall not affect the validity or enforceability of any other provision.

13.5 BINDING.

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

13.6 INTERPRETATION.

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

13.7 LIMITATION OF LIABILITY.

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

13.8 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.

13.9 NUMBER AND HEADINGS.

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

13.10 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 Lot which is enforceable pursuant to the provisions of this Declaration. This Section shall also apply to attorneys' fees incurred to collect any post-judgment costs.

13.11 CONFLICT.

In the event of any inconsistency between the provisions of this Declaration, the Bylaws and/or the Articles of the Association, the Declaration shall prevail. In the event of any inconsistency between the provisions of the Bylaws and the Articles, the Articles shall prevail.

13.12 DEFINITIONS.

Architectural Control Committee. The Board or, if the Board elects, a Committee established pursuant to this Declaration for the purpose of approval and control of architecture and design standards established for the Project.

Articles. The Articles of Incorporation of the Association, as they may from time to time be amended.

Association. THE MARIPOSA OF MISSION PACIFIC PROPERTY OWNERS ASSOCIATION, a California Nonprofit Mutual Benefit Corporation, consisting of all sublessees of Lots in the project, created for the purpose of managing a common interest development.

Beneficiary. See *Mortgagee*.

Board. The Board of Directors of the Association.

Bylaws. The Bylaws of the Association or as amended from time to time.

City. The City of San Diego, County of San Diego, State of California

Civil Code. Shall mean the State of California Civil Code.

Common Area. The entire Property, including improvements thereon, owned by the Association for the common use and enjoyment of the Owners. The Common Area owned by the Association after annexation of all phases by the Developer of the Association consist of Lots 148, 149, 360, 362, 363, 364 & 365 of MISSION PACIFIC UNIT NO. 2 according to Map thereof No. 10252 recorded in the Office of the San Diego County Recorder on October 29, 1981.

Common Expenses. The actual estimated expenses of operating the Project and any reasonable reserve for such purposes as found and determined by the Board and all sums designated common expenses by or pursuant to the governing documents.

Corporations Code. Shall mean the State of California Corporations Code.

County. The County of San Diego, State of California

Declarant. The **Association** as defined above, and those successors and assigns of Declarant who acquire all or part of the interest in the Property for the purposes of development of the Association, and which are expressly named as successor Declarant in a document recorded by Declarant assigning the rights and duties of Declarant to such successor Declarant. Successor Declarant shall additionally be deemed to include the beneficiary of any Deed of Trust securing an obligation from Declarant encumbering all or part of the Property.

Developer. TREETOPS UNLIMITED, a joint venture, its successors and assigns.

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 Lot number, and requesting notice to which such Eligible Mortgagee is due under the Governing Documents.

Exclusive Use Common Area. Those portions of the Common Area designated herein for the exclusive use of one or more, but fewer than all, of the owners of the separate interest and which is or will be appurtenant to the separate interest(s), according to *Civil Code* §1351(i), and which is appurtenant to a Lot as shown on the instrument of conveyance and/or pursuant to the provisions herein. "**Exclusive Use Common Areas**" and "**Restricted Common Areas**" shall have the same meaning and shall be consistent with the definition provided by *Civil Code* §1351(i).

FHA. The Federal Housing Authority.

Governing Documents. This Declaration and any other documents such as the Articles, Bylaws, Architectural Guidelines, Plan or Rules and Regulations which govern the operation of the Association.

Lender. See **Mortgagor**.

Lot. Any Plot of land shown upon any recorded subdivision map of the Properties, with exception of the Common Area.

Member. Every person or entity entitled to membership in the Association as provided in this Declaration.

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

Mortgagee. Any person to whom a Mortgage is made and includes the beneficiary of a deed of trust and any guarantors or insurer of a mortgage given for value which encumbers any Lot. **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 Housing Authority (FHA), Federal National Mortgage Association (FNMA), the Federal Home Loan Mortgage Corporation (FHLMC), Federal National Mortgage Association (FNMA) 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 Lot or other portions of the Project.

Mortgagor. Any 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.

Owner. The owner of record of a fee simple title or long-term leasehold interest of record to any a Lot or other parcel of property in the Project, whether held by one or more persons or entities, including any contract sellers under recorded contracts of sale. A contract purchaser under a record installment land sales contract shall be included as an Owner but those merely having an interest in the Property as security for performance of an obligation shall not be Owners.

Person. An individual, corporation, or any other entity with the legal right to hold title to real property.

Project. The common interest development which is a project as described herein, including all improvements and structures thereon, located within the Property.

Property(ies). The real property described in Recital A.

Recreation Common Area. That property owned, operated and maintained by the Association for the benefit of the Owners.

Rules and Regulations. Any Rules and Regulations adopted by the Board for the Association regulating the use of the Lots, Common Areas, the Project and any facilities located thereon.

Taking. The term "taking" as used in this Declaration shall mean condemnation by eminent domain or by sale under threat thereof of all or part of the Project.

Timeshare(ing). The term "time-sharing" shall be deemed to include, but shall not be limited to: any time-share project, time-share estate and/or time-share use (as those terms are defined under *Business and Professions Code* §11003.5 or any successor statute thereto); any qualified resort vacation club (as those terms are used under *Business and Professions Code* § 10260, *et seq.*); or any agreement, plan, program or arrangement under which the right to, use, occupy, or possess the Lot in the Project rotates among various persons, either corporate, partnership, individual, or otherwise, on a periodically recurring basis for value exchanged, whether monetary or like-kind use privileges, according to a fixed or floating interval or period of time

Trustor. See **Mortgagor.**

VA. The U. S. Department of Veterans Affairs (Veteran’s Administration).

Vehicle Code. Shall mean the State of California Vehicle Code.

EXECUTION & RATIFICATION OF DECLARATION

IN WITNESS WHEREOF, the undersigned, being the Declarant, has executed this Declaration this ____ day of _____, 2004.

**THE MARIPOSA OF MISSION PACIFIC
PROPERTY OWNERS ASSOCIATION**
A California Nonprofit Mutual Benefit Corporation

By: _____

James D. Lanflisi, its President
duly authorized

By: _____

Al Millstine, its Secretary
duly authorized

[Notarization attached]