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**SECOND RESTATED  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
AND RESERVATION OF EASEMENTS  
OF  
MARINA PARK CONDOMINIUM ASSOCIATION  
CITY OF SAN DIEGO, COUNTY OF SAN DIEGO  
STATE OF CALIFORNIA**

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**SECOND RESTATED**

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

## **AND RESERVATION OF EASEMENTS**

**OF**

### **MARINA PARK CONDOMINIUM ASSOCIATION**

The Declaration of Covenants, Conditions and Restrictions and Reservation of Easements Restrictions for MARINA PARK CONDOMINIUM ASSOCIATION, (recorded in the official records of San Diego County, California) on January 12, 1982, as Instrument 008265 (herein referred to as “Original Declaration”), the First Restatement of Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for Marina Park Condominiums (recorded in the official records of San Diego County, California), February 1, 1993, as Instrument No. 0063992 (herein referred to as “First Restatement”), and The First Amendment to the First Restatement of Declaration of Covenants, Conditions, and Restrictions and Reservation of Easements for the Marina Park Condominium Association recorded (recorded in the official records of San Diego County, California), April 7, 2003, as Instrument No. 0387250 (herein referred to as “First Amendment”), and any other amendments not specifically set forth herein but recorded prior to the date of the recording of this instrument, are hereby superceded, amended and restated in their entirety to read as follows:

#### **RECITALS**

(A) The Original Declaration established MARINA PARK CONDOMINIUM ASSOCIATION (“Association”) to oversee, manage, maintain and operate the real property (“Project”) subject to the Original Declaration, plus all annexations to the Project. The Project subject to this Declaration is legally described in Exhibit “A” to this Second Restated Declaration.

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

(C) It was further intended that the Project consist of a “Condominium Project,” as defined in California *Civil Code* Section 1351(k) and the condominium Units sold and conveyed to the Owners, are subject to the protective covenants, conditions, restrictions, limitations, reservations, grants of easements, rights, rights-of-way, liens, charges and equitable servitudes as set forth in this Declaration.

(D) The Association now desires to amend and restate the First Restatement and replace it in its entirety with this Second Restated Declaration and that upon recordation of same, the Project shall be subject to the covenants, conditions, restrictions, rights, reservations, easements, equitable servitudes, liens and charges contained herein.

#### **ARTICLE 1**

## DEFINITIONS

**Section 1.1.** “**Architectural Control Committee**” or “**Committee**” means the Committee created in accordance with Article 7 of this Declaration.

**Section 1.2.** “**Articles**” means the Articles of Incorporation of the Association which are filed in the Office of the California Secretary of State, as such Articles may be amended from time to time.

**Section 1.3.** “**Assessment**” means any Regular, Special or Reimbursement Assessment made or assessed by the Association against an Owner and his or her Unit in accordance with the provisions of Article 5 of this Declaration.

**Section 1.4.** “**Association**” or “**Corporation**” means MARINA PARK CONDOMINIUM ASSOCIATION, a California nonprofit mutual benefit corporation (formed pursuant to the Nonprofit Mutual Benefit Corporation Law of the State of California), its successors and assigns. The Association is an “association” as defined in California *Civil Code* Section 1351(a).

**Section 1.5.** “**Balcony**” or “**Balconies**” means those elements designated on the Condominium Plan as Restricted Common Area (referred to herein as Exclusive Use Common Area).

**Section 1.6.** “**Beneficiary**” means a mortgagee under a mortgage or, as the case may be, the beneficiary of or holder of a note secured by a Deed of Trust, and/or the assignees of such mortgagee, beneficiary or holder.

**Section 1.7.** “**Board of Directors**” or “**Board**” means the Board of Directors of the Association.

**Section 1.8.** “**Bylaws**” means the Bylaws of the Association, as such Bylaws may be amended from time to time.

**Section 1.9.** “**City**” means the City of San Diego and its various departments, divisions, employees and representatives.

**Section 1.10.** “**Common Area**” means the entire Project, except all Units, as defined in this Article and shown on the Condominium Plan. Unless the context clearly indicates a contrary intention, any reference herein to the “Common Areas” shall also include any Common Facilities located thereon. As more particularly described in Article 1, Section 1.19, portions of the Common Area are designated as Exclusive Use Common Areas whose use and enjoyment are restricted to the Owners and occupants of the residence adjacent to such Exclusive Use Common Areas.

**Section 1.11.** “**Common Expense**” means any use of Association funds authorized in the Governing Documents and includes, without limitation:

(A) All expenses or charges incurred by or on behalf of the Association for the management, maintenance, administration, insurance, operation, repairs, additions, alterations or

reconstruction of the Common Area, Common Facilities that the Association is obligated to maintain or repair;

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

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

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

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

**Section 1.12.** “**Common Facilities**” means the swimming pools, spas, storage areas, restrooms, recreation room, exercise rooms, lobby, planters, walkways, stairways, garages, fountains, trees, hedges, plantings, lawns, shrubs, landscaping, fences, utilities, beams, lighting fixtures, buildings, structures and other facilities constructed or installed, or to be constructed or installed, or currently located within the Common Area.

**Section 1.13.** “**Condominium**” means an estate in real property as described in California *Civil Code* Sections 783 and 1351(f) consisting of an undivided fractional interest as a tenant in common in all or any portion of the Common Area.

**Section 1.14.** “**Condominium Building**” shall mean and refer to a separate residential building containing one or more Condominium Units.

**Section 1.15.** “**Condominium Plan**” means any Condominium Plan recorded by the original Declarant for this Project, pursuant to California *Civil Code* Section 1351(e) and any amendments to the plan.

**Section 1.16.** “**County**” means the County of San Diego, State of California, and its various departments, divisions, employees and representatives.

**Section 1.17.** “**Declaration**” means this instrument, including all of the Exhibits referred to herein (all of which shall be deemed incorporated herein by reference), as the same may be amended from time to time. The “Original Declaration” and “First Restatement” mean and refer to the documents referenced in the preamble to this Declaration.

**Section 1.18.** “**Deed of Trust**” or “**Trust Deed**” means a Mortgage or a Deed of Trust, as the case may be.

**Section 1.19.** “**Exclusive Use Common Area**” or “**Restricted Common Area**” shall mean any portion of the Common Areas designated by this Declaration and/or the Condominium Plan for the exclusive use of one or more, but fewer than all, of the Owners of the separate interests and which is or will be appurtenant to the separate interests or interest and shall consist of Patios, Parking Spaces, Balconies, and Storage Areas. Unless otherwise provided herein or on the Condominium Plan, any doorsteps, entryways, exterior doors, door frames and hardware incident thereto, screens and windows or other fixtures designed to serve a single separate interest, but located outside the boundaries of the separate interests, are Exclusive Use Common Areas. Internal and exterior cable television/internet/satellite, etc., electrical and telephone wiring and plumbing lines designed to serve a single separate interest are exclusive use areas allocated exclusively to that separate interest. Subject to the consent of the Association, the Owner of a separate interest shall be entitled to reasonable access to the Common Areas for the purpose of maintaining the internal and exterior telephone lines, plumbing lines, and electrical wires. The Association’s approval shall not be unreasonably withheld, but may include conditions as the Association determines reasonable.

**Section 1.20.** “**Governing Documents**” is a collective term that means and refers to the Declaration, Articles, Bylaws, Rules and Regulations, Architectural Guidelines, and any policies and procedures adopted by the Board.

**Section 1.21.** “**Member**” means every person or entity who holds a Membership in the Association and whose rights as a Member are not suspended pursuant to Article 3, Section 3.2(D) hereof.

**Section 1.22.** “**Mortgage**” means any security device encumbering all or any portion of the Project, including any Deed of Trust. “**Mortgagee**” shall refer to the beneficiary of, or the holder of a Note secured by a first Deed of Trust (Trust Deed) or, as the case may be, the Mortgagee under a first mortgage, and/or the assignee of such beneficiary, holder or Mortgagee.

**Section 1.23.** “**Owner**” means any person, firm, corporation or other entity which owns a fee simple interest in a Unit which is part of a Condominium, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation. “**Owner of Record**” and “**Member of the Association**” includes an Owner and means any person, firm, corporation or other entity in which title to a Unit is vested as shown by the official records of the Office of the County Recorder.

**Section 1.24.** “**Parking Space**” means those elements designated on the Condominium Plan as Restricted Common Area (referred to herein as Exclusive Use Common Area).

**Section 1.25.** “**Patio**” or “**Patios**” means those elements designated on the Condominium Plan as Restricted Common Area (referred to herein as Exclusive Use Common Area).

**Section 1.26.** “**Project**” or “**Real Property**” means all parcels of real property (Common Area and Condominium Units) described and identified in Recital “A” hereof, together with all buildings, structures, utilities, Common Facilities, and all other Improvements now located or hereafter constructed or installed thereon, and all appurtenances thereto.

**Section 1.27.** “**Regular Assessment**” means an Assessment levied against an Owner and his or her Unit in accordance with Article 5, Section 5.3, hereof.

**Section 1.28.** “**Reimbursement Assessment**” means an Assessment levied against an Owner and his or her Unit in accordance with Article 5, Section 5.5 hereof.

**Section 1.29.** “**Residential Use**” means occupancy and use of a residence for dwelling purposes in conformity with this Declaration and the requirements imposed by applicable zoning or other applicable laws or governmental regulations limiting the number of persons who may occupy residential dwellings.

**Section 1.30.** “**Rules and Regulations**” means the rules, regulations and policies adopted by the Board of Directors of the Association, pursuant to California *Civil Code* Sections 1357.100 et. seq. and this Declaration, as the same may be in effect from time to time.

**Section 1.31.** “**Special Assessment**” means an Assessment levied against an Owner and his or her Unit in accordance with Article 5, Section 5.4 hereof.

**Section 1.32.** “**Storage Areas**” means those elements designated on the Condominium Plan as Restricted Common Area (referred to herein as Exclusive Use Common Area). For purposes of this Declaration, “Storage Areas” are referred to as “Storage Closets.”

**Section 1.33.** “**Unit**” or “**Living Unit**” means the elements of a Condominium that are not owned in common with the Owners of Condominiums in the Project, such Units and their respective boundaries being shown and particularly described in the Condominium Plan, deeds conveying condominiums, and this Declaration. “Unit” does not include other interests in real property that are less than estates in real property, such as exclusive or non-exclusive easements. In interpreting deeds and plans, the existing physical boundaries of the Unit, or of a Unit reconstructed in substantial accordance with the original plan, shall be inclusively presumed to be its boundaries, rather than the description expressed in the deed or Condominium Plan or in the deed and those of the building and regardless of settling or lateral movement of the building. Whenever reference to a Unit is made in this Declaration, in the Condominium Plan, in any deed, or elsewhere, it shall be assumed that such reference is made to the Unit as a whole, including each of its component elements.

The following are not part of any Unit: bearing walls, columns, unfinished floors, balconies, patios, ledges, parking spaces, chutes, conduits, wires and other utility installations, wherever located, except the outlets thereof when located in the Unit.

## **ARTICLE 2**

### **MEMBERSHIP AND VOTING RIGHTS IN ASSOCIATION**

**Section 2.1. Membership.** All Unit Owners, by virtue of their ownership of a Unit, shall be a Member of the Association and shall be entitled to vote on all matters upon which Members of the Association are entitled to vote pursuant to the Declaration and in accordance with the Articles and

Bylaws which are incorporated herein. Membership shall be appurtenant to and may not be separated from ownership of any Condominium. Each Member is obligated to promptly, fully and faithfully comply with and conform to the Articles, Declaration, Bylaws, Rules and Regulations pertaining to the Association.

**Section 2.2. Voting Rights.** As more specifically set forth in the Bylaws, the Association has one (1) class of voting membership. Each Member shall be entitled to cast one (1) vote for each Unit owned by such Member.

**Section 2.3. Transfer.** Membership in the Association shall not be transferred, pledged or alienated in any way, except upon the sale of the Condominium to which it is appurtenant, and then only to the purchaser. The transfer of title to a Condominium or the sale of a Condominium and transfer of possession thereof to the purchaser shall automatically transfer the membership appurtenant to such Condominium to the transferee. Any attempt to make a prohibited transfer is void, and will not be reflected upon the books and records of the Association. In the event an Owner should fail or refuse to transfer the membership registered in his or her name to the purchaser of such Condominium, the Association shall have the right to record the transfer upon the books of the Association.

**Section 2.4. Joint Owner Disputes.** The vote for each Unit shall be cast as a single vote, and fractional votes shall not be allowed. In the event that joint Owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. If any Owner casts a vote representing a certain Unit, it will thereafter be conclusively presumed for all purposes that he, she or they were acting with the authority and consent of all other Owners of the same Unit.

### **ARTICLE 3**

#### **PROPERTY RIGHTS AND OBLIGATIONS OF OWNERS**

**Section 3.1. Elements of Condominium Ownership.** Ownership of each Unit within the Project shall include a Unit, an undivided fractional interest in the Common Area as a tenant in common, which fraction shall have a numerator of one (1) and a denominator equal to the total number of Units within the applicable Condominium Plan as specified in the deed from Declarant to each Owner, and which undivided interest cannot be altered or changed as long as the prohibition against severability of component interest in the Unit remains in effect as provided in Article 11 of this Declaration, and any exclusive or non-exclusive easement or easements appurtenant to said Unit over the Common Area or Common Facilities as described in the Declaration, the Condominium Plan and the deed to the Unit.

**Section 3.2. Owners' Nonexclusive Easements of Use.** Every Owner shall have a non-exclusive right and easement of use in and to the Common Areas within the Project, including ingress and egress to and from his or her Unit, which shall be appurtenant to and shall pass with the title to every Unit, subject to the rights and restrictions set forth in the Association's Governing Documents, including, but not limited to the following:

- (A) The right of the Association to limit the number of guests of Members;
- (B) The right of the Association to limit the use of the Common Facilities by Owners not in possession of a Unit;
- (C) Subject to the provisions of the Governing Documents and California law, the Board shall have the right to adopt reasonable Rules and Regulations;
- (D) The right of the Association to temporarily suspend the voting rights right, right to run for Board position and right to use the Common Facilities by an Owner for any period during which any Assessments remain unpaid. In addition, the Association may suspend a Member's right to use the Common Facilities for any infraction of this Declaration, the Bylaws and/or the published Rules and Regulations by that Member, his or her lessees, or guests. Any action to suspend a Member's right shall only be valid after a hearing by the Board, in accordance with the provisions of the Governing Documents, California *Civil Code* Section 1363(h) and California *Corporations Code* Section 7341. If the Board decides to impose a penalty or suspension, written notice of the penalty or suspension shall be provided to the Owner within fifteen (15) days after the date the hearing in accordance with California *Civil Code* Section 1363(h). For the purpose of this subsection, notice shall be given by any method reasonably calculated to provide actual notice;
- (E) The right of the Association to grant licenses or easements on, over and under the Common Area to public utilities or governmental entities or agencies; provided that such easement shall not unreasonably interfere with the right of any Owner to the use and enjoyment of his or her Unit and the Common Area;
- (F) Subject to the limitations contained in the Section 4.4(C) of the Declaration, the right of the Association to grant licenses or easements to individual Owners over the Common Area with a value of less than five percent (5%) of the Association's gross fiscal budget;
- (G) The right of the Association to charge deposit fees and other administrative costs for use of the Common Facilities situated upon the Common Area; and
- (H) The right of the Association, in accordance with the Bylaws, to borrow money for the purpose of improving the Common Area and to hypothecate any or all real or personal property owned by the Association.

**Section 3.3. Persons Subject to Governing Documents.** All present and future Owners, tenants and occupants of Units within the Project shall be subject to, and shall comply with, each and every provision of the Governing Documents, as the same or any of them shall be amended from time to time, unless a particular provision is specifically restricted in its application to one or more of such classes of persons (i.e., Owners, tenants, invitees, etc.). The acceptance of a deed to any Unit, the entering into a lease, sublease or contract of sale with respect to any Unit, or the occupancy of any Unit shall constitute the consent and agreement of such Owner, tenant or occupant that each and all of the provisions of this Declaration, as the same or any of them may be amended from time to time, shall be binding upon said person and that said person will observe and comply with the Governing Documents. The Owners hereby delegate and assign to the Association, acting through the Board, the power and authority of enforcement against the tenant for breaches resulting from the violation

of the Declaration, Bylaws and the Rules and Regulations adopted pursuant thereto, including the power and authority to evict the tenant on behalf of and for the benefit of the Owner, in accordance with the terms hereof.

**Section 3.4. Waiver of Use.** No Member may exempt himself from personal liability for Assessments duly levied by the Association, nor release the Unit owned by him or her from the liens, charges and other provisions of this Declaration, the Articles, Bylaws and Rules and Regulations, by waiver of the use and enjoyment of the Common Area or the abandonment of his or her Unit.

**Section 3.5. Obligations of Owners.** Owners of Units within the Project shall be subject to the following:

(A) **Owner's Duty to Notify Association of Tenants and Contract Purchasers.** Each Owner shall notify the Association's property manager (if employed by the Association) of the names of any contract purchaser or tenant of the Owner's Unit. Each Owner, contract purchaser or tenant shall also notify the Secretary of the Association of the names of all persons to whom such Owner, contract purchaser or tenant has delegated any rights to use and enjoy the Project and the relationship that each such person bears to the Owner, or contract purchaser or tenant.

(B) **Payment of Assessments and Compliance With Rules.** Each Owner shall pay when due each Regular, Special and Reimbursement Assessment levied against the Owner and his or her Unit and shall observe, comply with and abide by any and all Rules and Regulations set forth in, or promulgated by the Association pursuant to any Governing Document for the purpose of protecting the interests of all Owners or protecting the Common Area and Common Facilities.

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

(D) **Joint Ownership of Units.** In the event of joint ownership of any Unit, the obligations and liabilities of the multiple Owners under the Governing Documents shall be joint and several. Without limiting the foregoing, this Subparagraph shall apply to all obligations, duties and responsibilities of Owners as set forth in this Declaration, including, without limitation, the payment of all Assessments.

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

**Section 3.6. Delegation of Use.** Any Owner may delegate his rights of enjoyment in the Project, including the Common Area, to the members of his family, his guests, and invitees, and to such other persons as may be permitted by the Bylaws and the Association Rules and Regulations. Neither an Owner of a Unit who has sold same to a contract purchaser thereof or has leased or rented same, nor members of his family, his guests and invitees shall be entitled to use and enjoy the Common Area while such Owner's Unit is occupied by such contract purchaser, lessee or renter. Each Owner shall notify the secretary of the Association of the names of any contract purchasers,

lessees or renters of such Owner's Unit. Any rights of enjoyment delegated pursuant hereto are subject to suspension to the same extent that rights of the Owners are subject thereto.

**Section 3.7. Interest in Common Area.** No Owner may sell, assign, lease or convey his interest in the Common Area, separate and apart from his Unit.

**Section 3.8. Exclusive Use Common Area.** Each Exclusive Use Common Area (i.e., Patios, Balconies, Parking Spaces, and Storage Closets) shall be (1) appurtenant to the Condominium, and (2) used only for the purposes set forth in this Declaration. The right to use an Exclusive Use Common Area shall be exercisable only by the Owner(s) of the Condominium appurtenant thereto and/or said Owner's tenants and licensee(s). Conveyance of a Condominium shall effect conveyance of Exclusive Use Common Areas appurtenant thereto and transfer all rights thereto to the vested Owner of the Condominium. Any license(s) thereto shall be terminated upon such conveyance. No Exclusive Use Common Area or any rights thereto (other than said revokable licenses) shall be transferred or conveyed apart from conveyance of the Condominium to which it is appurtenant. Each Exclusive Use Common Area shall be deemed to be Common Area for the purposes set forth in this Declaration which are not inconsistent with this Article.

**Section 3.9. Blanket Utility Easement.** There is hereby created a blanket easement upon, across, over and under all of the Project for ingress, egress, installation, replacing, repairing and maintaining all utilities, including but not limited to water, sewers, gas, telephones, drainage and electricity and the master television antenna or cable television system. By virtue of this easement, it shall be expressly permissible for the providing utility company to erect and maintain the necessary equipment and underground facilities on the Common Area. Notwithstanding the foregoing, no sewer, electrical lines, water lines, or other utilities may be installed or relocated on said Project except as initially designed or approved by the Association's Board of Directors. The easement provided for in this section shall in no way effect any other recorded easement on the Project.

## **ARTICLE 4**

### **POWER AND DUTIES OF THE ASSOCIATION**

**Section 4.1. Management Control by the Board.** The Board shall manage the affairs of the Association and shall have all the powers and duties necessary for the administration of the Project subject only to such limitations on the exercise of such powers as are set forth in the Governing Documents.

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

**Section 4.2. Powers of the Board.**

(A) **Rule-Making Power.** Subject to the provisions of the Governing Documents and California law, the Board shall have the right to adopt reasonable Rules and Regulations and to

amend the same from time to time relating to the use of the Common Area and Units, and all other facilities situated thereon by Owners and by their tenants or guests and the conduct of such persons with respect to vehicle parking, outside storage, disposal of waste materials, drying of laundry, control of pets and other activities reasonably contemplated under the Association's Governing Documents. The Rules and Regulations may include the establishment of a system of fines and penalties.

So long as required by *Civil Code* Sections 1357.100 et. seq., at least thirty (30) days prior to adopting, amending or repealing rules that relate to use of the Common Area, Exclusive Use Common Area and Units, member discipline (including monetary penalties for violation of the governing documents), delinquent Assessment payment plans, procedures regarding resolution of disputes, any procedures for reviewing and approving or disapproving a proposed physical change to a unit or Common Area, and procedures for elections, the Board shall provide the Members with written notice of the proposed Rule change. This notice shall include the text of the proposed rule change and a description of the purpose and effect of such proposed rule change. The Rules and Regulations may be amended only by the vote of a majority of the entire Board at a duly held meeting after consideration of any comments made by Association members. Within fifteen (15) days after making any rule change, the Board shall deliver notice of the rule change to every Member.

The requirement that members be sent notice of proposed rule changes does not apply to any rule change that the Board determines is necessary to address an imminent threat to public health or safety or imminent risk of substantial economic loss to the Association. A copy of the current Rules and Regulations shall be:

- (1) Maintained in the office of the Association and be available for inspection at all reasonable times; and
- (2) Given to each Owner within a reasonable time after the Association has notice of his or her occupancy of a Unit.

Upon completion of the above notice requirement the Rules and Regulations shall have the same force and effect as if they were set out in this Declaration.

(B) Enforcement Power. As more specifically set forth in Article 17 of this Declaration, the Board shall have the power to enforce the Declaration and Bylaw provisions, and Rules and Regulations, by the imposition of reasonable monetary fines, Reimbursement Assessments for costs incurred in compelling compliance with the Association's Governing Documents (Articles, Declaration, Bylaws, Architectural Guidelines and Rules and Regulations), and suspend the right to use Common Facilities and voting/candidacy privileges. These powers, however, shall not be construed as limiting any other legal means of enforcing such provisions. Any fines and/or Reimbursement Assessments so imposed shall be considered an Assessment against the Unit and may be collected in the manner provided for collection of other Assessments, except that fines shall not be recoverable through the imposition of a lien against the Owner's Unit enforceable through foreclosure, but the same may be recovered by the Association through other legal processes.

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

(D) Selection of Officers. The Board shall have the power to select and remove all the Officers, agents and employees of the Association, prescribe such powers and duties for them as may be consistent with law, the Articles, the Bylaws and the Declaration.

(E) Vacancies. The Board shall have the Power to fill vacancies on the Board of Directors or in any committee, except a vacancy created by the removal of a Board Member, by the Association Members.

(F) Bank Accounts. The Board shall have the Power to open bank accounts on behalf of the Association and designate the signatories to such bank accounts.

(G) Convey, Sell or Grant Property. Subject to the limitations set forth in Section 4.4(C) of this Article, the Board may convey, sell, or grant permits, licenses, utility easements, and other easements, necessary for the proper maintenance or operation of the Project under, through, or over the common elements, as may be reasonably necessary to or desirable for the ongoing development and operation of the Project.

(H) Borrowing Money. Subject to the limitations set forth in Section 4.4(A) of this Article, the Board may borrow money for the purposes of improvement or restoration of the Common Area and Common Facilities.

**Section 4.3. Duties of the Association.** In addition to the powers delegated to it by its governing documents, and without limiting their generality, the Association, acting by and through the Board and its agents, has the obligation to conduct all business affairs of common interest for all Owners and to cause to be performed each of the duties set forth below:

(A) Maintenance of Common Area. As more specifically set forth in Article 10 of this Declaration, the Board shall maintain in good repair all Common Area structures, improvements and appurtenances. The Board shall have the power to contract for and pay for maintenance, landscaping, utilities, materials, supplies, labor and services that may be required from time to time in relation to the Common Areas and other portions of the Project which the Association is obligated to maintain.

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

(C) Utilities and Services. The Board shall provide water, sewer, gas, electric, refuse collection, janitorial and gardening service for the Common Area, provide water, gas, sewer and

refuse service to all Units, and may make electrical service, cable T.V. service and such other utilities, as the Board may determine, available to all Units.

(D) Provide Insurance. The Board shall secure and maintain policies of insurance, as more particularly provided in Article 14 of this Declaration.

(E) Assessments. To establish, fix, and levy Assessments against the Owners and to enforce payment of such Assessments, in accordance with the provisions of the Declaration.

(F) Budget and Financial Statements. To prepare budgets and financial statements for the Association as provided in the Bylaws and as required by California *Civil Code* Sections 1365, 1365.2.5. and any successor statute.

(G) Distribute Documents and Perform Other Duties. To prepare and distribute to the Members documents required pursuant to California *Civil Code* Sections 1365, 1365.1, 1365.2.5, and/or any successor statutes and to perform other duties as required by California *Civil Code* Section 1365.5 and/or any successor statutes.

**Section 4.4. Limitations on Authority of Board.** The Board shall not take any of the actions listed below except with the approval or written consent Owners constituting a quorum, casting a of a majority of the votes at a meeting or election of the Association.

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

(B) Capital Expenditures. Make expenditures for capital improvements for and on behalf of the Association in excess of five percent (5%) of the budgeted gross expenses of the Association for that fiscal year. For purposes of the Governing Documents, the term “capital improvement” means those items or elements which are new to the Project.

(C) Sell Property. Sell property of the Association having a fair market value in excess of five percent (5%) of the budgeted gross expenses of the Association for that fiscal year.

(D) Convey Property to Owners. Convey, sell or grant easements, licenses and/or permits to Owners to use the Common Area with a value of more than five percent (5%) of the budgeted gross expenses of the Association for that fiscal year. For purposes of *Civil Code* Section 1363.07, the affirmative vote of zero percent (0%) of the Owners is required for the Board to convey, sell or grant exclusive use of any portion of the Common Area to any Owner if the value of said portion of the Common Area is less than five percent (5%) of the budgeted gross expenses of the Association for that fiscal year.

**Section 4.5. Limit on Third Party Contracts.** The Board shall not, without obtaining the consent of a majority of the voting power of the Members, enter into contracts with third parties for the furnishing of goods or services for the Common Area of the Association for a term longer than one (1) year with the following exceptions:

(A) 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;

(B) A prepaid casualty and/or liability insurance policy not to exceed three (3) years duration; provided that the policy permits for short-rate cancellation by the insured;

(C) Payment of any taxes and governmental special Assessments which are and could become a lien on the Common Area or any portion thereof;

(D) Contract(s) for cable television; and

(E) Contract(s) for cell phone site or similar leases.

**Section 4.6. Management Agreements.** Any agreement for the management of the Project shall contain the following provisions:

(A) Be terminable by the Association without cause or payment of a termination fee upon thirty (30) days written notice thereof;

(B) Be for a term not in excess of one (1) year; and

(C) Any renewal by agreement of the parties for successive terms shall not exceed more than one (1) year.

**Section 4.7. Right of Entry.**

(A) For the purpose of maintaining the Common Area, performing maintenance that an Owner has failed to perform as further described in Article 10, Section 10.5 of this Declaration or for any other purpose reasonably related to the performance by the Board of its responsibilities under the Declaration, the Association's Officers, agents or employees shall have the right, after reasonable notice to Owner(s), to enter any Unit, any portion of the Unit, or Exclusive Use Common Area at reasonable hours.

(B) In addition to and not in limitation of all other rights, the Association may enter into Units for emergency, security, or safety purposes, which right may be exercised by the Association's Board of Directors, officers, agents, employees, managers, and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their respective duties. In an emergency situation, if practicable, prior to entering the Unit, a reasonable attempt will be made to notify the occupant and the Owner of the Unit of the Association's need and intent to enter the Unit. For purposes of this Section, an "emergency" includes, but is not limited to: water coming into or out of the Unit, smoke detector emitting alarm, defibrillator use, etc.

(C) Except during an emergency, there shall be no entry into a Unit without the Owner's consent, which consent shall not unreasonably be withheld. When there is an entry into any Unit, such entry shall be made with as little inconvenience to the occupant as possible.

**Section 4.8. Limitation of Liability.** In discharging their duties and responsibilities, the Board acts on behalf of and as representative of the Association, which acts on behalf of and as representative of the Owners, and no Member of the Board of Directors shall be individually or personally liable or obligated for performance or failure of performance of such duties or responsibilities unless he or she fails to act in good faith.

## **ARTICLE 5**

### **COVENANT FOR MAINTENANCE ASSESSMENTS TO ASSOCIATION**

**Section 5.1. Assessments Generally.**

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

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

**Section 5.2. Creation of Lien and Personal Obligation for Assessments.** Each Owner of any Unit, by acceptance of a deed, whether or not it shall be so expressed in such deed or conveyance, is deemed to covenant and agree to pay the Association: (1) annual Regular Assessments or charges; (2) Special Assessments, to be established and collected as hereinafter provided; and (3) Reimbursement Assessments against any particular Unit which are established pursuant to the terms of the Association's Governing Documents.

(A) All such Assessments, together with late charges, interest, costs, and all attorney's fees reasonably incurred, as provided in this Declaration and in the maximum amount permitted by the laws of the State of California, whichever is greater, shall be a charge on the Unit and shall be a continuing lien upon the Unit against which each Assessment is made. Such amounts shall also be the personal obligation of the person who was the Owner of such Unit at the time when the Assessment fell due or was levied. Each Owner of a Unit shall be jointly and severally liable for the entire Assessment coming due while he or she is the Owner of a Unit. Unless otherwise stated in the Association's policy with respect to collection of Assessments, Assessments shall be considered delinquent if not received by the fifteenth (15th) day of the month in which they are due.

(B) Assessments shall be paid in such manner and on such dates as may be fixed by the Board; unless otherwise provided, the annual Regular Assessments shall be paid in monthly installments due on the first day of each calendar month.

(C) The personal obligation shall not pass to an Owner's bona fide and for value successors in title unless expressly assumed by them.

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

**Section 5.3. Regular Assessments.**

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

(B) Mailing Notice of Assessment. The Board of Directors shall mail to each Owner at the street address of the Owner's Unit, or at such other address as the Owner may from time to time designate in writing to the Association, a statement of the amount of the Regular Assessment for the next succeeding fiscal year not less than thirty (30) days nor more than ninety (90) days prior to the beginning of the next fiscal year.

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

(D) Ability to Change Assessments. The Board of Directors may change the amount of Assessments at any time upon not less than thirty (30) nor more than sixty (60) days prior written notice to the Membership.

**Section 5.4. Special Assessments.** In addition to the Regular Assessments, authorized above, the Board may levy Special Assessments for the purpose of defraying, in whole or in part, the cost of any capital improvement to the Common Area or such other purpose as may be determined by the Board; provided, however, that no Special Assessment shall exceed, in the aggregate during any fiscal year of the Association, an amount equal to five percent (5%) of the budgeted gross expenses of the Association for that fiscal year, without the vote or written assent of Members constituting a quorum, casting a majority of the votes at a meeting or election of the Association. For purposes of this Section, "quorum" shall constitute a majority of the Owners of the Association. All such Special Assessments shall be levied upon each Unit in the same proportion as Regular Assessments are levied.

(A) Assessments to Address Emergency Situations. The requirement of a membership vote to approve Regular Assessment increases in excess of twenty percent (20%) of the previous year's Regular Assessment and Special Assessments in an amount exceeding five percent (5%) of the budgeted gross expenses of the Association for that fiscal year shall not apply to Assessment increases necessary to address emergency situations. For purposes of this subparagraph (A), an emergency situation is any of the following:

(1) An extraordinary expense required by an order of a court;

(2) An extraordinary expense necessary to repair or maintain the Common Areas, Common Facilities or any portion of the separate interests which the Association is obligated to maintain where a threat to personal safety is discovered; or

(3) An extraordinary expense necessary to repair or maintain the Common Areas, Common Facilities or any portion of the separate interests which the Association is obligated to maintain that could not have been reasonably foreseen by the Board in preparing and distributing the budget pursuant to Section 3(A) above, provided that, prior to the imposition or collection of an Assessment under this paragraph, the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process. The Board's resolution shall be distributed to the Members together with the Notice of Assessment.

**Section 5.5. Reimbursement Assessments.**

(A) Circumstances Giving Rise to Reimbursement Assessments. In addition to the Special Assessments levied against all Owners in accordance with Section 4, above, the Board of Directors may impose Reimbursement Assessments against an Owner in any of the circumstances described, without limitation, in Subparagraphs (1) through (3) below, provided that no Reimbursement Assessment may be imposed against an Owner pursuant to this Section until the Owner has been afforded the notice and hearing rights to which the Owner is entitled pursuant to *Civil Code* Section 1363(h) and *Corporations Code* Section 7341, and, if appropriate, has been given a reasonable opportunity to comply voluntarily with the Association's Governing Documents. Subject to the foregoing, the acts and circumstances giving rise to liability for Reimbursement Assessments include the following:

(1) Damage to Common Area or Common Facilities. In the event that any damage to, or destruction of, any portion of the Common Area or the Common Facilities, including any portion of the Unit which the Association is obligated to repair and maintain is caused by the willful misconduct or negligent act or omission of any Owner, any Member of his or her family, or any of his or her tenants, guests, servants, employees, licensees or invitees, the Board shall cause the same to be repaired or replaced, and all costs and expenses incurred in connection therewith (to the extent not compensated by insurance proceeds) shall be assessed and charged solely to and against such Owner as a Reimbursement Assessment.

(2) Expenses Incurred in Gaining Membership Compliance. In the event that the Association incurs any costs or expenses, to accomplish (a) the payment of delinquent Assessments, (b) any repair, maintenance or replacement to any portion of the Project that the Owner is

responsible to maintain under the Governing Documents but has failed to undertake or complete in a timely fashion, or (c) to otherwise bring the Owner and/or his or her Unit into compliance with any provision of the Governing Documents, the amount incurred by the Association (including reasonable costs imposed hereunder, title company fees, accounting fees, court costs and reasonable attorney's fees) shall be assessed and charged solely to and against such Owner as a Reimbursement Assessment.

(3) Required Maintenance on Units. As more particularly provided in Article 6, if any Unit is maintained so as to become a nuisance, fire or safety hazard for any reason, including without limitation, the accumulation of trash or hazardous material therein, the Association shall have the right to enter said Unit, correct the offensive or hazardous condition and recover the cost of such action through imposition of a Reimbursement Assessment against the offending Owner.

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

**Section 5.6. Notice.** Annual written notice of an Assessment shall be given to every Owner subject thereto. Assessments may be collected on a monthly basis or otherwise as determined by the Board. The Association shall, upon demand and for a reasonable charge, furnish a certificate signed by an Officer or other agent of the Association setting forth whether the Assessments of a specified Unit have been paid.

**Section 5.7. Exemption of Certain Properties From Assessments.** The following real property subject to this Declaration shall, unless devoted to use as a residential dwelling, be exempted from the Assessments and the lien thereof provided herein:

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

**Section 5.8. Remedies of the Association for Non-Payment of Assessments** The Association shall have the power to impose Assessments as provided in these Governing Documents. Such Assessments are the personal obligation of the Owner against whom they are assessed and are a lien against that Unit. The Association shall have the authority to create and enforce a lien with the power of sale on each separate Unit to secure payment of the amount of any Assessment, to the full extent permitted by applicable law. The obligation and the lien for Assessments may also include: a late or delinquency charge in the amount of ten dollars (\$10.00) or ten percent (10%) of the amount of each Assessment or installment not paid when due, whichever is greater, or such higher amount as may be authorized by the laws of the State of California; interest on each Assessment or installment not paid when due and on any delinquency fee or late charge pertaining thereto commencing thirty (30) days after the date the charge was first due and payable at the rate of twelve

percent (12%) per annum, or such higher rate as may be authorized by the laws of the State of California; the costs of collection, including court costs, the expenses of sale, any expense required for the protection and preservation of the Unit, and reasonable attorney's fees actually incurred; and the fair rental value of the Unit from the time of institution of suit until the sale at foreclosure or other satisfaction of any judgment.

**Section 5.9. Effect of Non-Payment of Assessments.**

(A) At any time after any Assessments levied by the Association affecting any Unit have become delinquent, and the Association has complied with the pre-lien requirements set forth in California *Civil Code* Section 1367.1 or successor statute the Association, upon a vote of a majority of the Board made at an open Board meeting, the Association may file for recording in the Office of the San Diego County Recorder a lien upon the Unit described therein, which lien shall also secure all other payments and/or Assessments which shall become due and payable with respect to said Unit following such recording, and all costs (including attorney's fees), penalties and interest accruing thereon. Said lien shall continue until all amounts secured thereby are fully paid or otherwise satisfied.

(B) In the event the delinquent Assessments and all other Assessments which have become due and payable with respect to the same Unit, together with all costs (including attorney's fees) and interest which have accrued on such amounts, are fully paid or otherwise satisfied prior to the completion of any sale held to foreclose the lien provided for in this Article, the Board shall record a further notice, similarly signed, stating the satisfaction and releasing of such lien.

**Section 5.10. Assignment of Rents.** Each Owner does hereby presently assign to the Association, absolutely and regardless of possession of the property, all rents and other monies now due or hereafter to become due under any lease or agreement or otherwise for the use or occupation of any or all parts of any Unit owned by the Owner, now existing or hereafter made for the purpose of collecting all Assessments due the Association pursuant to this Declaration which are in default. The Association hereby confers on each Owner the authority to collect and retain the rents and other monies derived from any such lease or agreement as they become due and payable, provided that the Association at its sole discretion, may revoke such authority at any time, upon written notice to the Owner of a default in the payment of any Assessment due hereunder. Upon revocation of such authority the Association may, pursuant to court order or by court-appointed receiver, collect and retain such rental monies, whether past due and unpaid or current. The Association's rights under this Section shall be subordinate to the rights of any First Mortgagee.

**Section 5.11. Foreclosure of Assessment Lien.** Each Assessment lien may be foreclosed upon as and in the same manner as the foreclosure of a mortgage upon real property under the laws of the State of California, or may be enforced by sale pursuant to California *Civil Code* Section 2924 et. seq., and Section 1367.4 of the California *Civil Code*, and to that end a power of sale is hereby conferred upon the Association. Suit to recover a money judgment for unpaid Assessments, late fees, interest, attorney's fees and rent shall be maintainable without foreclosing or waiving the lien securing the same.

**Section 5.12. Subordination of Lien.** The lien of the Assessments provided for herein shall be subordinate to the lien of any first Mortgage. Sale or transfer of any Unit shall not affect the

Assessment lien. However, the sale or transfer of any Unit pursuant to foreclosure of a first Mortgage or deed in lieu of foreclosure of a first Mortgage shall extinguish the lien of such Assessments as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such Unit from liability for any Assessments thereafter becoming due or from the lien thereof.

Where the Mortgagee of a first Mortgage of record or other purchaser of a Condominium obtains title to the same as a result of such a foreclosure, or deed in lieu of foreclosure, such acquirer of title, and its successor and assigns, shall not be liable for the share of the Common Expenses or Assessments by the Association chargeable to such Condominium which became due prior to the acquisition of title to such Condominium by such acquirer. However, such unpaid share of Common Expenses or Assessments shall be deemed to be Common Expenses collectible from Owners of all of the Condominiums, including such acquirer, its successors and assigns.

Upon the written request of a holder of a first Mortgage encumbering a Condominium, the Association shall provide such holder with written notification of any default by the Owner of such Condominium in the performance of such Owner's obligations under this Declaration and the Bylaws of the Association, or either of them.

**Section 5.13. Waiver of Exemptions.** Each Owner does hereby waive, to the extent of any liens created pursuant to this Article, the benefit of any homestead or exemption laws of the State of California in effect at the time any Assessment, or installment thereof, becomes delinquent or any lien is imposed pursuant to the terms hereof.

**Section 5.14. Rate of Assessments.** Unless otherwise indicated in the Association budget, all Regular Assessments and Special Assessments shall be assessed equally against the Members.

## **ARTICLE 6**

### **USE RESTRICTIONS**

**Section 6.1. Occupancy.** Use restrictions regarding the use of Units and the Common Areas may be adopted by the Board in accordance with the terms hereof and as specified in the Bylaws of the Association, are as follows:

(A) **Single Family Occupancy.** The Units within the Project are restricted exclusively to residential use, and no Unit shall be occupied by more than a single-family. The term "single-family" shall be defined in accordance with applicable Federal and California laws, City codes and ordinances.

"Occupancy," for purposes of this Declaration, shall be defined as staying over night in a Unit for a total of more than sixty (60) days, either consecutive or non-consecutive days, in any one year.

(B) **Residential Use.** Each Unit shall be used for residential purposes. Trade or business may be conducted in or from a Unit, so long as there is no material impact on the Association or Common Area due to the operation or conduction of any trade or business. The terms "business" and "trade," as used in this provision, shall be construed to have their ordinary or generally accepted

meanings, and shall include, without limitation, any occupation, work, or activity undertaken on an on-going basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (1) such activity is engaged in full or part-time; (2) such activity is intended to or does generate a profit; or (3) a license is required therefor.

(C) Lessee/Tenant Bound by Governing Documents. Each Owner shall have the right to lease his or her Unit, Parking Spaces, interest in the Common Area together, provided that such lease is in writing and provides that the tenant shall be bound by and obligated to the provisions of this Declaration, the Bylaws and the Rules and Regulations of the Board; provided, however, that no such lease shall be for transient or hotel purposes. Any such lease which is either for a period of less than six (6) months or pursuant to which the Lessor provides any services normally associated with a hotel shall be deemed to be for transient or hotel purposes.

(D) No camping, whether temporary or permanent, and no temporary structures of any kind shall be permitted on any part of the Project.

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

#### **Section 6.2. Pets.**

(A) No more than a reasonable number of pets, as determined by the Board in the Rules and Regulations, (exclusive of tropical fish, and caged birds) may be kept in any Unit. No other animals, livestock, or poultry of any kind shall be raised, bred, or kept on any part of the Project. Pets may be kept provided that they do not endanger or unreasonably threaten the physical or emotional well being of the Owner of any Unit or any resident thereof. No pet, regardless of size or type, shall be permitted to be kept within any portion of the Project property if it makes excessive noise, creates a nuisance, or otherwise constitutes an annoyance to residents or damages property. Furthermore, each pet owner must immediately clean up after their pet in the Common Area. All dogs must be kept on a leash within the Common Area and under the control of a person capable of controlling the animal.

(B) The keeping of pets and their ingress, egress, and travel upon the Common Areas shall be subject to such Rules and Regulations as may be issued by the Board. If an Owner or occupant fails to abide by the Rules and Regulations and/or covenants applicable to pets, the Board may restrict or bar the pet(s) of the Owner or occupant from the Project and/or from use of or travel upon the Common Areas.

(C) Any pet which is allowed to unreasonably threaten the physical or emotional well being of any Owner or resident of a Unit or which is allowed to create a nuisance or disturbance or cause damage to property as may be determined at the sole discretion of the Board, must be permanently removed from the Project property upon seven (7) days' written notice by the Board.

#### **Section 6.3. Signs, Flags and Banners.**

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

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

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

**Section 6.4. Antennas and Similar Devices.** Antennas and Satellite dishes that are one (1) meter or less in diameter may be installed within an Owner's Unit, or his or her Exclusive Use Common Area, without approval of the Association. However, no such dish may be installed on the Common Area, including attaching them to roofs and sides of buildings, without prior written approval of the Association. The Association may require reasonable screening, establish preferred locations, and impose other restrictions as permitted by applicable federal and state law, provided they do not preclude an acceptable signal or unreasonably increase the cost or cause unreasonable delay in the installation of same. These restrictions are subject to change based on federal and state law.

**Section 6.5. Vehicles, Parking and Garages.** Automobiles must be parked properly within the Project to ensure the following objectives: (1) access to living units by emergency vehicles; (2) adequate parking for visitors; (3) pedestrian and vehicle safety; and (4) preserving the aesthetic quality of Project. The Board of Directors may establish Rules and administrative bodies in order to serve those objectives. The following specific restrictions shall apply:

(A) All residential Parking Spaces are assigned to designated Units. Owners shall be entitled to exchange Parking Spaces provided that (1) a reciprocal assignment identifying the exchanged Parking Spaces, the exchanging Owners and their respective Units is executed by the exchanging Owners and the First Mortgagees of such exchanging Owners, and recorded; and (2) no exchange of Parking Spaces shall be effective if such exchange would result in a reduction of the number of parking spaces to which such Owners were originally entitled. A copy of the recorded reciprocal assignment shall be delivered to the Board as soon as possible after it is recorded.

(B) No trailer, camper, mobilehome, commercial vehicle, truck (other than standard size pickup truck), inoperable vehicle, boat or similar equipment or vehicle shall be permitted to remain upon any area within the Project, other than temporarily (not exceeding two (2) hours) for the purpose of loading or unloading. Commercial vehicles shall not include sedans or standard size pickup trucks or sport utility vehicles which are used both for business and personal use, provided that any signs or markings of a commercial nature on such vehicles shall be unobtrusive and inoffensive as determined by the Board.

(C) No vehicle may be washed on the Project.

(D) All vehicles operated within the Project shall be operated in a safe manner at a speed not to exceed five (5) miles per hour.

(E) No vehicles may be repaired in the garage parking areas.

(F) The Board may adopt rules for special use of parking spaces normally reserved for guests, and place reasonable restrictions on the types, condition, and appearance of vehicles that may park in the Common Area.

(G) Residents shall not park in guest garage parking spaces.

(H) No vehicle may encroach on another Owner's Parking Space.

(I) No gasoline or other flammable items may be used anywhere in the garage parking areas or Common Area.

**Section 6.6. Impairment of Units and Easements; Structural Alterations.** An Owner or occupant shall not perform nor commence any work that will impair the structural soundness or integrity or the mechanical systems of another Unit, Common Area or impair any easement, nor do any act nor allow any condition to exist which will adversely affect the other Units or their Owners or occupants. No structural alterations to the interior of any Unit shall be made and no plumbing or electrical work within any bearing or common walls shall be made by any Owner without the prior written consent of the Association.

**Section 6.7. Rubbish, Trash, and Garbage.** All rubbish, trash, storage piles, wood piles and garbage shall be regularly removed from the Unit, and shall not be allowed to accumulate outside of any Unit. Trash, garbage, or other waste shall be kept only in sanitary containers. No Owners of a Unit shall permit or cause any trash or refuse to be kept on any portion of the Project subject to this Declaration other than in the receptacles customarily used therefor.

**Section 6.8. Nuisance.**

(A) No noxious, illegal, or materially offensive activities shall be carried out or conducted within any Unit, Common Area or in any part of the Project, nor shall anything be done within the Project which shall unreasonably interfere with any other Residents' right to quiet enjoyment. No Owner or occupant of a Unit may use or allow the use of the Unit or any portion of the Unit in any way or for any purpose which may endanger the health or unreasonably annoy or disturb other Owners or occupants of a portion of the Unit; or act in such a way as to constitute, in the sole opinion of the Board, a nuisance. Nothing herein, however, shall be construed to affect the rights of an aggrieved Owner to proceed individually against another Owner and/or resident for relief from interference with his or her property or personal rights.

(B) Nothing shall be done within any Unit, or in, on, or to the Common Area which may impair the structural integrity or any building, or which would structurally change any building

located therein. Except as otherwise provided herein, nothing shall be altered or constructed in or removed from the Common Area except upon the written consent of the Board or an Architectural Control Committee appointed by the Board.

**Section 6.9. Unsightly or Unkempt Conditions.** The pursuit of hobbies or other activities, including without limitations, the assembly and/or disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly, or unkept conditions, shall not be pursued or undertaken on any part of the Unit nor on or within any part of the Project which unreasonably interferes with the Common Area.

**Section 6.10. Dangerous Use of Units.** No Unit or Improvement situated therein shall be occupied or used for any purpose or in any manner which shall cause such Improvement to be uninsurable against loss by fire or the perils of the extended coverage endorsement to the California Standard Fire Policy form, or cause any such policy or policies representing such insurance to be canceled or suspended, or the company issuing the same to refuse renewal thereof.

**Section 6.11. Responsibility for Damage to the Project.** Each Owner shall be legally liable to the Association for all damages to the Common Area or any area in which the Association has the maintenance obligation, including but not limited to the buildings, Common Facilities and landscaping caused by such Owner, his or her licensee(s) or any occupant of such Owner's Unit. In the event, after written request by the Board, the Owner fails to pay the Association for the damage caused by the Owner, his or her licensee(s) or any occupant of such Owner's Unit as such liability may be determined under California law, the Board, by majority vote, may specially assess the Owner in the same manner and with the same remedies as previously described in these Governing Documents.

**Section 6.12. Use of Common Area.** Except as otherwise provided herein, the Common Area shall be improved and used only for the following purposes:

(A) Affording vehicular passage and pedestrian movement within the Project property, including access to the Units and garage parking areas;

(B) Recreational use by the Owners and occupants of residences in the Project and their guests, subject to rules established by the Board;

(C) Beautification of the Common Area and providing privacy to the residents of the Project through landscaping and such other means as the Board shall deem appropriate;

(D) Parking of automotive passenger vehicles in areas provided therefor as may be designated and approved by the Board, upon such terms and conditions and for such fees as may from time to time be determined by the Board;

(E) As Exclusive Use Areas to be used in the manner hereinafter described. Nothing herein shall be deemed to allow persons other than the Owner of a Unit to which an Exclusive Use is appurtenant (or his tenants and licensees) to enjoy the use thereof;

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

(G) No Owner shall make any alteration or improvement to the Common Area, or remove any plants, structure, furnishings or other object therefrom, except with the prior written consent of the Board. Each Owner shall be liable to the Association for all damage to the Common Area or to any Improvements thereon or thereto, including, but not limited to, buildings, Common Facilities and landscaping, caused by such Owner or any guest or occupant of such Owner's Unit;

(H) No Owner shall use the Common Area in any manner of which shall increase the rate of insurance against loss by fire, or the perils of the extended endorsement to the California Standard Fire Policy form, or bodily injury, or property damage liability insurance covering the Common Area and Improvements situated thereon may be obtained, or cause such premises to be uninsurable against such risks or any policy or policies representing such insurance to be canceled or suspended or the company issuing the same to refuse renewal thereof; and

(I) Except as otherwise specifically provided herein, nothing herein contained shall give the Owner the right to paint, decorate, remodel, landscape or adorn any part or parcel of the Common Area without the written consent of the Board.

**Section 6.13. Window Covers.** Curtains, drapes, shutters or blinds of a neutral color may be installed as window covers. No window shall be covered with aluminum foil or similar material. The Board shall have the power to make reasonable Rules regarding window coverings which are visible from the exterior of the Unit.

**Section 6.14. Rules of Association.** Each Owner and his or her lessee, licensees, residents, occupants or guests of a Unit shall comply with the provisions of this Declaration, the Bylaws, and the Rules and Regulations of the Association, which may be amended from time to time. Failure to comply with any such provisions, decisions, or resolutions, shall be grounds for an action to recover sums due, for damages, or for injunctive relief, or for any other remedy permitted by law or permitted by the terms of this Declaration.

**Section 6.15. No Exterior Clotheslines.** No exterior clotheslines shall be erected or maintained and there shall be no outside drying or laundering of clothes on the property or on any deck, terrace, patio or balcony in a manner which is visible from any neighboring Unit or the Common Area.

**Section 6.16. Use of Exclusive Use Common Areas.** The Exclusive Use Common Areas, i.e., Patios, Balconies, Parking Spaces and Storage Closets, shall be reserved for the sole and exclusive use of the Unit appurtenant thereto as indicated in the Condominium Plan. Subject to Rules and Regulations and Architectural Guidelines adopted by the Board, each Owner shall have the right to place patio furniture and potted plants upon the Patio and Balcony which he or she has the exclusive right to use.

**Section 6.17. View Obstructions.** No vegetation or other obstruction shall be planted or maintained upon any Patio or Balcony in such location or of such height as to unreasonably obstruct

the view from any other Unit in the vicinity thereof. If there is a dispute between Owners concerning the obstruction of a view from a Unit, the dispute shall be submitted to the Architectural Committee. Any such obstruction shall, upon request of the Architectural Committee, be removed or otherwise altered to the satisfaction of the Board of Directors, by the Owner of the Unit upon which the obstruction is located. Any item or vegetation maintained upon any Patio or Balcony, which item or vegetation is exposed to the view of any Owners, shall be removed or otherwise altered to the satisfaction of the Board, if such Committee determines that the maintenance of such item or vegetation in its then existing state is contrary to the purposes or provisions of this Declaration. The Architectural Committee shall ensure that the vegetation on the Common Area maintained by the Association is cut frequently, so that the view of any Owner is not unreasonably obstructed, unless requested otherwise by the Owner.

## **ARTICLE 7**

### **ARCHITECTURAL CONTROL**

**Section 7.1. Architectural Control Committee.** The Board may appoint an Architectural Control Committee (the “Committee”) which consists of at least three (3) Members, none of whom shall be required to meet any particular qualifications, except that Members appointed to the Committee by the Board shall be from the Membership of the Association. The Board may act as the Committee. The Board may also delegate responsibilities in connection with its duties under this Article to its management company.

The Committee may, from time to time and with prior Board approval, delegate any of its rights or responsibilities hereunder to one or more duly licensed architects or other qualified persons who shall have full authority to act on behalf of said Committee in all matters so delegated.

**Section 7.2. Duties of the Committee.** It shall be the duty of the Committee to consider and make recommendations to the Board upon any and all proposals or plans submitted to it pursuant to the terms hereof, to insure that any improvements constructed on the property conform to plans approved by the Board, to propose for the Board’s consideration, Architectural Rules, and to perform other duties imposed upon it by the Board and this Declaration.

**Section 7.3. Approval of Improvements.**

(A) Notwithstanding anything contained in this Declaration expressly or impliedly to the contrary, no building, fence, wall, balcony, patio or balcony screen, cover, gazebo, tent, awning or other structure or Improvement shall be constructed or maintained upon the Project, nor shall any exterior addition, change or alteration be made in, on or to the Project, or any part thereof, until the plans and specifications showing the nature, shape, dimensions, materials and location of the same shall be submitted to the Committee and approved in writing as to the harmony of design and location in relation to surrounding improvements and topography by the Board. The Committee shall recommend to the Board whether or not the prevention or removal of any unauthorized and unapproved constructions of improvements should be undertaken. The Board, on behalf of the Association, may then exercise all available legal and equitable remedies to prevent or remove any unauthorized and/or unapproved construction of improvements on the Project property or any portion thereof.

For purposes of this Declaration, the term “Improvement” includes, without limitation, the construction, installation, alteration, or remodeling of any buildings, walls, patios, balconies, gazebos, fences, landscaping, landscape structures, spas, antennas, utility lines, or any structure of any kind. In no event shall the term “Improvement” be interpreted to include projects which are restricted to the Unit interior and which do not involve the roof or angle load bearing wall thereof.

(B) The Board shall approve or disapprove plans submitted to it, in writing, within forty-five (45) days. If a plan is disapproved, the disapproval must include a description of why the plan was disapproved and a description of the procedure for reconsideration of the decision by the Board. In the event the Board fails to respond to the submitted plans within forty-five (45) days, the applicant may send written notice, via certified mail, to the Board advising the Board that the plans will be deemed approved if not disapproved forty-five (45) days from the receipt of said certified letter.

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

**Section 7.4. Meetings.** The Committee shall meet from time to time as necessary to perform its duties hereunder. The vote or written consent of a majority of the Committee Members, at a meeting or otherwise, shall constitute the act of the Committee unless the unanimous decision of the Committee is required by any other provision of this Declaration. The Committee shall keep and maintain a written record of all actions taken by it at such meetings or otherwise. Members of the Committee shall not receive any compensation for services rendered.

**Section 7.5. Architectural Guidelines.** The Committee may, from time to time, make recommendations to the Board for the adoption, amendment or repeal of rules and regulations, to be known as “Architectural Guidelines.” The Board’s approval, amendment or repeal of Architectural Guidelines shall be made subject to California *Civil Code* Sections 1357.100 et. seq. by a decision of a majority of the entire Board. The Architectural Guidelines shall interpret and implement this Declaration by setting forth the standards and procedures for Board and Committee review and the guidelines for design and placement of Improvements and/or alterations.

**Section 7.6. Waiver.** The approval by the Board of any plans, drawings, or specifications for any work done or proposed, or for any other matter requiring the approval of the Board shall not be deemed to constitute a waiver of any right to withhold approval of any similar plans, drawings, specifications or matters subsequently submitted for approval.

**Section 7.7. Liability.** Neither the Board, Committee nor any Member thereof shall be liable to the Association, any Owner, or to any other party, for any damage, loss or prejudice suffered or claimed on account of (a) the approval or disapproval of any plans, drawings, or specifications, or (b) the construction or performance of any work, whether or not pursuant to approved plans,

drawings and specifications; provided that with respect to the liability of a Member, such Member has acted in good faith on the basis of actual knowledge possessed by him or her.

**Section 7.8. Variances.** Where circumstances such as topography, location of property lines, location of trees, configuration of Condominium Buildings, or other matters require, the Board, by the vote or written assent of a majority of its members, may allow reasonable variances as to any of the covenants, conditions and restrictions contained in this Declaration, on such terms and conditions as it shall require; provided, however that all such variances shall be in keeping with the general plan for the improvement and development of the Project.

**Section 7.9. Appeal.** In the event plans and specifications submitted to the Architectural Committee are disapproved, then the Owner may appeal in writing to the Board. The written request must be received by the Board not more than forty-five (45) days following the final decision of the Architectural Committee. Within forty-five (45) days following receipt of the request for appeal, the Board shall render its written decision.

**Section 7.10. Approval of Single Board Member.** There shall be no approval of plans and specifications by any single Board Member. In the event a single Board Member approves architectural plans and specifications, such approval should not be relied upon and shall not be deemed approval by the Board.

**Section 7.11. Completion of Improvements.** Unless expressly extended in writing by the Board or Committee, all Improvements must be completed within six (6) months from the commencement of construction of any approved Improvement.

**Section 7.12. Inspection.** Any member or agent of the Committee or Board may, from time to time, at any reasonable hour or hours and upon reasonable notice, enter and inspect any Unit for the purpose of carrying out its duties herein, in accordance with Rules adopted by the Board.

## **ARTICLE 8**

### **LEASING OF UNITS**

**Section 8.1. Definition.** “Leasing,” for purposes of this Declaration, is defined as regular, exclusive occupancy of a Unit by any person or persons other than the Owner for which the Owner receives any consideration or benefit, including, but not limited to, a fee, service, gratuity, or emolument.

**Section 8.2. Leasing Provision.** All leasing at MARINA PARK CONDOMINIUM ASSOCIATION shall be in writing and shall be governed by the following provisions:

(A) No lease shall be for a term shorter than six (6) months.

(B) **Notice.** With the exception of a lender in possession of a Unit following a foreclosure proceeding, default in a first mortgage or deed of trust or under any deed or arrangement in lieu of foreclosure, no Owner shall lease his or her Unit for transient or hotel purposes. No Owner

shall lease his or her interest in the Common Area separate and apart from his or her Unit and Exclusive Use Common Area, nor his or her Unit separate and apart from his or her interest in the Common Area and his or her Exclusive Use Common Area, nor his or her Exclusive Use Common Area separate and apart from his or her interest in the Common Area and Unit. All leases shall be subject in all respects to the provisions of this Declaration, the Bylaws and the Rules and Regulations and any failure by the Lessee to comply with the terms of such documents shall be a default under the lease.

Within fourteen (14) days after entering into the lease of a Unit, the Owner shall provide the Board and/or property manager with the name, telephone number and address of the lessee, the name, address and phone number of the Owner, and such other information as the Board may reasonably require.

(C) Liability for Assessments and Compliance With Declaration, Bylaws, and Rules and Regulations. Any leasing of a Unit shall contain the following language, and if such language is not expressly contained therein, then such language is deemed to be and shall be incorporated into a lease by existence of this covenant on the Unit. Any tenant, by occupancy in a Unit, agrees to the applicability of this covenant and incorporation of the following language and terms into the lease:

(1) General. There shall be no subleasing of Units or assignment of leases unless approved in writing by the Board. No transient tenants may be accommodated in a Unit. All leases shall be in writing and in a form approved by the Board. All rentals must be for a term of no less than six (6) months in any one (1) calendar year. The Owner must make available to the tenant copies of the Declaration, Bylaws, and the Rules and Regulations.

(2) Liability for Assessments. Upon written request by the Board, the tenant shall pay to the Association all unpaid annual and Special Assessments, but not to exceed the rental payments unpaid at the time of the Association's request. All such payments thus made shall reduce the tenant's obligation to Lessor by like amount. Payment of Assessments shall be deemed necessary for maintenance of the habitability of the Unit.

(3) Compliance with Declaration, Bylaws and Rules and Regulations. Lessee and Lessee's guests, residents, and occupants shall abide by and comply with all provisions of the Declaration, Bylaws, and Rules and Regulations adopted, pursuant thereto, as they may be amended from time to time, and the violation of same shall constitute a default under their lease. The residency limitations governing all other leases shall be set forth by the policy of the Board. If a tenant or an occupant violates the Declaration, Bylaws, or a Rule or Regulation for which a Reimbursement Assessment is imposed, such Reimbursement Assessment shall be the joint responsibility of the Owner and/or tenant. Unpaid Reimbursement Assessments may constitute a lien against the Unit.

(4) Enforcement Against Tenant by Association. The Owners hereby delegate and assign to the Association, acting through the Board, the power and authority of enforcement against the tenant for breaches resulting from the violation of the Declaration, Bylaws and the Rules and Regulations adopted pursuant thereto, including the power and authority to evict the tenant on behalf of and for the benefit of the Owner, in accordance with the terms hereof. In the event the Association proceeds to evict the tenant, any costs, including attorneys' fees and court costs,

associated with the eviction shall be specially assessed against the Unit and the Owner(s) thereof, such being deemed hereby as an expense which benefits the leased Unit and the Owner(s) thereof.

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

## **ARTICLE 9**

### **PROHIBITION OF TIMESHARES**

**Section 9.1. Timeshare Prohibition.** Timeshare projects, timeshare estates, timeshare programs and timeshare uses as defined pursuant to Section 11212 of the California *Business and Professions* Codes are prohibited and Timeshares and Timeshare Programs as defined in this Section are prohibited.

(A) For the purpose of this Section, the term “Timeshare Program” shall include and not be limited to any arrangement, plan, scheme, or similar device, whether by membership, agreement, tenancy in common, sale, lease, deed, rental agreement, license, right-to-use agreement, or by any other means, whereby a Timeshare Interval is created and whereby the use, occupancy or possession of an accommodation, Unit, Improvement, single-family dwelling, within such use, occupancy or possession circulates among purchasers of the Timeshare Interval according to a fixed or floating time schedule on a periodic basis occurring annually over any period of time in excess of one (1) year in duration.

(B) For the purpose of this Section, the term “Timeshare Use” means any contractual right of exclusive occupancy, whether fixed for a specific time period or not, which does not fall within the definition of a “Timeshare Estate,” including, without limitation, a vacation license, prepaid hotel reservations, club membership, limited partnership, trust agreement, or vacation bond.

**Section 9.2. Multiple Ownership Restrictions.** Ownership of a Condominium as tenants in common, joint tenants or any other form of multiple Ownership by more than four (4) persons or entities is prohibited unless otherwise approved by the Board.

## **ARTICLE 10**

### **MAINTENANCE RESPONSIBILITIES**

**Section 10.1. Maintenance Matrix.** A listing of the items within the Project, the routine maintenance, repair and replacement duty for which the Owners and Association are responsible is contained in the “Maintenance Matrix” attached as Exhibit B to this Declaration. If an item is not specifically addressed in the Maintenance Matrix, please use the principles in the Sections below to determine maintenance responsibility.

**Section 10.2. Common Area and Common Facilities.** Except as otherwise indicated in the Maintenance Matrix, the Association shall be solely responsible for all maintenance, repair, upkeep and replacement of facilities within the Common Area, including the Common Facilities, lighting, mailbox structures, garage parking areas, landscaping, private water and sewer systems, and monument and address signs. The Association shall pay all charges for utilities supplied to the Project except those metered or charged separately to the Units.

No person other than the Association or its duly authorized agents shall construct, reconstruct, refinish, alter or maintain any Improvement upon, or shall create any excavation or fill or change the natural or existing drainage of any portion of the Common Area. Any item placed on the Common Area without the permission of the Board will be subject to disposition as the Board, at its sole discretion, deems necessary. Any costs incurred in removing any unauthorized object from the Common Area will be imposed as a Reimbursement Assessment on the responsible Owner pursuant to the provisions of Article 5 of this Declaration.

**Section 10.3. Association Maintenance Responsibility With Respect to Condominium Building.**

(A) The Association shall provide maintenance of the Condominium Building as follows: paint, maintain, repair and replace roof, exterior building surfaces (other than exterior glass surfaces and screens on Units), and the structural elements (e.g., support beams) of the Patios and Balconies. The Association's maintenance shall not include: landscaping within the Exclusive Use Common Area, or any alterations or additions to the Exclusive Use Common Area or Common Area made by the Owner of the Unit, nor repair or replacements arising out of, or caused by, the willful or negligent act of the Owner, his/her family, guests, invitees, tenants, subtenants, or other occupants of said Owner's Unit. Such excluded items shall be the responsibility of each Unit Owner, provided, however, that if an Owner shall fail to maintain or make the repairs or replacements which are the responsibility of such Owner (or his tenant, subtenant, etc.) as provided above, then, upon a vote of a majority of the Board of Directors, and after not less than thirty (30) days notice to an Owner, the Association shall have the right (but not the obligation) to enter the Unit or Exclusive Use Common Area and provide such maintenance or make such repairs or replacements, and the cost thereof shall be added to the Assessments chargeable to such Unit and shall be payable to the Association by the Owner of such Unit.

(B) The Association shall not be responsible for the cleaning and ordinary maintenance, including the inspection and treatment of pests and organisms, except for wood destroying pests and organisms, within the individual Units. The Association shall provide for the inspection, treatment, repair and maintenance of any portion of the Units (except for personal property), Common Area, and including Exclusive Use Common Area damaged by the presence and/or actions of wood-destroying pests or organisms.

(C) The Association may cause the temporary removal of any occupant for such periods and at such times as are necessary for prompt, effective treatment of wood-destroying pests or organisms. The cost of the temporary relocation is to be borne by the Owner of the separate interest affected. Not less than fifteen (15) days nor more than thirty (30) days notice of the need to temporarily vacate shall be given occupants and to the Owners. The notice shall state: 1) the reason for the temporary relocation; 2) the date and time of the beginning of the treatment; 3) the

anticipated date and time of termination of treatment; and 4) that the occupants will be responsible for their own accommodations during the temporary relocation. Notice is deemed complete if a copy is personally delivered or mailed first-class to the occupants and a copy is sent to the non-occupying Owners via first class mail. The costs of temporary relocation during the repair and maintenance of the areas within the responsibility of the Association shall be borne by the Owner of the Unit.

**Section 10.4. Owner Maintenance Responsibilities.**

(A) Except as specifically provided in Section 10.3 above and the Maintenance Matrix, each Owner shall be responsible for the maintenance, repair and replacement of the interior surfaces of his or her Unit and the ordinary cleaning and maintenance of his or her Exclusive Use Common Areas (Patios, Balconies, Parking Spaces and Storage Closets), including without limitation, the ceilings, interior doors, window frames, window tracks, and interior floor surfaces in a clean, sanitary, workable and attractive condition. Each Owner shall also be responsible for the maintenance, repair and replacement of the equipment and fixtures in the Unit, including, without limitation, the showers, baths, plumbing within the Unit, sinks, toilets, electrical sockets, switches, wiring, air conditioners, heating units, outlets, fans, windows and sliding glass doors (exterior and interior), window and sliding glass door frames (exterior and interior), window and door screens (interior and exterior), patio coverings, lighting installations, electrical appliances and telephone equipment of the owned Unit in a clean, sanitary, workable and attractive condition.

(B) Each Owner shall also be responsible for the maintenance, repair and replacement of all pipes, ducts, flues, chutes, conduits, wires, cables and systems that solely supply utility and/or convenience services (“Utilities”) to his or her Unit that are located within or underneath the outside perimeter of the exterior bearing walls of the Unit. The Association shall maintain, repair and replace all Utilities that are located within or underneath the outside perimeter of the exterior bearing walls of the Unit which do not solely service an Owner’s Unit.

(C) Owners shall pay for their own electricity and telephone service where individually metered.

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

(E) Each Owner shall have the right, at his sole cost and expense, to paint, paper, panel, plaster, tile and finish the interior surfaces of the ceilings, floors, trim and perimeter walls of the Unit and the surfaces of the bearing walls and partitions located within the Unit.

**Section 10.5. Failure of Owner to Carry Out Maintenance Responsibilities.** In the event that the Owner of a Unit fails to perform his or her maintenance responsibilities, the Board shall have the right, but not the obligation, through itself or its agents, to perform appropriate maintenance and/or repairs at the expense of the Owner. In such event, in addition to other penalties and disciplinary measures imposed by the Board, the Board may levy a Reimbursement Assessment

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

**Section 10.6. Liability for Damage.** Owners shall be responsible to the Association for repairs necessitated by the act(s) and/or negligence of the Owners, their licensees, residents, tenants or guests. The Owner shall be liable for any damage or additional maintenance costs incurred as a result of Owner's unauthorized construction, erection or repair of the Common Area or areas of which the Association has the maintenance responsibility. At the discretion of the Board, damages incurred under this Section may be a Reimbursement Assessment against the Owner's Unit.

**Section 10.7. Cooperative Maintenance Obligations.** To the extent necessary or desirable to accomplish the Association's maintenance obligations hereunder, individual Owners shall cooperate with the Association and its agents and maintenance personnel in the prosecution of its work.

## **ARTICLE 11**

### **PARTITION PROHIBITED**

**Section 11.1. Partition.** Each of the Owners of a Unit is prohibited from participating or in any other way severing or separating such Ownership from any of the other Ownerships in the Common Area, except upon a showing that:

(A) More than three (3) years before the filing of the action, the Project was damaged or destroyed so that a material part was rendered unfit for its prior use, and the Project has not been rebuilt or repaired substantially to its state prior to its damage or destruction, or

(B) That three-fourths (3/4) or more of the Project has been destroyed or substantially damaged, and that Owners holding in aggregate more than fifty percent (50%) interest in the Common Area are opposed to repair or restoration of the Project, or

(C) That the Project has been in existence in the excess of fifty (50) years, that it is obsolete and uneconomic, and that Owners holding in aggregate more than a fifty percent (50%) interest in the Common Area are opposed to repair or restoration of the Project; provided, however, that if any Unit shall be owned by two (2) or more co-tenants as tenants in common or as joint tenants, nothing herein shall be deemed to prevent a judicial partition by sale as between such co-tenants.

**Section 11.2. Power of Attorney.** The Association is hereby granted an irrevocable power of attorney to sell the Project for the benefit of all the Owners thereof when partition of the Owners' interest in said Project may be had pursuant to this Article. The power of attorney herein granted 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 Common Area by any three (3) Members of the Board who are hereby authorized to record a certificate of exercise in the Office of the San Diego County Recorder, which certificate shall be conclusive evidence thereof in favor of any person relying thereon in good faith.

## **ARTICLE 12**

### **AMENDMENTS**

**Section 12.1. General.** This Declaration may be amended at any time and from time to time by the vote or written consent of a majority of the total voting power of the Association. Any amendment shall be effective upon the certification of the amendment signed by the President of the Association, and the recording of the amendment with the Office of the County Recorder of San Diego County, California.

**Section 12.2. Amendments Requiring Approval of First Mortgagees.** No amendment shall affect the rights of the holder of any first deed of trust or Mortgage recorded prior to the recording of such amendment. If the consent or approval of any governmental authority, Mortgagee or other entity is required under this Declaration to amend or revoke any provision of this Declaration, no such amendment or revocation shall become effective unless such consent or approval is obtained.

Any amendment sent to a Mortgagee pursuant to this provision which is not returned within thirty (30) days, shall be considered a valid consent to the amendment.

## **ARTICLE 13**

### **DESTRUCTION OF IMPROVEMENTS**

**Section 13.1. Insurance Proceeds Sufficient.** In the event of damage to or the partial destruction of the improvements in the Project, if the available proceeds of the insurance are sufficient to cover at least eighty-five percent (85%) of the cost of repair or reconstruction thereof, the damaged or destroyed Improvements shall be promptly repaired and rebuilt unless, within ninety (90) days from the date of such damage or destruction, Owners representing a seventy-five percent (75%) of the voting power of the Association determine at a duly constituted membership meeting that such repair and reconstruction shall not take place.

**Section 13.2. Insurance Proceeds Insufficient.**

(A) If the available proceeds of such insurance are less than eighty-five percent (85%) of the cost of repair or reconstruction, such repair or reconstruction may nevertheless take place if, within ninety (90) days from the date of such damage or destruction, Owners representing a majority of the voting power of the Association so elect at a duly constituted meeting of the Association. If the Board is unable to obtain sufficient participation at such meeting, the Board shall have the right to petition the Superior Court of San Diego County to allow it to rebuild without approval of a majority of the Membership.

**Section 13.3. Assessments.** If the Owners determine to rebuild, each Owner shall be obligated to contribute such funds as may be necessary to pay his or her proportionate share of the cost of construction, over and above the insurance proceeds, and the proportionate share of each Owner shall be based on the proportion of square footage of each Unit to the total square footage to be reconstructed at such time and in such amount as the Board shall determine is necessary to cover the costs of reconstruction in excess of insurance proceeds. In the event of the failure or refusal of any Owner to make his or her proportionate contribution, the Board may levy a Special Assessment against such Owner, and enforce such Assessment as provided in Article 5.

**Section 13.4. Failure to Rebuild.** If a majority of the Owners do not agree to the repair or rebuilding of the Common Area, then each Owner (and his or her Mortgagee(s) as their respective interests shall then appear) shall be entitled to receive that portion of insurance proceeds equal to the proportion of the decrease in fair market value of his or her Unit as compared to the aggregate decrease in fair market values of all the Units caused by such damage or destruction. For purposes hereof, fair market value shall be determined by a qualified real estate appraiser selected by the Board and hired by and at the expense of the Association. Should a dispute arise as to the distribution of insurance proceeds, the dispute shall be decided by arbitration.

**Section 13.5. Interior Repairs.** Any reconstruction undertaken pursuant to the foregoing provisions shall cover only the exterior and structural components of the damaged or destroyed Units, and such other damage to such Units as may be covered by insurance and maintained by the Association. If a destroyed Unit is so rebuilt, the Owner of such Unit shall be obligated to repair and rebuild the damaged portions of the interior of his or her Unit in a good and workmanlike manner at such Owner's expense substantially in accord with the original plans and specifications therefor; provided, however, that any such Owner may, with the written consent of the Board, reconstruct or repair the same pursuant to new or changed plans and specifications. In the event the Board fails to approve or disapprove such changed plans and specifications within sixty (60) days of receipt thereof, they shall be deemed to have been approved.

## **ARTICLE 14**

### **INSURANCE**

**Section 14.1. Types of Insurance Coverage.** The Association shall obtain and continue in effect the following:

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

(1) Loss or damage by fire or other risks covered by the standard coverage endorsement;

- (2) Loss or damage from theft, vandalism or malicious mischief; and
- (3) Such other risks, perils or coverage as the Board of Directors may determine.

Such policy or the endorsement made a part thereof, shall, to the extent available, provide that the insurer issuing the policy agrees to abide by decisions of the Association made in accordance with the provisions of Article 13 of this Declaration as to whether or not to repair, reconstruct or restore all or any damaged or destroyed portion of the Common Facilities.

The Association shall have the right to have the Association's insurance policy provide coverage for what is commonly referred to as "bare walls" coverage so that the Association's insurance policy covers solely the Association's maintenance responsibilities.

(B) General Liability. A general liability policy for full extended coverage, including but not limited to, vandalism, malicious mischief, public liability with a cross-liability endorsement. The limits of such insurance shall not be less than \$3,000,000.00 for death or injury to any one person and \$3,000,000.00 for death or injury to more than one person in any one occurrence, and property damage in an amount determined by the Board from time to time.

(C) Directors and Officers Insurance. The Association shall obtain directors and officers insurance covering errors and omissions for officers and directors, and if desirable, committee members of the Association in an amount of at least \$1,000,000.00 per occurrence.

(D) Fidelity Bond/Insurance. The Board shall obtain a fidelity bond or insurance insuring the Association against dishonest acts on the part of directors, managers, officers and employees, and employees of any manager or managing agent naming the Association as obligee and written in an amount not less than three times the monthly maintenance fees plus all reserves and shall contain an endorsement of any person who may serve without compensation. Such bond/insurance shall include a provision that calls for ten (10) days written notice to the Association or insurance trustee before the same can be canceled or substantially modified for any reason. The Board shall purchase and maintain such insurance on personal property owned by the Association and any other insurance, including officers and directors liability insurance, that it deems necessary or desirable.

(E) Workers Compensation. The Association shall obtain workers compensation coverage in and for amounts satisfactory to the Board, to the extent required by law, for all employees of the Association.

(F) Other Insurance. The Board shall have the discretion to obtain any other insurance, such as earthquake and flood, as it deems appropriate.

Insurance premiums for the master policy shall be a Common Expense to be included in the monthly Assessments levied by the Association. Each Owner shall be responsible for payment of any deductible amount for any loss to his or her Unit.

**Section 14.2. Owner's Insurance.** Each Owner shall obtain and maintain such insurance, at his or her sole expense, to protect against any damage to, or loss of the Owner's Unit and the cost of repair or replacement of damaged items, including, but not limited to, any improvements made by

an Owner, any personal property, decorations, floor and wall coverings, appliances, fixtures or other items therein, or any exterior items for which said Owner is responsible, such as landscaping. The Owner's policy shall be the primary policy for any claims for damages or loss of Owner's property. The Association shall not be liable to any Owner or his or her tenants, guests or others, for damage to or loss of any such property, or the cost of repair or replacement of any damaged property or portions of such Owner's Unit or Exclusive Use Common Area, unless such damage is caused by the gross negligence of the Association, its Board, Officers, agents or employees.

In the event an Owner's Unit sustains water damage originating from a Common Area element and the Owner has made a claim to his or her insurance and has paid his or her deductible, upon proof of payment of the deductible, the Association will pay to the Owner of the affected Unit one-half (1/2) of the then current month's Regular Assessment for that Unit. The payment of one-half (1/2) of the then current month's Regular Assessment is an incentive to encourage Owners to comply with the provisions of this Section regarding obtaining and maintaining insurance on his or her Unit and does not relieve the Owner of being responsible for said water damage as set forth in Article 10, Section 10.4 of this Declaration.

Notwithstanding the foregoing, Owners shall be responsible for reimbursement of the Association's deductible in the event damage to the Common Area was caused by the negligence of the Owner, his or her guests, invitees, licensees, etc. Additionally, Owners shall also be responsible to reimburse the Association for its deductible where damage to the Common Area occurred due to the failure of an element or item that was within the Owner's maintenance responsibility, regardless of the Owner's negligence in maintaining that element or item.

Owners failing to obtain or maintain insurance as required by this Section shall be responsible for all damages to the Association caused by the failure to obtain or maintain said insurance. Said damages include, but are not limited to: cancellation of Association's insurance policy, increase in premiums, out of pocket payments, etc.

**Section 14.3. Renter's Insurance.** All tenants, lessees, and renters shall obtain and maintain at their sole expense, renter's insurance to protect against any damage to or loss of their personal property.

**Section 14.4. Individual Fire and Casualty Insurance.** Except as provided in this Section, no Owner can separately insure his or her Unit or any part of it against loss by fire or other casualty covered by the Association's blanket insurance carried under this Article. If any Owner violates this provision, any diminution in insurance proceeds otherwise payable pursuant to the provisions of this Section that results from the existence of such other insurance will be chargeable to the Owner who acquired such insurance, and the Owner will be liable to the Association to the extent of any diminution.

**Section 14.5. Trustee.** All insurance proceeds payable under this Article and subject to the rights of the Mortgagees under this Article may, in the discretion of the Board of Directors, be paid to a Trustee to be held and expended for the benefit of the Owners, mortgagees, and others, as their respective interests shall appear. Said Trustee shall be a commercial bank or other institution with trust powers within the County that agrees in writing to accept such trust. If repair or reconstruction

is authorized, the Association and any duly appointed Trustee shall have the duty to contract for such work as provided in this Declaration.

**Section 14.6. Waiver of Claims Against Association and Others.** All insurance obtained by the association shall be maintained by the Association for the benefit of the Association, the Owners and the Mortgagees as their interests may appear. As to each of said policies which will not be voided or impaired thereby, the Owners hereby waive and release all claims against the Association, the Board, and agents and employees of each of the foregoing, with respect to any loss covered by such insurance whether or not caused by negligence of or breach of any agreement by said persons, but to the extent of insurance proceeds received in compensation for such loss only.

**Section 14.7. Making Claims to the Association's Insurance.** Only the Association, acting through its Board of Directors, or designated agent, is authorized to present claims to any of the Association's insurance agents. Owners may not make claims directly to any of the Association's insurance agents or policies. In the event the Association incurs any cost or damage by an Owner's violation of this Section, the Association will levy a Reimbursement Assessment against such Owner in the amount equal to all direct and indirect costs and expenses incurred by the Association.

**Section 14.8. Insurance Policy Deductibles.** The Board shall have the power, in its sole discretion, to determine the amount of any deductible applicable to any insurance policy carried by the Association. In the event of a loss for which Association coverage is used, the responsibility for payment of any deductible shall be as follows:

(A) Owners shall be responsible for the cost of any deductible if the damage or loss occurs to the Owners' real or personal property, or other property for which the Owner is responsible to maintain.

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

(C) If the damage or loss occurs to any Unit or Units and the Common Area, the responsibility for the payment of any deductible shall be apportioned among the affected parties on the basis of the ratio of each parties' cost of repair to the total costs of repair.

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

## **ARTICLE 15**

### **CONDEMNATION**

If any portion of the Project is taken by condemnation, eminent domain or any proceeding in lieu thereof, then:

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

(B) In the event of any taking of the Common Area, the Owners of the Common Area, and their Mortgagees, shall be entitled to receive the award for such taking in proportion to the interest of each in the Common Area; provided, however, that should it be determined to repair or rebuild any portion of the Common Area, such proceeds shall be paid to the Association for that purpose in the same manner and subject to the same terms, conditions and limitations as are set forth above in Article 13 for repairing damaged or destroyed portions of the Common Area. A decision to repair or rebuild shall be made in the same manner and subject to the same conditions and limitations as provided above in Article 13 for determining whether to rebuild or repair following damage or destruction.

(C) In the event of any taking of a Unit or the Common Area, timely notice shall be given to the holder of the first Mortgage on said Unit, or all holders of first Mortgages in the case of the Common Area.

## **ARTICLE 16**

### **PROTECTION OF MORTGAGEES**

**Section 16.1 Rights of First Lenders** 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 (meaning a Mortgage with first priority over any other Mortgage) on any Unit made in good faith and for value. All of said covenants, conditions, and restrictions shall be binding on and effective against any Owner whose title is derived through foreclosure or trustee's sale, or otherwise. Notwithstanding any provision in the condominium documents to the contrary, first lenders shall have the following rights:

(A) **Copies of Project Documents.** The Association shall make available to Unit Owners, lenders, holders, insurers or guarantors of any Mortgage, current copies of the Declaration, Bylaws, Articles or other rules concerning the project, and the books, records, and financial statements of the Association. "Available" means available for inspection, and copying, upon request, during normal business hours or under other reasonable circumstances.

(B) **Audited Statement.** Any holder, insurer, or guarantor of a Mortgage shall be entitled, on written request, to an audited financial statement for the immediately preceding fiscal year, free of charge of the party so requesting. Such statement shall be furnished within a reasonable time following such request.

(C) **Notice of Action.**

(1) For the purposes of this Article, an “Eligible Mortgage Holder” shall mean and refer to the holder of a first Mortgage or deed of trust on a Condominium, who has provided a written request to the Association to be notified of those matters which such holder is entitled to notice of by reason of this Declaration or the Bylaws of the Association. Such notice must contain the Unit number or the Unit address of the secured Condominium. Similarly, an “Eligible Insurer or Guarantor” shall mean and refer to an insurer or governmental guarantor, who has provided a written request to the Association to be notified of those matters which such holder is entitled to notice of by reason of this Declaration or the Bylaws of the Association. Such notice must contain the Unit number or the Unit address of the secured Condominium.

(2) On written request to the Association, in identifying the name and address of the Eligible Mortgage Holder or Eligible Insurer or Guarantor, and the Unit number or address, such Eligible Mortgage Holder or Eligible Insurer or Guarantor will be entitled to timely written notice of:

(a) Any condemnation loss or any casualty loss which affects a material portion of the project or any Condominium on which there is a first Mortgage held, insured, or guaranteed by such eligible mortgage holder or eligible insurer or guarantor, as applicable;

(b) Any default in performance of obligations under the project documents or delinquency in the payment of Assessments or charges owed by an Owner of a Unit subject to a first Mortgage held, insured, or guaranteed by such eligible Mortgage holder or eligible insurer or guarantor, which remains uncured for a period of sixty (60) days;

(c) Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association;

(d) Any proposed action which would require the consent of a specified percentage of eligible Mortgage holders. The Association shall discharge its obligation to notify eligible holders or eligible insurers or guarantors by sending written notices required herein to such parties, at the address given on the current request for notice; and

(e) Any proposed material amendment to the Declaration 30 days prior to the effective date.

(D) Right of First Refusal. The Governing Documents contain no provisions creating a “right of first refusal,” but should any such rights be created in the future, any such rights shall not impair the rights of any first lender to:

(1) Foreclosure or take title to a Condominium pursuant to the remedies provided in the Mortgage, or

(2) Accept a deed (or assignment) in lieu of foreclosure in the event of a default by a mortgagor, or

(3) Sell or lease a Condominium acquired by the Mortgagee.

(E) Priority of Liens. Each holder of a first Mortgage lien on a Unit who comes into possession of the Unit by virtue of foreclosure of the Mortgagee, or any purchaser at a foreclosure sale under a first deed of trust, will take the Unit free of any claims for unpaid Assessments and fees, late charges, fines, or interest levied in connection therewith against the Unit which accrue prior to the time such holder takes title to the Unit, except for claims for a pro rata share of such Assessments or charges to all project Units including the mortgaged Unit, and except for Assessment liens recorded prior to the Mortgage.

(F) Notice of and Attendance at Meetings. Each holder of a Mortgage shall be entitled to, upon request, receive notice prior to Association meetings, and be entitled to send a non-voting representative to all regular and special meetings.

## **ARTICLE 17**

### **ENFORCEMENT**

**Section 17.1. Enforcement.** Each Owner, lessee, licensee, guest, resident and occupant of a Unit shall comply with the provisions of this Declaration, the Bylaws, the Rules and Regulations and decisions and resolutions of the Association or its duly authorized representative. Failure to comply with any such provisions, decisions or resolutions shall be grounds for enforcement action which may include but not be limited to the following, in addition to other remedies afforded by law:

(A) Suspension of Rights. The Association may temporarily suspend the voting and candidacy rights and right to use the Common Area facilities by an Owner for any period during which any Assessments remain unpaid. Additionally, the Association may suspend the voting rights and right to use the Common Area facilities for up to thirty (30) days due to a violation of the Governing Documents by any Member, or his or her guests, tenants, or family members. No suspension shall take place unless the procedures set forth in subsection (D) have been taken.

(B) Fines/Monetary Penalties. The Board may impose fines and/or monetary penalties against an Owner for his or her family members', guests', tenants' or agents' violation of the Governing Documents, after Due Process, as set forth in subsection (D). Prior to imposing any such penalties, the Board shall adopt and distribute to each Member, by personal delivery or first class mail, a schedule of the penalties. The Board shall only be required to distribute additional schedules upon any amendments to such schedule being made.

(C) Reimbursement Assessments. The Board may levy Reimbursement Assessments, for damage to the Common Area or to reimburse the Association for costs incurred to bring a Member into compliance with the Governing Documents, as set forth in Article 5, Section 5.5.

(D) Due Process. Such suspension, fines, or Reimbursement Assessments may occur only after the Member has been given at least fifteen (15) days notice, and an opportunity to be heard before the Board no less than five (5) days before the effective date of the action, as set forth in *Civil Code* Section 1363(h), or successor statute.

(E) Alternative Dispute Resolution (ADR). Where required by *Civil Code* Sections 1354, 1369.510 - 1369.590, prior to the Association or any Owner bringing a civil action for declaratory relief or injunctive relief, or for such claims in conjunction with a claim for damages not in excess of \$5,000, related to the enforcement of the governing documents, such party shall offer alternative dispute resolution to the other party, as set forth in *Civil Code* Sections 1354, 1369.510 - 1369.590.

(F) Internal Dispute Resolution Procedures (IDR). Where there is a dispute between the Association and a Member involving their rights, duties, or liabilities under California law or the Governing Documents, the Association shall provide a fair, reasonable and expeditious procedure for resolving the dispute as set forth in *Civil Code* Sections 1363.810 - 1363.850.

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

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

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

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

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

**Section 17.2. Nuisance.** The results of every act or omission which are a breach as set forth in Section 1 above are hereby declared to be and constitute a nuisance, and every remedy allowed by law or equity against a nuisance shall be applicable against every such result and may be exercised by any Owner, or the Board.

**Section 17.3. Violation of Law.** Any violation of any state, municipal or local law, ordinance or regulation, pertaining to the Ownership, occupation or use of the Project or any part thereof is hereby declared to be a violation of this Declaration and subject to any or all of the enforcement procedures set forth herein.

**Section 17.4. No Waiver.** The failure of the Board, or any Owner to enforce any of the provisions contained in this Declaration shall not constitute a waiver of the right to enforce the same thereafter, nor shall such failure result in or impose any liability on the Association or the Board.

**Section 17.5. Attorneys' Fees.** In the event the Association, or any Owner, shall commence litigation to enforce any of the covenants, conditions or restrictions herein contained, the prevailing party in said action shall be entitled to actual attorneys' fees and costs reasonably incurred.

**Section 17.6. Cumulative Remedies.** Each and all legal or equitable remedies provided for herein shall be deemed to be cumulative.

## **ARTICLE 18**

### **GENERAL PROVISIONS**

**Section 18.1. General Duties and Powers.** The Association shall have all those duties and powers set forth in the Articles and Bylaws of the Association or permitted pursuant to the provisions of the California *Corporations Code* for nonprofit mutual benefit corporations. All such duties and powers shall be subject to any specific limitations set forth in this Declaration, the Articles or Bylaws of the Association. All such duties and powers shall be exercised by the Board unless specifically reserved to the Members.

**Section 18.2. Notices.** Any notice to be given to an Owner or Mortgagee under the provisions of the Governing Documents shall be in writing and may be delivered personally or by first class mail, postage prepaid to the latest recorded address in the business records of the Association. If delivery is made by mail, it shall be deemed to have been delivered upon deposit in the United States mail. Notice may also be given via e-mail, facsimile, or other electronic means, if the recipient has agreed to that method of delivery. If a document is delivered by electronic means, delivery is complete at the time of transmission.

**Section 18.3. Extension of Declaration.** Each and all of these Covenants, Conditions and Restrictions shall terminate on December 31, 2057, after which date they shall automatically be extended for successive periods of ten (10) years unless amended or extinguished by a written instrument executed by at least a majority of the Owners of Units in the Project and such written instrument is recorded with the San Diego County Recorder.

**Section 18.4. Limitation of Liability.** In discharging its duties and responsibilities, the Board acts on behalf of and as representative of the Association which acts on behalf of and as representative of the Owners of Units. No member of the Board shall be individually or personally liable or obligated for performance or failure of performance of such duties or responsibilities unless he or she fails to act in good faith.

**Section 18.5. Liberal Interpretation of Declaration.** The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the operation of the Project for the mutual benefit of all Members.

**Section 18.6. Indemnification.**

(A) Every Director and every Officer past or present of the Association shall be indemnified by the Association against expenses and liabilities, including reasonable attorney's fees

and cost incurred or imposed upon him or her in connection with any proceeding in which such Director or Officer may be a party, or in which such officer or Director may become involved, by reason of his or her being, or having been, a Director or an Officer of the Association, or any settlement thereof, except in such cases wherein the Director or Officer is adjudged guilty of gross negligence or malfeasance in the performance of his or her duties.

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

**Section 18.7. Partial Invalidation.** Invalidation or reformation of any one of these covenants or restrictions by judgment or court order or otherwise shall in no way affect the application of such provision to other circumstance(s) or any other provision(s) which shall remain in full force and effect.

**Section 18.8. Number; Gender.** The singular shall include the plural and the plural the singular unless the context requires the contrary, and the masculine, feminine and neuter shall each include the masculine, feminine or neuter, as the context requires.

**Section 18.9. Successors and Assigns.** This Declaration shall be binding upon and shall inure to the benefit of all heirs, personal representatives, successors, assigns, personal representatives, grantees, lessees, licensees and renters of Owners.

**Section 18.10. Joint and Several Liability.** In the case of Joint Ownership of a Unit, the liability of each Owner and the Owners thereof in connection with the liabilities and obligations of the Owners, set forth in or imposed by this Declaration, shall be joint and several.

**Section 18.11. Encroachment Easements.** The Owner of each Unit is hereby granted an easement over all adjoining Units and the Common Area for the purpose of accommodating any minor encroachments due to engineering errors, errors in original construction, settlement or shifting of any building, or any other cause. There shall be easements for the maintenance of said encroachments as long as they shall exist, and the rights and obligations of Owners shall not be altered in any way by said encroachments, settlement or shifting, provided, however, that in no event shall an easement for encroachment be created in favor of any Owner if said encroachment occurred due to the willful misconduct of an Owner. In the event any portion of a structure on the property is partially or totally destroyed and then repaired or rebuilt, each Owner agrees that minor encroachments over adjoining Exclusive Use Areas or Common Area shall be an easement for the maintenance of said encroachments so long as they shall exist.

**Section 18.12. Conflicts.** If there are conflicts or inconsistencies between the provisions of California law, this Declaration, the Articles of Incorporation, the Bylaws and the Rules and Regulations, the provisions of California laws, the Declaration, the Articles of Incorporation, the Bylaws and the Rules and Regulations (in that order) shall prevail.







## **EXHIBIT “A”**

### **Legal Description**

#### **MARINA PARK CONDOMINIUMS**

Parcel 3 of Parcel Map No. 10732, in the City of San Diego, County of San Diego, State of California, according to the Map thereof, filed in the Office of the County Recorder of San Diego County, November 24, 1980, being a division of Block 43, together with those portions of “E” Street and Columbia Street of New San Diego, Map thereof No. 456, by Gray and Johns, filed in the Office of the Recorder of said San Diego County.

Parcel 4 of Parcel Map No. 10732, in the City of San Diego, County of San Diego, State of California, according to the Map thereof, filed in the Office of the County Recorder of San Diego County, November 24, 1980, being a division of Block 38, together with those portions of “F” Street and Columbia Street of New San Diego, Map thereof No. 456, by Gray and Johns, filed in the Office of the Recorder of said San Diego County.

**EXHIBIT "B"**

**MAINTENANCE MATRIX**

The following is a list of all maintenance components within the Project and the party responsible for the routine maintenance, repair and replacement of those components, in accordance with Article 10 of the Second Restated Declaration of Covenants, Conditions and Restrictions and Restriction of Easements.

<b>COMPONENT(S)</b>	<b>OWNER</b>	<b>ASSN.</b>
Air Conditioning - Common Area & Common Area Facilities		X
Air Conditioning - Unit	X	
Appliances - Built In - Common Area Facilities		X
Appliances - Built In - Unit	X	
Appliances - Freestanding - Common Area Facilities		X
Appliances - Freestanding - Unit	X	
Bathroom Fans - Unit	X	
Boilers		X
Caulking - Exterior		X
Caulking - Interior	X	
Ceilings - Common Area & Common Area Facilities		X
Ceilings - Unit	X	
Doors - Unit Entry - Frame and Door (except for interior surface)		X
Doors - Unit Entry - Knobs and Locks	X	
Doors - Unit Entry - Other Hardware (Knockers, Numbers, etc.)		X
Doors - Unit Entry - Varnish/Stain - Exterior Surface		X
Doors - Unit Entry - Paint/ Stain - Interior Surface	X	
Doors - Unit Entry - Smoke Seal		X
Doors - Unit - Interior	X	
Drains and Drainage Systems - Common Area & Common Area Facilities		X
Drains - Unit - Bathtubs, Showers, Sinks	X	

<b>COMPONENT(S)</b>	<b>OWNER</b>	<b>ASSN.</b>
Drains - Curb		X
Drains - Patio/Balcony		X
Drywall - Common Area & Common Area Facilities		X
Drywall - Unit - Damage Repairs (e.g., cracks, inside minor localized water damage, dents, holes, etc.) - except for repairs in conjunction with repair of Utility systems (e.g. pipes) that is the Association's responsibility to maintain	X	
Drywall - Unit - Repair in conjunction with repair of Utility system that is the Association's responsibility to maintain		X
Drywall - Unit - Replace - except for repairs in conjunction with repair of Utility systems (e.g. pipes) that is the Association's responsibility to maintain	X	
Electrical Panel/Circuit Breakers - Unit	X	
Electrical Switches, Sockets, Wall Plates - Unit	X	
Exercise Rooms (2) (including all Equipment, Showers & Saunas)		X
Exterior Building Surface		X
Exterior Faucets, Handles, Washers		X
Facility Rooms (located on each floor in 850 building)		X
Fences - Common Area		X
Fire System Components - alarms and sprinklers		X
Fireplace - Chimney - Exterior and Cap		X
Fireplace - Chimney Flue	X	
Fireplace - Fire Brick (firebox, ceramic brick walls of fireplace)	X	
Fireplace - Mantelpiece, Trim and Facing	X	
Floor - Common Area Subfloor & Common Area Facilities		X
Floor - Unit Subfloor	X	
Floor Covering (e.g., carpet, tile, vinyl, wood, etc.) - Common Area & Common Area Facilities		X
Floor Covering (i.e., carpet, tile, vinyl, wood, etc.) - Unit	X	

<b>COMPONENT(S)</b>	<b>OWNER</b>	<b>ASSN.</b>
Foundation		X
Fountains - Common Area		X
Furnace - Unit Systems	X	
Garage - gates/ entrances/ guest parking spaces, structure		X
Garage - Exclusive Use Common Area Parking Space - cleaning of oil spills, stains	X	
Garage - Exclusive Use Common Area Parking Space - routine cleaning		X
Garbage Disposal - Common Area Facilities		X
Garbage Disposal - Unit	X	
Gas Lines/Valves - Common Area or those serving more than one Unit wherever located		X
Gas Lines/Valves - Solely serving one Unit and located within or underneath the Unit.	X	
Glass - Common Area and Common Area Facilities - Windows/Doors, including frame and tracks		X
Glass - Unit - Windows/Doors, including frame and tracks	X	
Gutters and Downspouts		X
Hose Bibs - Common Area excluding Exclusive Use Common Area		X
Hose Bibs - Exclusive Use Common Area	X	
Insulation - Common Area & Common Area Facilities		X
Insulation - Unit	X	
Landscaping - Common Area, Greenbelt		X
Lighting Fixtures - Common Area excluding Exclusive Use Common Area		X
Lighting Fixtures - Inside Unit & Exclusive Use Common Area	X	
Lighting Fixtures - Outside Unit - Front		X
Lobby (all levels)		X
Mailbox - Lock	X	

<b>COMPONENT(S)</b>	<b>OWNER</b>	<b>ASSN.</b>
Mailboxes - Box		X
Painting - Common Area & Common Area Facilities		X
Painting - Unit	X	
Pathways		X
Patio/Balcony - Cleaning and Maintenance	X	
Patio/Balcony - Deck Railings		X
Patio/Balcony - Floor Surface (except where modified from original construction)		X
Patio/Balcony - Painting of interior surface		X
Plumbing Fixtures - Common Area & Common Area Facilities (toilets, sinks, faucets, etc.)		X
Plumbing Fixtures - Unit (toilets, tubs, sinks, faucets, etc.)	X	
Plumbing Lines/Valves - Solely serving one Unit and located within or underneath the Unit.	X	
Plumbing Lines/Valves - Common Area or those serving more than one Unit wherever located		X
Pools, Pool Buildings, Spas, Equipment - Common Area		X
Pressure Regulators		X
Recreational Room		X
Roof Material		X
Roof Underlayment		X
Roof Vents		X
Sewer Lines - Common Area or those serving more than one Unit wherever located		X
Sewer Lines - Solely serving one Unit and located within or underneath the Unit.	X	
Sidewalks		X
Slab		X
Sliding Patio/Balcony Door Flashing/Waterproofing	X	

<b>COMPONENT(S)</b>	<b>OWNER</b>	<b>ASSN.</b>
Sliding Patio/Balcony Door Frames and Tracks	X	
Sliding Patio/Balcony Door Hardware	X	
Sliding Patio/Balcony Doors/Screens	X	
Spraying for Household Pests (ants, fleas, etc.) in the interior of the Unit	X	
Spraying for Landscaping Pests (ants, fleas, etc.) on the exterior of the Unit		X
Stucco Painting/Coloring		X
Stucco Repair and Replacement		X
Termites - Common Area and Unit		X
Trim - Wood - Exterior - Maintenance and Replacement		X
Trim - Wood - Exterior - Painting		X
Walls - Bearing, Studs, Frames, Tiedowns, Other Structural Items		X
Walls - Common Area Facilities - Non-bearing		X
Walls - Unit - Non-bearing	X	
Wall Covering - Common Area & Common Area Facilities		X
Wall Covering - Unit	X	
Window Flashing, Frames, and Hardware - Common Area & Common Area Facilities		X
Window Flashing, Frames, and Hardware - Unit	X	
Windows and Screens - Common Area & Common Area Facilities		X
Windows and Screens - Unit	X	
Wiring - Electrical - Solely serving one Unit and located within or underneath the Unit.	X	
Wiring - Electrical - Common Area or those serving more than one Unit wherever located		X
Wiring - Telephone, Cable TV/Internet/Satellite, etc. for Common Area Facilities		X

<b>COMPONENT(S)</b>	<b>OWNER</b>	<b>ASSN.</b>
Wiring - Telephone, Cable TV/Internet/ Satellite, etc. for Unit	X	

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Revised: November 24, 2008