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Dec 15, 2020 10:39 AM

OFFICIAL RECORDS

Ernest J. Dronenburg, Jr.,

SAN DIEGO COUNTY RECORDER

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Nationwide Reconveyance, LLC

**When recorded mail to and**

**Mail tax statements to:**

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**TS# Oceanside Community Assoc.**

**2020 Amended and Restated Declaration of  
Covenants, Conditions and Restrictions**

*Recording Requested By:*  
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*When Recorded, Mail to:*  
KRIGER LAW FIRM  
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(Space Above for Recorder's Use)

2020 AMENDED AND RESTATED

DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS

OF

OCEANSIDE  
COMMUNITY ASSOCIATION

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

**TABLE OF CONTENTS**

	<b><u>Page</u></b>
<b>RECITALS</b> .....	1
<b>ARTICLE I – DEFINITIONS</b>	
1.1 “Articles”.....	2
1.2 “Annual Assessments”.....	2
1.3 “Annual Budget Report”.....	2
1.4 “Architectural Guidelines”.....	2
1.5 “Architectural Committee”.....	2
1.6 “Assessment”.....	3
1.7 “Association”.....	3
1.8 “Association Rules”.....	3
1.9 “Board”.....	3
1.10 “Bylaws”.....	3
1.11 “City”.....	3
1.12 “Common Area”.....	3
1.13 “County”.....	3
1.14 “Declarant”.....	3
1.15 “Declaration”.....	3
1.16 “Development”.....	3
1.17 “Director”.....	3
1.18 “Exclusive Use Common Areas”.....	3
1.19 “Foreclosure”.....	4
1.20 “Governing Documents”.....	4
1.21 “Improvement”.....	4
1.22 “Individual Assessments”.....	4
1.23 “Lender”.....	4
1.24 “Lot”.....	4
1.25 “Maintenance Responsibility Checklist”.....	4
1.26 “Member”.....	4
1.27 “Mortgage”.....	4
1.28 “Owner”.....	4
1.29 “Person”.....	5
1.30 “Planned Unit Development”.....	5
1.31 “Property”.....	5
1.32 “Recreational Facilities”.....	5
1.33 “Residence” or “Dwelling Unit”.....	5
1.34 “Special Assessments”.....	5
1.35 “Unit” or “Phase”.....	5
1.36 “Voting Power”.....	5
1.37 “1997 Declaration”.....	5

**TABLE OF CONTENTS**

(Continued)

**Page**

**ARTICLE II – PROPERTY RIGHTS**

2.1	Property Subject to Declaration.....	5
2.2	No Separate Conveyance.....	5
2.3	Right of Entry by Association.....	6
2.4	Nonexclusive Easements.....	6
2.5	Encroachment Easements.....	6
2.6	Declaration Subject to Easements.....	7
2.7	Leasing.....	7
2.7.1	Delegation of Use.....	7
2.7.2	Obligation to Supply Tenant Information.....	7
2.7.3	Written Lease Must Require Conformance to Governing Documents.....	7
2.7.4	Discipline of Lessees.....	8
2.7.5	Hotel or Transient Purposes; Minimum Lease Term.....	8
2.7.6	Limit on the Number of Lots That Can Be Rented or Leased.....	8
2.7.6.1	Recitals.....	8
2.7.6.2	Total Number of Lots Eligible for Lease and Exceptions for Inheritance.....	8
2.7.6.3	Written Approval to Rent or Lease Required.....	8
2.7.6.4	Registration of Lot for Future Rental.....	9
2.7.6.5	Rental Pool Listing.....	9
2.7.6.6	Supplemental Rules and Regulations.....	9
2.7.6.7	Exemptions.....	9
2.7.6.8	Rental and/or Lease Hardships.....	9
2.7.6.9	Sale of Lot Subject to Lease or Rental Agreement.....	10
2.7.6.10	Loss of Rental Status.....	10
2.8	Owner Liability for Common Area Damages.....	10
2.9	Notification and Liability of Association Regarding Water Intrusion.....	10
2.10	Granting Exclusive Use of Common Area.....	10

**ARTICLE III – ASSOCIATION, ADMINISTRATION, MEMBERSHIP AND VOTING RIGHTS**

3.1	Association to Manage Common Areas.....	11
3.2	Membership.....	11
3.3	Transfer.....	11
3.4	Voting Rights.....	11
3.5	Joint Owner Disputes.....	11

**ARTICLE IV – ASSESSMENTS**

4.1	Creation of the Lien and Personal Obligation of Assessments.....	12
4.2	Purpose of Assessments.....	12
4.3	Annual Assessment.....	12
4.3.1	Annual Budget Report.....	12

**TABLE OF CONTENTS**

(Continued)

	<b><u>Page</u></b>
4.3.2 Reserve Contributions and Accounts.....	12
4.3.3 Utility Assessment.....	13
4.4 Special Assessments.....	13
4.5 Limits for Increases of Annual and Special Assessments.....	13
4.6 Notice of Assessment Increases Required.....	13
4.7 Division of Assessments; Payment of Assessments.....	13
4.8 No Offsets.....	14
4.9 Effect of Nonpayment of Assessments.....	14
4.10 Transfer of Lot by Sale or Foreclosure.....	14
4.11 Collection Remedies.....	14
4.11.1 Assessment Lien.....	14
4.11.2 Requirements Before Recording Liens.....	14
4.11.3 Delinquencies Less than \$1,800.00 or One Year.....	15
4.11.4 Delinquencies Greater than \$1,800.00 or One Year.....	15
4.11.5 Foreclosure of Lien.....	15
4.12 Individual Assessments.....	15
4.12.1 Damage to Common Area.....	15
4.12.2 Expenses Incurred in Gaining Member Compliance.....	16
4.12.3 Levy of Individual Assessment and Payment.....	16
4.12.4 Foreclosable Lien for Damage to Common Area.....	16

**ARTICLE V – DUTIES AND POWERS OF THE ASSOCIATION**

5.1 General Powers and Authority.....	16
5.1.1 Assessments.....	16
5.1.2 Adoption of Rules.....	16
5.1.3 Enforcement of Governing Documents.....	16
5.1.4 Right of Entry.....	17
5.1.5 Easements.....	17
5.1.6 Dedication.....	17
5.1.7 Management and Delegation of Powers.....	17
5.1.8 Service Personnel.....	17
5.1.9 Contracts.....	17
5.1.10 Towing.....	17
5.2 Duties of the Association.....	18
5.2.1 Maintenance and Operation of Common Areas.....	18
5.2.2 Financial Reports.....	18
5.2.3 Insurance.....	18
5.2.4 Discharge of Liens.....	18
5.2.5 Payment of Expenses.....	18
5.2.6 Conduct Reserve Studies.....	18
5.3 Limitation on Board Authority.....	18
5.3.1 Sale of Association Property.....	18

**TABLE OF CONTENTS**

(Continued)

	<b><u>Page</u></b>
5.3.2 Sale of Emerald Isle Golf Course or Stock in Golf Club, Inc.....	19
5.3.3 Contracts in Excess of One Year.....	19
5.4 Limitation on Liability of Officers and Directors.....	19
5.5 Adoption of Rules.....	19
5.5.1 Review and Comment Period.....	19
5.5.2 Special Membership Meeting to Reverse Rule Change.....	20
5.5.3 Emergency Rules.....	20
 <b>ARTICLE VI – MAINTENANCE RESPONSIBILITIES</b>	
6.1 General.....	20
6.2 Failure to Maintain.....	20
6.3 Division of Responsibility.....	20
6.4 Termite Control.....	21
6.5 Party Walls.....	22
6.5.1 Sharing of Repair and Maintenance.....	22
6.5.2 Destruction by Fire or Other Casualty.....	22
6.5.3 Weatherproofing.....	22
6.5.4 Party Fences.....	22
6.5.5 Right to Contribution Runs with Land.....	23
6.5.6 Arbitration.....	23
6.5.7 Damage to Party Walls or Fences.....	23
6.6 Roofs on Adjoining Dwelling Units.....	23
6.6.1 Arbitration.....	23
6.6.2 Association’s Right to Remedy.....	23
6.7 Repairs of Utility Lines.....	23
6.7.1 Easement for Utility Repairs and Access.....	23
6.7.2 Utility Connection Serving More Than One Lot.....	24
6.7.3 Dispute Between Owners Over Utility Repairs.....	24
6.8 Owner Obligation to Cooperate.....	24
 <b>ARTICLE VII – USE RESTRICTIONS</b>	
7.1 Responsibility to Comply with Governing Documents.....	24
7.2 Single Family Residential Use.....	24
7.3 Business Activities.....	24
7.4 Prohibition of Noxious Activities.....	25
7.4.1 Smoking in Common Areas Prohibited.....	25
7.5 Household Pets.....	25
7.5.1 Maximum Number of Pets.....	25
7.5.2 Leash Requirements for Pets.....	25
7.5.3 Pets and Common Areas.....	25
7.5.4 Owner Responsibility for Conduct of Pet.....	25
7.5.5 Association Not Responsible for Conduct of Pet.....	25

**TABLE OF CONTENTS**

(Continued)

	<b><u>Page</u></b>
7.5.6 Pet Rules. . . . .	26
7.5.7 Pets Constituting a Nuisance. . . . .	26
7.6 Insurance, Compliance with Law and Owner Personal Property. . . . .	26
7.7 Personal Property in Common Area. . . . .	26
7.8 Protected Uses. . . . .	27
7.8.1 Display of Real Estate Signs. . . . .	27
7.8.2 Solar Energy Systems. . . . .	27
7.8.3 Modification to Accommodate a Disability. . . . .	27
7.8.4 Restrictions on Signs, Posters, Flags, Banners. . . . .	27
7.8.5 Installation or Use of Video or Television Antenna. . . . .	28
7.8.6 Prohibition of Rental or Leasing. . . . .	28
7.8.7 Clotheslines. . . . .	28
7.9 Screening of Unsightly View. . . . .	28
7.10 Vehicles and Parking. . . . .	28
 <b>ARTICLE VIII - AGE RESTRICTIONS</b>	
8.1 Senior Housing. . . . .	29
8.2 Definitions. . . . .	29
8.2.1 Cohabitants. . . . .	29
8.2.2 Permitted Healthcare Resident. . . . .	29
8.2.3 Qualified Disabled Resident. . . . .	29
8.2.4 Qualified Permanent Resident. . . . .	29
8.3 Age Restriction Occupancy Requirements. . . . .	29
8.4 Termination of Disability. . . . .	30
8.5 Termination of Occupant Rights of a Qualified Disabled Resident. . . . .	30
8.6 Occupancy by a Permitted Healthcare Resident. . . . .	30
8.7 Temporary Residency. . . . .	31
8.8 Federal Law Requirements. . . . .	31
8.9 Applicable Law and Amendment Requirements. . . . .	31
 <b>ARTICLE IX - RECREATIONAL AREAS</b>	
9.1 Common Grounds and Recreational Areas. . . . .	31
9.2 Non-Exclusive Right of Use. . . . .	32
 <b>ARTICLE X - ASSOCIATION AGREEMENT. . . . .</b>	
<b>32</b>	
 <b>ARTICLE XI – ARCHITECTURAL CONTROL</b>	
11.1 Improvements and Changes Require Prior Approval. . . . .	32
11.1.1 Exterior Colors and Finishes. . . . .	33
11.1.2 Interior Improvements. . . . .	33
11.2 Architectural Committee. . . . .	33
11.3 Submission of Plans; Action by Committee. . . . .	33



**TABLE OF CONTENTS**

(Continued)

	<b><u>Page</u></b>
11.4 Approval of Solar Energy System. . . . .	33
11.5 Fee for Review. . . . .	34
11.6 Approval/Disapproval of Plans. . . . .	34
11.7 Architectural Guidelines. . . . .	34
11.8 Owner Responsibility for Modification. . . . .	34
11.9 Waiver. . . . .	34
11.10 Inspection of Work. . . . .	35
11.11 Nonliability of Association or Committee Members. . . . .	35
11.12 Variances. . . . .	35
11.13 Annual Architectural Procedures Disclosure. . . . .	36
11.14 Cease and Desist. . . . .	36
 <b>ARTICLE XII – INSURANCE</b>	
12.1 Association Insurance. . . . .	36
12.1.1 Fire and Casualty. . . . .	36
12.1.2 Liability. . . . .	36
12.1.3 Workers Compensation. . . . .	37
12.1.4 Directors and Officers Liability. . . . .	37
12.1.5 Fidelity Bond. . . . .	37
12.1.6 Other Insurance. . . . .	37
12.2 Scope of Coverage. . . . .	37
12.3 Insurance Trustee. . . . .	37
12.4 Waiver of Subrogation. . . . .	37
12.5 No Duplicate Insurance Coverage. . . . .	38
12.6 Owner’s Insurance Obligations. . . . .	38
12.7 Insurance Claim. . . . .	38
12.8 Insurance Deductible. . . . .	38
12.8.1 Damage Due to Act or Omission. . . . .	38
12.8.2 Damage from Owner-Maintained Item. . . . .	38
12.8.3 Damage from Association-Maintained Item. . . . .	39
12.8.4 Damage from Multiple Sources. . . . .	39
12.9 Annual Insurance Review. . . . .	39
12.10 Failure to Acquire Insurance. . . . .	39
12.11 Coverage for Common Area. . . . .	39
 <b>ARTICLE XIII - DAMAGE OR DESTRUCTION</b>	
13.1 Destruction; Proceeds Exceed or are Less Than 85 Percent of Reconstruction Costs. . . . .	39
13.2 Apportionment of Assessments. . . . .	40
13.3 Rebuilding Contract. . . . .	40
13.4 Rebuilding Not Authorized. . . . .	40
13.5 Minor Repair and Reconstruction. . . . .	41

**TABLE OF CONTENTS**

(Continued)

**Page**

**ARTICLE XIV – CONDEMNATION**

14.1 Association as Trustee for Owner. . . . . 41

**ARTICLE XV – DISPUTE RESOLUTION AND ENFORCEMENT**

15.1 Introduction. . . . . 41  
15.2 Informal Notice of Violation. . . . . 41  
15.3 Disciplinary Proceedings. . . . . 41  
15.4 Internal Dispute Resolution Procedure. . . . . 42  
    15.4.1 Meet and Confer. . . . . 42  
    15.4.2 Rights to Meet and Confer. . . . . 42  
    15.4.3 Designation of Representative. . . . . 42  
    15.4.4 Timeliness of Meeting. . . . . 42  
    15.4.5 Agreement in Writing. . . . . 42  
    15.4.6 Agreement Judicially Enforceable. . . . . 42  
15.5 Alternative Dispute Resolution Procedure. . . . . 42  
15.6 Litigation. . . . . 42  
15.7 Immediate, Temporary Relief. . . . . 43

**ARTICLE XVI – RIGHTS OF LENDERS**

16.1 General. . . . . 43  
16.2 Breach of Restated Declaration . . . . . 43  
16.3 Loan After Foreclosure. . . . . 43  
16.4 Unpaid Dues or Charges. . . . . 43  
16.5 Appearance at Meetings. . . . . 43  
16.6 Furnish Information. . . . . 44  
16.7 Insurance Clauses. . . . . 44  
16.8 Conflict. . . . . 44

**ARTICLE XVII – GENERAL PROVISIONS**

17.1 Severability. . . . . 44  
17.2 Term. . . . . 44  
17.3 Construction. . . . . 44  
17.4 Amendments. . . . . 44  
17.5 Singular Includes Plural. . . . . 45  
17.6 Nuisance. . . . . 45  
17.7 Waiver. . . . . 45  
17.8 Cumulative Remedies. . . . . 45  
17.9 Conflict of Governing Documents. . . . . 45  
17.10 Joint and Several Liability. . . . . 45  
17.11 Annexation Pursuant to Approval. . . . . 45  
17.12 Statutory Changes; Conflicts; No Liability for Following Law. . . . . 45

**TABLE OF CONTENTS**

(Continued)

	<b><u>Page</u></b>
17.12.1 Successor Law Supersedes this Declaration. ....	46
17.12.2 Changed Law Allows Declaration to Prevail.....	46
17.12.3 Changed Law Deletes Provisions Repeated in this Declaration. ....	46
17.12.4 No Liability for Following Changed Law. ....	46
17.13 Nonliability. ....	46

**ACKNOWLEDGMENTS**

- Exhibit "A" - Legal Description of the Project
- Exhibit "B" - Common Areas of the Project
- Exhibit "C" - Maintenance List

**2020 AMENDED AND RESTATED DECLARATION OF  
COVENANTS CONDITIONS AND RESTRICTIONS OF  
OCEANSIDE COMMUNITY ASSOCIATION**

This 2020 AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF OCEANSIDE COMMUNITY ASSOCIATION (“**Declaration**”) is made on the date indicated below by OCEANSIDE COMMUNITY ASSOCIATION, a California nonprofit mutual benefit corporation (“**Association**”) with reference to the facts set forth in the “Recitals” below.

**RECITALS**

A. **Property.** Declarant (Oceanside Land Company) was the Owner of that certain real property (“**Property**”) located in the City of Oceanside, County of San Diego, State of California, which is more particularly described in Exhibit A attached hereto.

B. **1997 Declaration.** The Property is subject to that certain Declaration of Covenants, Conditions and Restrictions for Oceanside Community Association, a planned development, recorded on April 7, 1997, as Document No. 1997-0157879, as amended, modified and supplemented (collectively, “**1997 Declaration**”). The Association intends, by recordation of this Declaration to amend, restate and supersede the 1997 Declaration and subsequent amendments thereto in their entirety.

C. **Nature of Development.** Declarant conveyed the Property, subject to certain easements, protective covenants, conditions, restrictions, reservations, liens and charges as set forth in the 1997 Declaration, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property and all of which shall run with the Property and be binding on all parties having or acquiring any right, title or interest in the Property, or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

D. **Development Subject to Declaration.** It was the further intention of the Declarant to sell and convey residential Lots improved by residences originally constructed by Declarant to the Owners, subject to the protective covenants, conditions, restrictions, limitations, reservations, grants of easements, rights, rights-of-way, liens, and charges set forth in this Declaration, which are enforceable equitable servitudes between Declarant and such Owners. These equitable servitudes shall run with the land, bind all present and future Owners and are set forth in this Declaration and which are intended to be in furtherance of a general plan for the subdivision, development, sale and use of the Property as a “planned development” as that term is defined in Civil Code Section 4175.<sup>1</sup>

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<sup>1</sup>Unless otherwise indicated, all Civil Code Section references are to sections of the California Civil Code.

Finally, it was the intention of Declarant that the “Common Areas” be owned and maintained by the Association, but reserved exclusively for the use and enjoyment of the Members of the Association, their tenants, lessees, guests and invitees, all subject to the terms and conditions of the Governing Documents.

E. **Common Interest Development.** There currently exists upon the above-described real property a Common Interest Development subject to the provisions of the Davis-Stirling Common Interest Subdivision Act (Civil Code Section 4000, *et seq.*).

F. **Member Approval of Declaration.** Prior to the date shown hereunder, the Owners of Lots within the Development voted by written ballot to amend and restate the 1997 Declaration, in accordance with Section 1 of Article XII of the 1997 Declaration, which requires that votes must be received from a majority of the Members of Oceanside Community Association, and of the votes cast, two-thirds (2/3) or more must be in the affirmative. In addition, approval of Eligible Lenders, if any, was obtained pursuant to Section 2 of Article XII. The Owners intend to replace the 1997 Declaration, in its entirety, when this Declaration is recorded in accordance with Civil Code Section 4270(a). The Owners’ action to amend and restate the 1997 Declaration as set forth herein, and the fact that the requisite percentage of affirmative votes required in the 1997 Declaration was achieved, is attested by the execution of this Declaration by duly authorized officers of the Association, as required by Civil Code Section 4270(a). As so amended, restated, and superseded in its entirety, the easements, covenants, restrictions, and conditions set forth herein shall run with the Property and shall be binding upon all parties having or acquiring any right, title or interest in the Property or any portion thereof, and shall inure to the benefit of each Owner thereof.

## **ARTICLE I DEFINITIONS**

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

**1.2** “**Annual Assessments**” means the assessments which are levied pursuant to the provisions of Article IV of this Declaration.

**1.3** “**Annual Budget Report**” means the pro forma (i.e., projected) operating budget described in Section 9.3 of the Bylaws.

**1.4** “**Architectural Guidelines**” means the design criteria adopted by the Board pursuant to Section 8.8 of this Declaration.

**1.5** “**Architectural Committee**” means the committee which may be appointed by the Board pursuant to Article XII of this Declaration.

**1.6** “**Assessment**” means any Annual, Special or Individual Assessment made or assessed by the Association against an Owner and his or her Lot in accordance with the provisions of Article IV of this Declaration.

**1.7** “**Association**” means the Oceanside Community Association, a California nonprofit mutual benefit corporation, also known as Oceana, its successors and assigns. The Association is an “Association” as defined in Civil Code Section 4080.

**1.8** “**Association Rules**” means the rules, regulations, policies and Architectural Guidelines adopted by the Board of the Association, as the same may be in effect from time to time.

**1.9** “**Board**” means the Board of Directors of the Association.

**1.10** “**Bylaws**” means the Bylaws of the Association, as such Bylaws may be amended from time to time which are or shall be adopted by a vote of the membership.

**1.11** “**City**” means the City of Oceanside, California.

**1.12** “**Common Area**” means “common area” within the meaning of California Civil Code Section 4095, and also means all real property (including the improvements thereon) which is owned, leased, or maintained by the Association for the common use and enjoyment of the Owners. The Common Area consists of the Property described in Exhibit “B” attached hereto and made a part hereof.

**1.13** “**County**” refers to the County of San Diego, California.

**1.14** “**Declarant**” means the original developer of the Property, namely Oceanside Land Company. This information is for historical purposes only. Control of the Association has been transferred to the Members.

**1.15** “**Declaration**” means this 2020 Amended and Restated Declaration of Covenants, Conditions and Restrictions of Oceanside Community Association, as the same may be amended, supplemented, modified or changed from time to time.

**1.16** “**Development**” means all of the Property together with all improvements situated thereon.

**1.17** “**Director**” means a natural person who serves on the Board.

**1.18** “**Exclusive Use Common Areas**” mean those portions of the Common Area designated herein for the exclusive use of one (1) or more, but fewer than all, of the Owners and which is or will be appurtenant to a Lot or Lots, such as carports and association-maintained garages.

**1.19 “Foreclosure”** means the legal process by which a Lot owned by an Owner who is in default under a Mortgage is sold pursuant to Civil Code Section 2924, *et seq.*, or sale by the court pursuant to California Code of Civil Procedure Section 725a, *et seq.*, and any amendments thereto.

**1.20 “Governing Documents”** is a collective term that means and refers to the Declaration, the Articles, the Bylaws, and the Association Rules, and amendments, modifications or supplements thereto.

**1.21 “Improvement”** includes, without limitation, the construction, installation, alteration, or remodeling of any buildings, walls, decks, fences, landscaping, landscape structures, skylights, solar heating equipment, spas, antennas (except as specified in **Section 7.8.5** herein), utility lines, or any structure of any kind upon a Lot. In no event shall the term “Improvement” be interpreted to include projects which are restricted to the interior of the residence and which do not modify the exterior appearance of any of the above-referenced elements.

**1.22 “Individual Assessments”** means the assessments which are levied according to the provisions of **Article IV** of this Declaration.

**1.23 “Lender”** means any financial institution holding a first mortgage and/or trustee on any of the Lots within the Development.

**1.24 “Lot”** means any parcel of real property designated by a number on the final subdivision map of the Property, excluding the Common Area. When appropriate within the context of this Declaration, the term “Lot” shall also include the Improvements constructed on a Lot.

**1.25 “Maintenance Responsibility Checklist”** refers to **Exhibit “A”** attached hereto and incorporated herein, which designates the components to be maintained by the Association and the Owners.

**1.26 “Member”** means every person or entity who is an Owner of record.

**1.27 “Mortgage”** means any security device encumbering all or any portion of the Properties, including any deed of trust. “**Mortgagee**” shall refer to a beneficiary under a deed of trust as well as to a Mortgagee in the conventional sense.

**1.28 “Owner”** means the record Owner or Owners, whether one (1) or more persons or entities, whether a natural person, firm, corporation, partnership, trust, or other entity which owns a fee simple interest in any Lot, including any contract sellers under recorded contracts of sale. “Owner” shall not include any person or entities who hold an interest in a Lot merely as security for performance of an obligation. For purposes of exercising membership rights and incurring membership obligation when an owner is a corporation, any person director, officer, employee or agent designated by corporate resolution may exercise the membership rights

attributable to the corporation. When the owner is a trust, the trustee may exercise the membership rights attributable to the trust unless otherwise designated in writing by the trustee.

**1.29 “Person”** means a natural person, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership, limited liability company, association, or other entity.

**1.30 “Planned Unit Development”** means a planned development as defined in Civil Code section 4175.

**1.31 “Property”** means all of the real property described in **Recital A** of this Declaration.

**1.32 “Recreational Facilities”** means the clubhouses, the swimming pools and other facilities such as the wood shop, art room and billiard room located within the Development .

**1.33 “Residence” or “Dwelling Unit”** means the Dwelling Unit located within an Owner’s Lot.

**1.34 “Special Assessments”** means the assessments that are levied pursuant to the provisions of Article IV of this Declaration.

**1.35 “Unit” or “Phase”** means any of the fifteen (15) divisions of the Development, including all the Lots thereon, which are identified as Oceana Unit Nos. I, I-A, II, III, IV, V, VI, VII, VII-A, VIII, IX, X, XI, XII and XIV in **Exhibit “A”** attached hereto. (The term **“Phase”** is intended to have the same meaning as that used in the definition of “Senior Citizen Housing Development” in California Civil Code Section 1. 3.)

**1.36 “Voting Power”** means the total number of votes eligible to vote in the Association.

**1.37 “1997 Declaration”** means and refers to the document referenced in the **Recital B** of this Declaration, together with all amendments and annexations thereto, recorded prior to recordation of this Declaration.

## ARTICLE II PROPERTY RIGHTS

### **2.1 Property Subject to Declaration**

The Development is subject to this Declaration.

### **2.2 No Separate Conveyance**

Along with ownership of the Lot comes interest in the use and benefit of the Common Area. No Lot shall be conveyed by the Owner separately from the interest in the Common Area.



## **2.3 Right of Entry by Association**

**2.3.1** The Association or its agents have the right to enter in emergency situations to protect life and/or property, such entry would not require prior notice to the owner (Cf. The Good Samaritan Law, California Health and Safety Code § 1799.102).

**2.3.2** A violation or condition which is deemed by the Board or its agents to be a violation which endangers health or safety shall give the Association or its agents the right to enter upon the Lot on which such violation exists, and to abate and remove it, at the expense of the defaulting Owner thereof, and the Association and its agents shall not be deemed guilty of any manner of trespass by such entry, abatement, or removal. No such entry shall be made until the Board has complied with the requirements of Corporations Code section 7341. At a minimum, the defaulting Owner shall be given at least fifteen (15) days' prior written notice of the violation, the reasons the Board intends to enter the Owner's Lot to abate the violation, and a reasonable estimate of any costs or charges which the Board intends to assess against such Owner. In addition, the Owner shall be given an opportunity to be heard before the Board, orally or in writing, at least five (5) days before any such entry is made. Any notice given under this Section shall be given by any manner reasonably calculated to provide actual notice. Any notice given by mail must be given by first class or certified mail, and sent to the last address of the Owner as shown on the Association's records.

**2.3.3** All other violations of any of the provisions, covenants, conditions, restrictions, easements, or reservations herein shall be handled according to Article XVI.

## **2.4 Nonexclusive Easements**

Each Owner shall have a nonexclusive easement for use and enjoyment of the Common Area and for ingress, egress, and support over and through the Common Area. These easements shall be appurtenant to, and shall pass with the title to, each Lot and shall be subordinate to the exclusive easements granted elsewhere in this Declaration, as well as to the right of the Association to regulate time and manner of use, to charge reasonable fees, and to perform its obligations under this Declaration.

## **2.5 Encroachment Easements**

Each Owner of a Lot within the Development is hereby declared to have an easement over all adjoining Lots and the Common Area for the purpose of accommodating any encroachment due to engineering errors, errors in original construction, reconstruction, repair, settlement or shifting of the building, or any other similar 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 an Owner or Owners if said encroachment occurred due to the willful misconduct of said Owner or Owners.

## **2.6 Declaration Subject to Easements**

Notwithstanding anything herein to the contrary, this Declaration and the Development shall be subject to all easements and rights-of-way shown on the final subdivision map and all other easements of record.

## **2.7 Leasing**

Owners are entitled to lease their Lots subject to the restrictions contained herein:

### **2.7.1 Delegation of Use**

Any Owner may delegate his or her rights of use and enjoyment of the Development, including any recreational facilities, to the members of his or her family, his or her guests and tenants, and to such other persons as may be permitted by the Governing Documents. However, if an Owner has sold his or her Lot to a contract purchaser or has leased or rented it, the Owner, members of the Owner's family, and guests shall not be entitled to use and enjoy any of such rights while the Owner's Lot is occupied by the contract purchaser or tenant. Instead, the contract purchaser, or tenant, while occupying such Lot, shall be entitled to use and enjoy such rights, including the recreational facilities, and can delegate the rights of use and enjoyment in the same manner. Any delegated rights of use and enjoyment are subject to suspension to the same extent as are the rights of Owners. No such delegation shall relieve an Owner from liability to the Association or to other Owners for payment of Assessments or performance of the covenants, conditions and restrictions set forth in this Declaration.

### **2.7.2 Obligation to Supply Tenant Information**

Within fifteen (15) days of a tenant taking possession of a Lot, each Owner shall notify the Board of Directors of the Association of the names and contact information for any contract purchasers or tenants of such Owner's Lot, including, without limitation, telephone numbers, identification of resident vehicles and such other information as required by rules enacted by the Board. If requested by the Board, each Owner shall provide a copy of the lease, rental agreement or contract of sale and any amendments, extensions or renewals thereof to the Association.

### **2.7.3 Written Lease Must Require Conformance to Governing Documents**

Any rental or leasing agreement or contract to purchase, and any amendments, extensions or renewals thereof, shall be in writing, shall provide that the lease or rental is subject to the CC&Rs and any amendments thereto, the Bylaws, Articles of Incorporation and Rules, Regulations and Guidelines (collectively, "Governing Documents") and shall provide that any failure to comply shall be a default under the terms of the lease or rental agreement or contract to purchase. Copies of the Governing Documents shall be provided to each tenant or lessee by the Owner so renting or leasing. The Association and each Owner shall have a right of action directly against any tenant or contract purchaser of an Owner, as well as against the Owner, for nonperformance of any of the provisions of the Governing Documents to the same extent that such right of action exists against such Owner. A tenant shall have no obligation to the Association to pay assessments imposed by the Association nor shall any tenant have any voting rights in the Association.

#### **2.7.4 Discipline of Lessees**

In the event that any tenant, lessee or contract purchaser fails to comply with the provisions of any Governing Document, the Association shall be entitled to take such corrective action as it deems appropriate under the circumstances to preserve the quiet enjoyment of other Owners and residents within the community. Without limiting the foregoing, the Association's actions may include suspension of the tenant's privileges to use the Common Area, including, without limitation, the recreational facilities, or the imposition of fines and penalties against the Owner of such after notice and hearing.

#### **2.7.5 Hotel or Transient Use; Minimum Lease Term**

There shall be no hotel or transient use of any Lot located within the Development. No Lot Owner may lease their Lot for the purposes of a "mini dorm," in which individual bedrooms of the Lot are rented separately and independently. No Lot shall be leased, rented or subleased for less than thirty (30) days. No Lot Owner may lease less than the entire Lot. No short-term, vacation rentals are allowed. Fines may be imposed against the owner for advertising short-term, vacation rentals.

#### **2.7.6 Limit on the Number of Lots That Can Be Rented or Leased**

##### **2.7.6.1 Recitals**

The Association members have determined to limit the number of Lots that can be rented and/or leased at any one time in the future to a maximum of two hundred thirty-three (233) Lots; provided, however, the Board, at its discretion, may from time to time for good cause (e.g., temporary work related transfers, temporary hospitalization, etc.) allow additional Lots to be temporarily rented or leased, with the time period being determined by the Board. Any such action by the Board shall be in response to an Owner's written request as set forth in **Section 2.7.6.8** of this Amendment.

##### **2.7.6.2 Total Number of Lots Eligible for Lease and Exceptions for Inheritance**

If, at the time this Amendment was recorded, less than two hundred (200) Lots are rented and/or leased, additional Lots may be rented and/or leased until the total number of rented and/or leased Lots has reached two hundred thirty-three (233) Lots. An exception shall be made for Lots acquired through inheritance, at any time. When a Lot is acquired through inheritance, the new Owner may rent or lease the Lot, after satisfying the requirements of **Section 2.7.6.3** below. The inherited Lot then becomes part of the total number of currently rented and/or leased Lots.

##### **2.7.6.3 Written Approval to Rent or Lease Required**

The Owner of a Lot who wishes to rent and/or lease the Lot is required to obtain from the Association written authorization to rent or lease. Approval will be granted if the number of existing leased Lots is below two hundred thirty-three (233) and the Owner is at the top of the Rental Pool listing or meets the other criteria set forth herein, such as hardship (**Section 2.7.6.8**), inheritance (**Section 2.7.6.2**), or existing lease (**Section 2.7.6.9**). The written authorization may be obtained by submitting a written request to the Association for approval to

rent or lease. The Association will respond within thirty (30) days of receipt of the request that the Lot either qualifies or does not qualify for rental. Failure of the Association to respond within thirty (30) days is deemed approval. In the alternative, if the Owner receives notice from the Association that their Lot has become eligible for rental or lease, this requirement is deemed satisfied.

#### **2.7.6.4 Registration of Lot for Future Rental**

Owners may submit the Lot for inclusion in the Association Rental Pool listing by written request to the Board.

#### **2.7.6.5 Rental Pool Listing**

Lots will be added to the bottom of the list of rented or leased Lots (“Rental Pool”) on a first-come, first-served basis. When the total number of rented and/or leased Lots has fallen below two hundred thirty-three (233) Lots, the Owner of the first Lot set forth on the Rental Pool listing may elect to designate his or her Lot as a “Rental Lot” and proceed to rent or lease the Lot, after satisfying the requirements of **Section 2.7.6.3** above. The Owner of said Lot, if owner-occupied, will be required to vacate the residence and actively list it for rental or lease within sixty (60) days or else be placed at the bottom of the Rental Pool as described in **Section 2.7.6.4** above. If the Owner of the first Lot on the Rental Pool listing does not elect to designate its Lot as a Rental Lot, the second Owner on the Rental Pool listing may then elect to designate his or her Lot as Rental Lot and proceed to rent or lease the Lot, after satisfying the requirements of **Section 2.7.6.3** above. The Rental Pool listing is maintained by the Board. If a Lot on the Rental Pool listing is approved, all remaining Lots will advance in priority.

#### **2.7.6.6 Supplemental Rules and Regulations**

The Board shall have the power to enact supplemental rules and regulations for the purpose of implementing the policies and procedures contained in this Amendment.

#### **2.7.6.7 Exemptions**

Owners who had title to their Lots prior to recordation of this Amendment are not subject to the rental limitations stated in **Section 2.7.6** herein. Upon sale or transfer of the Lot, this exemption will no longer apply.

#### **2.7.6.8 Rental and/or Lease Hardships**

If an Owner of a Lot believes that the imposition of this **Section 2.7.6** will pose an extreme physical or financial hardship, the Owner may submit a written request to the Board for a hearing on said hardship. Within thirty (30) days of the Board's receipt of the written request, the Board shall hold a hearing on the facts. The Board will then give due consideration to the Lot Owner's request, and any other available, pertinent information, and render a decision. The decision of the Board will be final. The decision will then be documented in a letter sent to the Lot Owner by first-class mail within fifteen (15) days following the hearing.

#### **2.7.6.9 Sale of Lot Subject to Lease or Rental Agreement**

A Lot that was subject to an existing lease or rental agreement prior to the close of escrow or change of title shall remain eligible for rental after the completion of the sale only while the existing tenants remain in possession. Upon termination of their tenancy, the Owner must obtain authorization to lease or rent the Lot in accordance with **Section 2.7.6.3** herein.

#### **2.7.6.10 Loss of Rental Status**

If tenants vacate a Lot and the Property is not re-rented but instead the owner chooses to live in the home, the Property will lose its rental status and the owner will need to comply with **Section 2.7.6.3** before re-leasing the Property. A Lot does not lose its status as a rental upon a change of tenants, except as provided in **Section 2.7.6.9**.

### **2.8 Owner Liability for Common Area Damages**

Each Owner shall be liable to the Association and the remaining Owners for the cost of repair of any damage to the Common Area that may be sustained by reason of the intentional or negligent act or omission of such Owner, the Owner's family members, contract purchasers, tenants or guests. The Board shall be solely responsible for determining whether or not a claim shall be submitted to an insurer for damage to Common Area. In the event a claim is submitted, and repair funds collected, such Owner shall only be responsible for the costs over and above the amount recovered. If the Owner refuses or fails to reimburse the Association for the demanded funds, the amount may be added to the Owner's assessment account in accordance with **Section 4.12.1** herein.

### **2.9 Notification and Liability of Association Regarding Water Intrusion**

The Association's Water Intrusion Policy will determine liability in the case of water intrusion damage.

### **2.10 Granting Exclusive Use of Common Area**

Upon the affirmative vote of a majority of a quorum of Members, the Board may grant exclusive use of any portion of the Common Area to a Member. The Board alone may grant exclusive use of any portion of the Common Area without membership approval if done so for any of the following reasons, as more specifically described in Civil Code Section 4600(b)(3):

**2.10.1** To fulfill the requirement of a public agency;

**2.10.2** To transfer the burden of management and maintenance of any Common Area that is generally inaccessible and not of general use to the membership at large of the Association;

**2.10.3** To accommodate a disability;

**2.10.4** To install and use an electrical vehicle charging station as more specifically described in Civil Code Section 4600(b)(3)(H) and (I); and/or

**2.10.5** To comply with governing law.

In the event the Board grants an Owner exclusive use of a Common Area, it may require the Owner to enter into an Agreement Affecting Real Property outlining the terms and conditions of the use of the Property, and also providing for indemnification of the Association under certain circumstances.

**ARTICLE III  
ASSOCIATION, ADMINISTRATION, MEMBERSHIP AND VOTING RIGHTS**

**3.1 Association to Manage Common Areas**

The management of the Common Area shall be vested in the Association in accordance with its Governing Documents. The Members covenant and agree that the administration of the Development shall be in accordance with the provisions of the Governing Documents.

**3.2 Membership**

The Owner of a Lot shall automatically, upon becoming the Owner of same, be a Member of the Association, and shall remain a Member thereof until such time as the ownership ceases for any reason, at which time the membership in the Association shall automatically cease. Membership shall be held in accordance with this Declaration, the Articles, and Bylaws of the Association.

**3.3 Transfer**

The Association membership of an Owner shall not be transferred, pledged or alienated in any way except upon the conveyance of the ownership interest and then only to the transferee. Any attempt to make a prohibited transfer is void and shall not be reflected upon the books and records of the Association. In the event an Owner fails or refuses to transfer the membership registered in his or her name to the transferee of such Lot, the Association shall have the right to record the transfer upon the books of the Association.

**3.4 Voting Rights**

The Association shall have one (1) class of membership. Voting rights shall be as specified in Article IV of the Bylaws.

**3.5 Joint Owner Disputes**

The vote for each such Lot may be cast only as a Lot, 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 or Owners cast a vote representing a certain Lot, it will thereafter be conclusively presumed for all purposes that he or they were acting with the authority and consent of all other Owners of the same Lot. In the event more than one vote is cast for a particular Lot, none of said votes shall be counted and all of said votes shall be deemed void.

## **ARTICLE IV ASSESSMENTS**

### **4.1 Creation of the Lien and Personal Obligation of Assessments**

Each Owner of a Lot by acceptance of a deed, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (a) Annual Assessments or charges, (b) Special Assessments for purposes permitted herein, and (c) Individual Assessments; such Assessments are to be established and collected as hereinafter provided. The Annual Assessments and Special Assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which each such Assessment is made, the lien to become effective upon recordation of a notice of delinquent assessment. Each such Assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the Assessment became due and shall bind his or her devisees, personal representatives, heirs, successors and assigns. No Member may exempt himself or herself from liability for this contribution towards the common expenses by waiver of the use or enjoyment of any of the Common Areas or by the abandonment of his or her Lot.

### **4.2 Purpose of Assessments**

The Assessments levied by the Association shall be used exclusively to perform the obligations and duties of the Association, including, without limitation, to promote the economic interest, recreation, health, safety and welfare of all of the residents of the Development and the improvement and maintenance of the Common Area and those other portions of the Development for which the Association is responsible, for any other onsite or offsite maintenance responsibilities of the Association, to reimburse the Association for any costs incurred in bringing an Owner into compliance with the Governing Documents, and for the common good of the Development.

### **4.3 Annual Assessment**

The Board shall determine and fix the amount of the Annual Assessment against each Lot in accordance with the procedures described in this Article.

#### **4.3.1 Annual Budget Report**

The Association shall distribute an Annual Budget Report thirty (30) to ninety (90) days before the end of its fiscal year in accordance with Civil Code Section 5300. As part of the Annual Budget Report, the Board will prepare a pro forma operating budget for the next fiscal year upon which the Annual Assessment will be based. The Board shall have the power to increase the Annual Assessment without a vote of the membership as specified in **Section 4.5**, so long as the Annual Budget Report is distributed timely. Otherwise, any increase of the Annual Assessment will require the approval of a majority of a quorum of the Members. For the purposes of this section "Quorum" means more than fifty percent (50%) of the Members.

#### **4.3.2 Reserve Contributions and Accounts**

As part of the preparation of the pro forma budget as provided in **Section 4.3.1**, the Board shall annually fix the amount to be contributed to reserve funds for the purpose of



defraying, in whole or in part, the cost or estimated cost of any reconstruction, repair or replacement of improvements, including fixtures and personal property related thereto. Separate records shall be maintained for all reserve funds deposited in the reserve account.

#### **4.3.3 Utility Assessment**

In the event that any water or other public utility service provided to the Development is sub-metered to separate Lots, then the provisions herein shall apply. In addition to any other assessments levied against a Lot, the Association may also impose a Utility Assessment for the separately-metered utilities referenced above. The Utility Assessment shall be separate from, and not considered part of either Regular or Special Assessments, and shall not be subject to limitations on increases or decreases thereof contained in California law. The Utility Assessment will become part of the total assessment for which Owners are responsible and may be enforced the same as any Regular or Special Assessment as specified in Article IV.

#### **4.4 Special Assessments**

In any fiscal year, the Board may levy a Special Assessment applicable to that year only, for the purpose of defraying in whole or in part the cost of extraordinary expenses incurred or to be incurred by the Association, including but not limited to, unanticipated delinquencies and/or repair and replacement of Common Area Improvements subject to the limitations contained in **Section 4.5** below.

#### **4.5 Limits for Increases of Annual and Special Assessments**

The Board may not impose an Annual Assessment that is more than twenty percent (20%) greater than the Annual Assessment for the Association's preceding fiscal year or impose Special Assessments which in the aggregate exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year without the approval of a majority of a quorum of the Members, pursuant to Civil Code Section 5605(c). For the purposes of this section "Quorum" means more than fifty percent (50%) of the members.

This Section does not limit Assessment increases necessary for emergency situations. For purposes of this Section, an emergency situation is any one of the following: (a) an extraordinary expense required by an order of a court; (b) an extraordinary expense necessary to repair or maintain the Common Area for which the Association is responsible where a threat to personal safety is discovered; and (c) an extraordinary expense necessary to repair or maintain the Common Area that could have not been reasonably foreseen by the Board in preparing and distributing the current year's operating budget.

#### **4.6 Notice of Assessment Increases Required**

Whenever there is an increase in Annual Assessments or Special Assessments, all Members shall be notified by first class mail or e-mail if authorized by Owner, not less than thirty (30) nor more than sixty (60) days prior to the Assessment due date.

#### **4.7 Division of Assessments; Payment of Assessments**

Annual and Special Assessments shall be charged to and equally divided among the Lots. Annual Assessments levied against each Owner and his or her Lot shall be due and payable in



advance to the Association in equal monthly installments on the first day of each month or on such other date or dates as may be established from time to time by the Board. Special Assessments shall be due and payable in advance of such date or dates as established by the Board.

#### **4.8 No Offsets**

All Assessments shall be payable in the amount specified in the Assessment levied by the Association, and no offsets against such amount shall be permitted for any reason, including, without limitation, a claim that the Association which levied such Assessment is not properly exercising its duties of maintenance or enforcement.

#### **4.9 Effect of Nonpayment of Assessments**

Assessments shall be due on the first day of each month unless some other due date is established by the Board. Assessments become delinquent fifteen (15) days after they become due. A late charge not exceeding ten percent (10%) of the delinquent Assessment or Ten Dollars (\$10.00), whichever is greater, shall be imposed upon any delinquent payment. Interest on delinquent Assessments and late charges shall be imposed at an annual percentage rate of twelve percent (12%) commencing thirty (30) days after the Assessments become due. Late charges and interest on past due amounts may be modified by the Board in accordance with any changes permitted by applicable law.

#### **4.10 Transfer of Lot by Sale or Foreclosure**

Sale or transfer of any Lot shall not affect the Assessment lien. However, the sale of any Lot pursuant to foreclosure of a first Mortgage shall extinguish the lien of such Assessments as to payments which became due prior to such sale or transfer (except for Assessment liens recorded prior to the Mortgage). No sale or transfer shall relieve such Lot from liability for any Assessments thereafter becoming due or from the lien thereof.

#### **4.11 Collection Remedies**

##### **4.11.1 Assessment Lien**

If any Annual Assessment or Special Assessment is delinquent, the Association may pursue collection action by any method permitted by law, including, but not limited to, recordation of an Assessment lien against the Lot, all pursuant to Civil Code Sections 5650 through 5690.

##### **4.11.2 Requirements Before Recording Liens**

Liens shall be recorded in accordance with Civil Code Sections 5650 through 5690. At least thirty (30) days prior to recording a lien against the Lot of any Owner, the Association shall notify the Owner in writing of the delinquency including an itemized statement of the charges owed by the Owner and that if the charges are not paid within the time specified in the writing that a lien may be recorded against his or her Lot. The decision to record a lien for delinquent assessments shall be made only by the Board and may not be delegated to an agent for the Association. The Board shall approve the decision by a majority vote of the directors at an open meeting. The Board shall record the vote in the minutes of that meeting.

#### **4.11.3 Delinquencies Less than \$1,800.00 or One Year**

If the Association seeks to collect delinquent Annual Assessments or Special Assessments of an amount less than One Thousand Eight Hundred Dollars (\$1,800.00), not including any accelerated assessments, late charges, fees and costs of collection, attorney's fees, or interest, it may not collect that debt through judicial or non-judicial foreclosure, but may attempt to collect or secure that debt through a civil action, recordation of a lien or other manner permitted by law.

#### **4.11.4 Delinquencies Greater than \$1,800.00 or One Year**

If the Association seeks to collect delinquent Annual Assessments or Special Assessments of an amount of One Thousand Eight Hundred Dollars (\$1,800.00) or more, not including any accelerated assessments, late charges, fees and costs of collection, attorney's fees, or interest, or any Assessments that are more than twelve (12) months delinquent, it may pursue judicial foreclosure, non-judicial foreclosure, or a personal judgment, all in accordance with Civil Code Sections 5700 through 5740.

#### **4.11.5 Foreclosure of Lien**

The lien may be enforced in any manner permitted by law, including sale by the court, sale by the trustee designated in the notice of delinquent Assessment, or sale by a trustee substituted pursuant to Civil Code Section 2934(a). Any sale shall be conducted in accordance with the provisions of Civil Code Sections 2924, 2924(b), 2924(c), 2924(f), 2924(g) and 2924(h), or any successor statutes thereto, applicable to the exercise of powers of sale in mortgages and deeds of trust, or in any other manner permitted by law. The Association, acting on behalf of the Owners, shall have the power to bid on the Lot at the foreclosure sale, and to acquire and hold, lease, mortgage, and convey the Lot and vote as an Owner of the Lot. If the Association obtains title at the foreclosure sale, all assessment fees for the Lot are suspended so long as the Association retains title.

### **4.12 Individual Assessments**

The Board may impose Individual Assessments against an Owner as provided in this Section, provided that no Individual Assessments may be imposed against an Owner until the Owner has been afforded notice and the opportunity for a hearing as provided in Section 8.5 of the Bylaws, and, if appropriate, has been given a reasonable opportunity to comply voluntarily with the Governing Documents. Subject to the foregoing, the acts and circumstances giving rise to liability for Individual Assessments are set forth below.

#### **4.12.1 Damage to Common Area**

In the event that any damage to, or destruction of, any portion of the Common Area, including any portion of the Lot which the Association is obligated to repair and maintain, is caused by the willful misconduct or negligent act or omission of any Owner, tenants, guests, 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 an Individual Assessment.

#### **4.12.2 Expenses Incurred in Gaining Member Compliance**

In the event that the Association incurs any costs or expenses to bring the Owner and/or his or her Lot into compliance with any provision of the Governing Documents, the amount incurred by the Association, including reasonable fines and penalties duly imposed hereunder, title company fees, accounting fees, and reasonable attorney's fees, shall be assessed and charged solely to and against such Owner as an Individual Assessment. Reasonable attorney's fees and costs shall include such fees and costs incurred in bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services.

#### **4.12.3 Levy of Individual Assessment and Payment**

Once an Individual Assessment has been imposed against an Owner and subject to the conditions imposed in this **Section 4.12**, such Individual Assessment shall be (a) added to the Owner's account, (b) notice thereof shall be mailed to the affected Owner and (c) the Individual Assessment shall thereafter be due as a separate debt of the Owner payable in full to the Association within thirty (30) days after the mailing of notice of the Assessment.

#### **4.12.4 Foreclosable Lien for Damage to Common Area**

Once an Individual Assessment has been imposed by the Association's Board pursuant to **Section 4.12.1** with regard to damage to Common Area, such charge may be collected as provided in **Section 4.11**.

### **ARTICLE V DUTIES AND POWERS OF THE ASSOCIATION**

#### **5.1 General Powers and Authority**

The Association shall have all the powers of a nonprofit corporation under California law, subject only to the limitations in the Governing Documents. It may perform all acts which may be necessary for or incidental to the performance of the obligations and duties imposed upon it by the other Governing Documents. Its powers shall include those granted in its Bylaws and as set forth below.

##### **5.1.1 Assessments**

The Association shall have the power to establish, fix, levy and enforce payment of Assessments against the Members in accordance with the provisions of the Governing Documents.

##### **5.1.2 Adoption of Rules**

The Association shall have the power to adopt reasonable operating rules as set forth in **Section 5.5** of this Declaration.

##### **5.1.3 Enforcement of Governing Documents**

The Association shall have the authority to enforce the Governing Documents as provided in **Article XVI** of this Declaration.

#### **5.1.4 Right of Entry**

The Association's agents or employees shall have the right to enter upon any Lot when necessary in connection with any maintenance, landscaping, or construction for which the Association is responsible. Such entry shall be made with as little inconvenience to the Member as is practicable, and in accordance with **Section 2.4** of this Declaration.

#### **5.1.5 Easements**

The Association shall have the authority, by document signed or approved by two-thirds (2/3) of the Board, to grant easements in addition to those shown on the tract map of the Development, where necessary for utilities, telecommunication services, and sewer facilities over the Common Area to serve the common and open space areas and the Lots. All other easements, such as those to accommodate adjoining Property Owners, require approval of a majority of a quorum of the Members.

#### **5.1.6 Dedication**

The Association shall have the power to dedicate all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Members and are permissible under the provisions of the Association's land lease. No such dedication shall be effective unless approved by a majority of a quorum of the Members.

#### **5.1.7 Management and Delegation of Powers**

The Association can delegate its powers, duties and responsibilities to committees or employees, including a professional manager, subject to the requirements of this Declaration.

#### **5.1.8 Service Personnel**

The Association shall have the power to engage persons necessary for the effective operation and maintenance of the Association, including legal, management and accounting services.

#### **5.1.9 Contracts**

The Association shall have the power to contract for goods and services for the benefit of the Development that are necessary for the Association to perform its duties and obligations hereunder, subject to the limitations set forth in **Section 5.3.3**.

#### **5.1.10 Towing**

Any vehicle parked within the Development in violation of this Declaration or the Association Rules may be removed as provided for in accordance with the provisions of California Vehicle Code Section 22658 and any amendments thereto, or in accordance with City ordinances.

The foregoing notwithstanding, the Association may cause the removal, without notice, of any vehicle parked in a marked fire lane, within fifteen (15) feet of a fire hydrant, or in a manner which interferes with any entrance to or exit from the Development or any Lot, garage or driveway located therein.

## **5.2 Duties of the Association**

In addition to the duties delegated to the Association or its agents and employees elsewhere in these Governing Documents, the Association, acting through the Board, shall be responsible for the following:

### **5.2.1 Maintenance and Operation of Common Areas**

The Association shall operate, maintain, repair or replace the facilities and improvements located in the Common Areas, which duty shall include maintenance of the Common Areas as provided in **Article VI**.

### **5.2.2 Financial Reports**

The Association shall have the duty to prepare annual budgets, reports, balance sheets and operating statements for the Association as required under the Governing Documents and applicable laws.

### **5.2.3 Insurance**

The Association shall obtain and maintain such policy or policies of insurance as are required by this Declaration.

### **5.2.4 Discharge of Liens**

The Association shall discharge by payment, if necessary, any lien against the Common Area, and charge the cost thereof to the Member or Members responsible for the existence of the lien, after notice and a hearing, as provided in the Bylaws.

### **5.2.5 Payment of Expenses**

The Association shall pay all expenses and obligations incurred by the Association in the conduct of its business, including, without limitation, all licenses, taxes, or governmental charges levied or imposed against the property of the Association.

### **5.2.6 Conduct Reserve Studies**

At least once every three (3) years the Board shall cause a study of the reserve account requirements of the Development to be conducted. The reserve study shall consist, in part, of a reasonably competent diligent inspection of the major components maintained by the Association.

## **5.3 Limitation on Board Authority**

### **5.3.1 Sale of Association Property**

The Board shall not sell during any fiscal year property of the Association having an aggregate fair market value greater than five percent (5%) of the budgeted gross expenses of the Association for that fiscal year, without approval of a majority of a quorum of the Members.

### **5.3.2 Sale of Emerald Isle Golf Course or Stock in Golf Club, Inc.**

No sale of any real property owned by Oceana Golf Club, Inc. shall be valid unless a 51% majority of the Members of Oceanside Community Association have first approved said transaction.

### **5.3.3 Contracts in Excess of One Year**

The Board shall not enter into a contract with a third party to furnish goods or services for the Common Area or the Association for a term longer than one (1) year, subject to 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 the term does not exceed the shortest term for which the supplier will contract at the regulated rate; (b) prepaid casualty or liability insurance policies not to exceed three (3) years duration provided the policy permits short rate cancellation by the insured; (c) agreements for sale or lease of burglar alarm and fire alarm equipment, installation and services of not to exceed five (5) years duration; and (d) agreements for provision of bulk rate cable, telecommunication services, and/or internet, not to exceed five (5) years in duration, without approval of a majority of a quorum of the Members.

### **5.4 Limitation on Liability of Officers and Directors**

No director, officer, committee member, employee, or other agent of the Association, shall be liable to any Owner or any other party, including the Association, for any damage, loss, or prejudice suffered or claimed on account of any act, omission, error, or negligence of any such person if such person has acted in good faith and in a manner such person reasonably believed to be in the best interests of the Association.

### **5.5 Adoption of Rules**

The Board shall have the power to adopt reasonable operating rules governing the Development, use of the Common Area and any facilities located thereon, and of any other Association property, all in accordance with Civil Code Sections 4340 through 4365. Such rules may include, but are not limited to, reasonable restrictions on use by the Members and their guests, rules of conduct, and the setting of reasonable fees for the use of recreational facilities. Rules must be in writing and must be consistent with applicable law and the Governing Documents. A copy of the current Association Rules shall be provided to each Member.

#### **5.5.1 Review and Comment Period**

Prior to enacting rules, the Association shall provide Owners with a twenty-eight (28) day advance notice of a rule adoption or change, which shall include a copy of the proposed rule and a description of the purpose and effect of the proposed rule, and allow Owners to provide comments to the Board regarding the proposed rule. After the twenty-eight (28) day comment period has expired, the Board shall meet to discuss any comments received, and decide whether to proceed with adoption of the proposed rule. If the rule is adopted, the Board shall provide notice to the Owners of the rule adoption within fifteen (15) days of adopting the rule.

### **5.5.2 Special Membership Meeting to Reverse Rule Change**

Members of the Association representing five percent (5%) or more of the Lots may request a special vote of the Members to reverse a rule change, all in accordance with Civil Code Section 4365.

### **5.5.3 Emergency Rules**

The Board may enact a temporary emergency rule dealing with any class or type of rule if the Board determines that an immediate rule change is necessary to address an imminent threat to public health or safety or imminent risk of substantial economic loss to the Association. The Board shall provide notice to the Owners of adoption of the emergency rule within fifteen (15) days of its adoption, which shall include the text of the rule change, a description of the purpose and effect of the rule change and the date that the rule change expires. Such an emergency rule may be effective for up to 120 days, and may not be re-adopted as an emergency rule under this Section but may be re-adopted pursuant to **Section 5.5.1** above.

## **ARTICLE VI MAINTENANCE RESPONSIBILITIES**

### **6.1 General**

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

### **6.2 Failure to Maintain**

In the event an Owner fails to maintain the areas described herein pursuant to the standards set by the Board, the Board may notify the Owner of the work required and request that the same be done within a reasonable time from the giving of such notice. In the event the Owner fails to carry out such maintenance within said time period, the Board may, following notice and a hearing, cause such work to be done and the cost thereof shall immediately be paid as an Individual Assessment by such Owner to the Association and until paid will bear interest at a rate no greater than the maximum rate authorized by law.

### **6.3 Division of Responsibility**

**6.3.1** Attached hereto as Exhibit "C," and incorporated herein by reference, is a listing of the allocation of responsibility for maintenance, repair and replacement of various components in the Development. In the event of any inconsistency between the general provisions of this Section and the specific provisions of Exhibit "C," the provisions of Exhibit "C" shall prevail. Provided any item is not listed in Exhibit "C," the responsibility for its maintenance shall be determined in accordance with the provisions of this Section or as otherwise provided by statute of law.

**6.3.2** To the extent not inconsistent with Exhibit "C," each Owner shall be responsible for the maintenance, repair and replacement of the Owner's Dwelling Unit, the Owner's garage or carport if it is part of his Lot, and those items located anywhere within the Development which are used exclusively by that Owner, in a clean manner, consistent with the surrounding properties, and to ensure that such area does not pose a threat to the health, safety or welfare of other Owners. The replacement of exterior items shall be subject to approval by the Architectural Committee as provided hereinabove.

**6.3.3** To the extent not inconsistent with Exhibit "C," the Association shall be responsible for the maintenance, repair and replacement of the Common Area. Such responsibility shall include, landscape planning and maintenance service, including trees, plants, and shrubs, and maintenance and structural repair of the exterior of any Dwelling Unit and its components.

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

#### **6.4 Termite Control**

The responsibility for control for wood-destroying pests or organisms shall be as follows:

**6.4.1** Owners shall be responsible for the maintenance and repair of their personal property and the Dwelling Unit as required to control the presence of or damage caused by wood-destroying pests or organisms.

**6.4.2** Notwithstanding the above, if the Board of Directors determines fumigation tenting it is necessary to eradicate wood-destroying pests or organisms in a Dwelling Unit and the Owner is unwilling to take care of it, the Association shall be responsible for the fumigation, and tenting, or other remedial treatment and may recover the cost thereof from the Owner(s) of the Dwelling Units to be fumigated treated as an Individual Assessment.

**6.4.3** The Association shall be responsible for the maintenance and repair of the Common Area and the areas on the Lots to be maintained by the Association as required to control the presence of or damage caused by wood-destroying pests or organisms in accordance with the provisions of Civil Code section 4775(a)

**6.4.4** The Association shall have the power to temporarily remove any Dwelling Unit resident for such periods and at such times as may be necessary for prompt effective treatment of such pests or organisms. The costs of any temporary relocation during such maintenance or repair shall be paid by the Dwelling Unit Owner affected. The Association shall give notice of the need to temporarily vacate a Dwelling Unit to the record Owners and occupants not less than fifteen (15) days nor more than thirty (30) days prior to the date of the temporary relocation. The notice shall state the reason for the relocation, the date and time of the beginning of treatment, the anticipated date and time of termination of treatment and that the occupants will be responsible for all necessary accommodations during the relocation.



**6.4.5** Neither the Association, the Board, officers, agents and nor employees shall have any liability, absent willful or wanton negligence, to an Owner, family member, guest, invitee, or tenant for any damage caused by the treatment.

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

## **6.5 Party Walls**

Each wall which was built as a part of the original construction of the homes and placed upon the dividing line between the Lots or parcels shall constitute a party wall. In the event that any such wall not be placed exactly on the dividing line between separate parcels, the same may encroach on one of such parcels and shall be maintained in the location originally constructed; and with respect to such wall, each of the adjoining Owners shall assume the burdens and be entitled to the benefits of these Governing Documents; and to the extent not inconsistent herewith the general rules of law regarding party walls and of liability for property damage due to negligent or willful acts or omissions shall apply thereto.

### **6.5.1 Sharing of Repair and Maintenance**

The cost of reasonable repair or maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

### **6.5.2 Destruction by Fire or Other Casualty**

If a party wall is destroyed or damaged by fire or other casualty, any Owner who uses the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owner to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

### **6.5.3 Weatherproofing**

Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

### **6.5.4 Party Fences**

Fences may have been constructed and located upon the Lot lines between adjoining private Lots. In that event, any such fence needs maintenance or replacement, the cost of any such maintenance or replacement shall be shared equally by the adjoining Owners unless the maintenance or replacement is necessary due to the conduct of one Owner, in which case such one Owner shall pay such cost. Each such adjoining Owner shall not change the fence

without the agreement of the other adjoining Owner and without the written approval of the Board.

#### **6.5.5 Right to Contribution Runs with Land**

The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

#### **6.5.6 Arbitration**

In the event of any dispute arising concerning a party wall or fence in excess of the jurisdictional limits of the Small Claims Court, said dispute shall be submitted to binding arbitration.

#### **6.5.7 Damage to Party Walls or Fences**

An owner who by his negligent or willful act causes any damage to a party wall or fence shall bear the whole cost of repairs.

If the damage was caused by negligent or willful acts or omissions of more than one party, the cost of the repairs is to be apportioned according to the degree of liability. The division of the cost is to be arrived at by mutual agreement of the parties involved or, if necessary, our legal action.

### **6.6 Roofs on Adjoining Dwelling Units**

Each homeowner is responsible for maintaining his roof in good repair. In attached Dwelling Units the homeowner will be liable for any damage done to an adjoining residence due to a leaky, damaged, or poorly-maintained roof.

#### **6.6.1 Arbitration**

In the event of any dispute arising concerning a roof on an adjoining Dwelling Unit, said dispute shall be submitted to binding arbitration.

#### **6.6.2 Association's Right to Remedy**

If a homeowner refuses to correct a leaky or damaged roof which is causing harm to an adjoining Dwelling Unit, the Association, after giving the Homeowner written notification, may make the repairs necessary to avert further damage. The Association may recover the cost of such repairs as an Individual Assessment from the Homeowner.

### **6.7 Repairs of Utility Lines**

The rights and duties of the Owners with respect to sanitary sewer, water, electricity, gas and telephone lines and facilities are set forth below:

#### **6.7.1 Easement for Utility Repairs and Access**

Whenever sanitary sewer, water, electricity, gas, television receiving, telephone lines, data lines, or connections, are installed within the Property, which connections or any portion thereof lie in or upon a Lot owned by other than the Owner of a Lot served by such connections, the Owners of any Lot served by such connections shall have the right to, and are

hereby granted, an easement to the full extent necessary, to enter upon the Lots or to have the utility company enter upon the Lots in or upon which such connections or any portion thereof lie, to repair, replace and generally maintain such connections, as and when necessary.

#### **6.7.2 Utility Connection Serving More Than One Lot**

Whenever sanitary sewer, water, electricity, gas or telephone lines or connections, are installed within the Property that serve more than one Lot, the Owner of each Lot served by such connection shall be entitled to the full use and enjoyment of such portions of such connections as service his or her Lot.

#### **6.7.3 Dispute Between Owners Over Utility Repairs**

In the event of a dispute between Owners with respect to the repair or rebuilding of such connections, or with respect to the sharing of the cost thereof, then, upon written request of one (1) or more of such Owners addressed to the Association, and after notice and hearing pursuant to Section 8.5 of the Bylaws, the matter shall be submitted to the Board, which shall decide the dispute and the decision of the Board shall be final and conclusive on the parties.

#### **6.8 Owner Obligation to Cooperate**

To the extent necessary or desirable to accomplish the Association's maintenance obligations hereunder, Owners shall cooperate with the Association and its agents and maintenance personnel in the performance of its work.

### **ARTICLE VII USE RESTRICTIONS**

#### **7.1 Responsibility to Comply with Governing Documents**

Each Owner of a Lot shall be responsible for ensuring that the Owner's family, guests, tenants and all occupants of the Owner's Lot comply with all provisions of the Governing Documents. In addition to any rights the Association may have against the Owner's family, guests, tenants or occupants, the Association may take action under this Declaration against the Owner as if the Owner committed the violation in conjunction with the Owner's family, guests, tenants or occupants.

#### **7.2 Single Family Residential Use**

Lots shall be used for single family residential purposes by one or more individuals with the exception that a homeowner may share his or her Dwelling with other individuals who meet the Association's residency requirements. The maximum number of residents allowed in a Dwelling will be two (2) for each bedroom plus one (1). In no event shall a Lot be occupied by more individuals than permitted by applicable zoning laws or governmental regulations. This section does not prohibit a single individual from residing in a Lot.

#### **7.3 Business Activities**

The Board may establish guidelines to allow home occupations which (a) do not cause any external effects which are detrimental to neighboring Dwelling Units or the Development, and (b) are compatible with the characteristics of residential use in the Development. The intent

of such guidelines is to restrict any business or commercial activities which would disturb one's neighbors, undermine their quality of life, or endanger property values.

#### **7.4 Prohibition of Noxious Activities**

No noxious or offensive activities or noxious odors shall be conducted within or upon any portion of the Development nor shall anything be done or permitted within any Lot which is or could become an unreasonable annoyance or nuisance to one's neighbors. No Owner shall permit noise of any sort including, but not limited to, barking dogs, the operation of air conditioners, stereo amplifier systems, television sets, motor vehicles and power tools, to emanate from an Owner's Lot or any portion of the Common Area which would unreasonably disturb other Owners' enjoyment of their Lots or the Common Area. Excessive noise levels may be determined in the sole discretion of the Board which may, but shall not be obligated to, rely on the County Code or other applicable governmental regulation dealing with such matters.

##### **7.4.1 Smoking in Common Areas Prohibited**

Smoking in the areas around the pool and clubhouse is prohibited except in the designated area.

#### **7.5 Household Pets**

The following restrictions regarding the care and maintenance of pets within the Development shall be observed by each Owner, resident and guest.

##### **7.5.1 Maximum Number of Pets**

No more than two (2) common household pets may be kept in each Lot. Such pets may not be kept, bred or maintained for commercial purposes. Caged birds or fish in an aquarium may be kept and maintained in reasonable numbers or as otherwise established by the Board. No other animals, or poultry of any kind shall be kept, bred or raised in any Lot.

##### **7.5.2 Leash Requirements for Pets**

Pets shall only be allowed on the Common Area when they are leashed and otherwise under the supervision and restraint of their owners.

##### **7.5.3 Pets and Common Areas**

No household pets shall be left chained or otherwise tethered in the Common Area. Pet owners shall be responsible for the prompt removal and disposal of pet wastes deposited by their pets within the Development.

##### **7.5.4 Owner Responsibility for Conduct of Pet**

Each person bringing or keeping a pet in the Development shall be solely responsible for the conduct of such pets.

##### **7.5.5 Association Not Responsible for Conduct of Pets**

The Association, its Board, officers, employees and agents shall have no liability to any Owners, their family members, guests, tenants and contract purchasers for any damage or injury to persons or property caused by any pet.

#### **7.5.6 Pet Rules**

The Board shall have the right to establish and enforce additional regulations imposing standards for the reasonable control and keeping of household pets in the Development to ensure that the same do not interfere with the quiet and peaceful enjoyment of the Property by the other Owners.

#### **7.5.7 Pets Constituting a Nuisance**

The Board shall have the power to prohibit the keeping or maintenance of any animal, which, in the sole discretion of the Board, after notice and hearing, is deemed by the Board to constitute a nuisance to any other Owner or resident, whether due to its size, viciousness, unreasonable noise or otherwise.

#### **7.6 Insurance, Compliance with Law and Owner Personal Property**

Nothing shall be done or kept in any Lot or in the Development that might increase the rate of, or cause the cancellation of, insurance on the Development, or any portion of the Development, without the prior written consent of the Board. No Owner shall permit anything to be done or kept in his or her Lot that violates any applicable law or ordinance of the government

#### **7.7 Personal Property in Common Area**

Personal property, other than vehicles which are not subject to this section, shall not be kept or allowed to remain for a period of more than twenty-four (24) hours upon any portion of the Common Areas.

If the Board or its designate, in its sole discretion, determines that the property has been abandoned or is being stored or allowed to remain on the Common Areas in violation of this Section, the Board may place a notice on the personal property and/or on the front door of the Owner's Lot specifying the nature of the violation and stating that after two (2) days the property may be removed and either discarded or stored by the Board in a location which the Board may determine, at the Owner's or user's sole expense. The notice shall include the name and telephone number of the person or entity which will remove the property and the name and telephone number of a person to contact regarding the alleged violation.

If two (2) days after such notice is placed on the personal property and/or the front door of the Lot, the violation continues or thereafter occurs within six (6) months of such notice, the personal property maybe removed in accordance with the notice, without further notice to the Owner or user of personal property.

If the Board, in its discretion, determines that an emergency situation exists, the personal property abandoned or stored in violation of this Section may, without prior notice to the Owner or user of the personal property, be removed or either discarded or stored by the Board in a location which the Board may determine at the Owner's or user's sole expense. The Board shall give to the Owner notice of the removal of the property and the location of the personal property within three (3) days after the personal property is removed.

If personal property is removed in accordance with this Section, neither the Association nor any officer or agent of the Association shall be liable to any person for any claim of damage resulting from the removal activity. The Board may elect to impose fines or use other available sanctions, rather than exercise its authority to remove abandoned or improperly stored personal property.

## **7.8 Protected Uses**

California law grants Owners certain protected uses of the Property. This Section lists those protected uses and provides a brief description of them. The summaries provided are for informational purposes only and do not extend Owners' rights beyond those provided under California law.

### **7.8.1 Display of Real Estate Signs**

Owners may display signs which are reasonably located, of reasonable dimension and design, and which indicate that the property is for sale or lease. (Civil Code Sections 712 and 713)

### **7.8.2 Solar Energy Systems**

Owners may install or use a solar energy system subject to the imposition of reasonable restrictions by the Association requiring prior approval for installation of the solar energy system; maintenance, repair or replacement of roofs or other building components damaged as a result of use or installation of a solar energy system and a requirement that installers of the system indemnify or reimburse the Association for loss or damage caused by installation or maintenance. (Civil Code Sections 714 and 714.1)

### **7.8.3 Modification to Accommodate a Disability**

Disabled Owners are permitted to make reasonable modifications of the existing premises and adjacent Common Area to afford them full enjoyment of the premises. Owners are required to obtain Association approval prior to making any modifications and are required to do so at their own expense and restore any Common Areas modified at such time as they are no longer residing in the Residence. (Government Code Section 12927 and Civil Code Section 4760(a)(2))

### **7.8.4 Restrictions on Signs, Posters, Flags, Banners**

No commercial advertising signs or billboards shall be displayed on any Lot or posted within or on any portion of the Common Area, except that Owners may post on their Lots any signs required by legal proceedings and a single "For Rent," "For Lease," or "For Sale" sign of reasonable dimensions as permitted under Civil Code Section 713. Owners may place non-commercial signs as permitted by Civil Code Section 4710. Owners may not paint the messages on architectural surfaces. Notwithstanding the foregoing, the Board may prohibit and order the immediate removal of any sign which poses a threat to health or safety, or which is in violation of applicable law. (Civil Code Section 4710)

In keeping with California law, it is permitted to display political signs during election periods. Such signs must be placed entirely within the confines of one's Lot and cannot be

placed in the Common Area or attached to exterior walls. Each Lot is allowed one (1) such sign, not larger than nine (9) square feet in size. It can be posted no sooner than ninety (90) days before the election and must be removed within fifteen (15) days after the election.

#### **7.8.5 Installation or Use of Video or Television Antenna**

An Owner may install satellite dishes not in excess of one (1) meter in diameter on his or her Lot. Owners may not install satellite dishes or antennas on any Common Areas. The Association may adopt rules permitting installation of satellite dishes or antennas in Common Areas, but adoption of said rules are solely within the discretion of the Board. The Board may adopt rules regulating the installation of antennas or satellite dishes on the Lots provided that the rules do not unreasonably delay or prevent installation, maintenance or use, unusually increase the cost of installation, maintenance or use, or preclude reception of an acceptable quality signal. Any rules implemented for legitimate safety restrictions are permitted, even if they impair installation, maintenance or use of the satellite dish or antenna. Other than as set forth above, no Owner shall place or maintain any outside television, radio or other antenna within the Development except upon written authorization by the Board or the Architectural Review Committee. (Civil Code Section 4725)

#### **7.8.6 Prohibition of Rental or Leasing**

No Owners shall be subject to a prohibition of rental or lease of their Lot unless the provision in the Governing Document restricting such usage was effective prior to the date the Owner acquired title. (Civil Code Section 4740)

#### **7.8.7 Clotheslines**

Laundry may be dried by use of exterior clotheslines or the like so long as said items are not visible either from Common Areas or adjacent Lots.

#### **7.9 Screening of Unsightly View**

All equipment, garbage cans, and the like service yards, woodpiles, or storage piles shall be kept screened by adequate planting or fencing so as to conceal them from view of neighboring Lots and streets. All rubbish, trash, or garbage shall be removed from the premises and shall not be allowed to accumulate thereon.

#### **7.10 Vehicles and Parking**

Only vehicles commonly described as passenger, which can be garaged in a normal manner, shall be permitted to be operated or parked within the Development. Except in specially designated areas as specifically permitted in the rules and regulations, no boats, trailers, trucks, campers, other RVs, or vehicles or contrivances of like nature, shall be permitted to be operated or parked within the Development. Vehicles must never be parked in a way that blocks or hinders other Residents from free and easy access to their garages or carports, or that extend over a sidewalk. Short-term parking of delivery trucks or RVs for loading and unloading is permitted.

**ARTICLE VIII  
AGE RESTRICTIONS**

**8.1 Senior Housing**

Residents are to be seniors 55 or older, with a limited number of exceptions as set by law (California Civil Code §51.3.). The following lists such exceptions.

**8.2 Definitions**

For purposes of this **Article VIII**, the following terms shall have the following definitions:

**8.2.1 Cohabitants**

Married couples or persons who are domestic partners within the meaning of California Family Code §297.

**8.2.2 Permitted Healthcare Resident**

A person hired to provide live-in, long-term, or terminal healthcare to a Senior Citizen or a member of the Senior Citizen's family who is providing such care. The care must be substantial in nature and must provide assistance with necessary daily activities, medical treatment, or both.

**8.2.3 Qualified Disabled Resident**

A disabled person or person with a disabling illness or injury who is a child or grandchild of the Senior Citizen or a Qualified Permanent Resident who needs to live with the Senior Citizen or Qualified Permanent Resident because of the disabling condition, illness, or injury. A "disabled" person means a person with a disability as defined in California Civil Code §54(b). A "disabling injury or illness" means an illness or injury that results in a condition meeting the definition of disability in California Civil Code §54(b).

**8.2.4 Qualified Permanent Resident**

A person who satisfies both of the following requirements: (a) the person was residing with the Senior Citizen before the Senior Citizen's death, hospitalization, or other prolonged absence or before the dissolution of marriage with the Senior Citizen; and (b) the person is age 45 or older; was the spouse of the Senior Citizen, was a Cohabitant with the Senior Citizen, or was providing the primary physical or economic support to the Senior Citizen.

**8.3 Age Restriction Occupancy Requirements**

This Development is designed to provide housing for Senior Citizens and is intended to qualify as a senior citizen housing development within the meaning of California Civil Code §51.3(b)(4). On commencement of occupancy of the dwelling Unit, at least one resident must be a Senior Citizen who intends to reside in the dwelling Unit as his or her primary residence on a permanent basis. All other residents must meet the requirements of Sections 8.2.1 through 8.2.4 herein. On the death or dissolution of marriage or on hospitalization or other prolonged absence of the Senior Citizen, a Qualified Permanent Resident or Qualified Disabled Resident may continue to reside in the dwelling Unit as long as at least 80 percent of the occupied residences in



the Development are occupied by a person age 55 or older and the continued occupancy by the Qualified Permanent Resident or Qualified Disabled Resident does not reduce the percentage to less than 80 percent so as to disqualify the Development as “housing for older persons” under federal law.

#### **8.4 Termination of Disability**

For anyone who is a Qualified Disabled Resident and the disabling condition ends and the Qualified Disabled Resident does not otherwise qualify to reside in the Dwelling Unit under **Section 8.2.3**, the Board may require the formerly disabled resident to cease residing in the Development on receipt of six months’ written notice; the Board may, however, allow the person to remain a resident for up to one year after the disabling condition ends.

#### **8.5 Termination of Occupant Rights of a Qualified Disabled Resident**

The Board may take action to prohibit or terminate the occupancy by a person who is a Qualified Disabled Resident solely because of a disability if the Board, based on credible and objective evidence, finds that the person is likely to pose a significant threat to the health or safety of others that cannot be ameliorated by means of a reasonable accommodation; provided that the action to prohibit or terminate the occupancy may be taken only after satisfying each of the following conditions:

(i) The Board gives reasonable notice to and an opportunity to be heard for the disabled person whose occupancy is being challenged and reasonable notice to the co-resident parent or grandparent of that person; and

(ii) The Board gives due consideration to the relevant, credible, and objective information provided at the hearing. The evidence shall be taken and held in a confidential manner under a closed session by the Board to preserve the privacy of the affected person. The affected persons shall be entitled to have present at the hearing an attorney or any other person authorized by them to speak on their behalf or to assist them in the matter.

#### **8.6 Occupancy by a Permitted Healthcare Resident**

A Permitted Healthcare Resident may occupy a dwelling Unit during any period that the Permitted Healthcare Resident is actually providing live-in, long-term, or terminal healthcare to the Senior Citizen for compensation. Compensation shall include provisions of lodging and food in exchange for care. A Permitted Healthcare Resident shall be entitled to continue his or her residency if the Senior Citizen is absent from the dwelling Unit on satisfaction of each of the following conditions:

(i) The Senior Citizen became absent owing to hospitalization or other necessary medical treatment and expects to return to the dwelling unit within 90 days after the date the absence began; and

(ii) The absent Senior Citizen or an authorized person acting for the Senior Citizen submits a written request to the Board stating that the Senior Citizen desires that the

Permitted Healthcare Resident be allowed to remain in order to be present when the Senior Citizen returns to reside in the dwelling Unit.

### **8.7 Temporary Residency**

Nothing in this section shall prohibit the temporary residency of any person under age 55 as a guest of the Senior Citizen or Qualified Permanent Resident. "Temporary residency" shall mean occupancy of a dwelling Unit for no more than 60 days in any consecutive 12-month period.

### **8.8 Federal Law Requirements**

The Development is also intended to qualify as "housing for older persons" exempt from the age restriction prohibition in the Federal Fair Housing Amendments Act of 1988 as amended by the Housing for Older Persons Act of 1995 (the "Acts"). To meet the requirements of the Acts, at least 80 percent of the occupied Lots must be occupied by at least one person aged 55 or older; and the Association shall:

(i) Publish and adhere to policies and procedures that demonstrate an intent by the Association to provide housing for persons age 55 or older; and

(ii) Adopt and implement procedures for the periodic verification of compliance with the age restrictions, including procedures for routinely determining the occupancy of each Lot, including the identification of whether at least one occupant is a Senior Citizen. The procedures shall provide for regular updates at least once every two years.

### **8.9 Applicable Law and Amendment Requirements.**

The provisions in this section are intended to comply with the housing for Senior Citizen requirements in Civil Code §51.3 and the housing for older persons exemption under the Acts of 1988 and 1995 in effect as of the date this Declaration was recorded in the records of the County. In the event of any conflict between this section and applicable law regulating age restrictions in senior housing developments, the applicable law shall control. If the applicable law is subsequently modified or amended in any manner, this section shall automatically be considered modified and amended in a like manner as necessary to remain in compliance with applicable laws.

## **ARTICLE IX RECREATIONAL AREAS**

### **9.1 Common Grounds and Recreational Areas**

The common grounds and recreational areas in the Development shall be developed, used and maintained, pursuant to the provisions of **Article VI** hereof, subject to the following covenants, conditions and restrictions:

**9.1.1** The Association shall maintain developed areas in accordance with the plot plan, which is on file with the Planning Department of the City of Oceanside.

**9.1.2** The Association shall maintain all driveways, walks, off-street parking, Common Areas, and incidentals thereto at all times for the full use and enjoyment of the Owners of Lots, who shall have the right to access to them at all times.

**9.1.3** The Association shall maintain all recreation facilities and incidentals thereto for the full use and enjoyment of the Owners of Lots, and each such Lot Owner shall have the right to access the recreational buildings, pools and open spaces in common with every other such Owner.

**9.2 Non-Exclusive Right of Use**

Each Owner shall have the non-exclusive right to the use of the recreational buildings, pools, and incidentals thereto, so long as such Owner is in residence in the Development . An Owner who has sold his or her Lot and Dwelling Unit to a purchaser, or who has leased or rented the Lot and Dwelling Unit, shall be deemed to have assigned his or her rights to use and enjoy the Common Area to the purchaser or tenant who resides in the Owner's Dwelling Unit, subject to reasonable regulation by the Board.

**ARTICLE X  
ASSOCIATION AGREEMENT**

Declarant, its successors and assigns, deeded, conveyed, released and/or assigned all of the rights, powers, and reservations hereinafter set forth in this **Article X**, to the Oceanside Community Association, a nonprofit California corporation, hereinafter sometimes referred to as "Association," for the purposes set forth in this Declaration. Association, its successors, and assigns, shall assume and be bound by all of the obligations hereinafter set forth in this **Article X**.

The Common Area, as identified in **Exhibit "B"**, attached hereto and made a part hereof, has been leased by Declarant for ninety-nine (99) years to Oceanside Community Association organized, among other things, for the purpose of operating and maintaining such Common Area, as improved, for the common use and benefit of the Owners of the residential Dwelling Units in said Phase, as hereinafter more specifically set forth. The Association shall sublease undivided interests in the leasehold estate for the Common Area in each Phase to each Owner in that respective Phase, who shall also become a Member of such Association as in **Section 3.2 of Article III** hereof provided. Said lease shall be in the form agreed to by Association and Declarant and shall contain all the covenants, conditions and restrictions necessary to carry out the intent and purposes of this **Article X**.

**ARTICLE XI  
ARCHITECTURAL CONTROL**

**11.1 Improvements and Changes Require Prior Approval**

No Improvement shall be erected, placed or altered on any Lot until the building plans and specifications and plot plans showing the location, elevation, and grade lines of such Improvement have been approved (1) in writing by the Board, and (2) building permits have

been obtained, if required. One set of such plans, specifications, and plot plans shall be submitted to the Architectural Committee. The Committee may require that said plans, specifications and plot plans shall comply with such requirements as the Committee may, under the direction of the Board, impose as to structural features of said Improvement, the type of building material used or other features or characteristics thereof not otherwise expressly covered by any of the provisions of this instrument, including the location of the Improvement with respect to topography and finished ground elevation. The Committee may also require that the exterior finish and color and architectural style or character of such building shall be such as in the discretion of the Committee shall be deemed to be suitable in view of the general architectural style and character of structures erected or to be erected in each Phase. The Committee shall make its recommendation for approval or disapproval to the Board, and the Board shall make its decision within 30 days or at the next General Session Board Meeting whichever is sooner.

#### **11.1.1 Exterior Colors and Finishes**

The Architectural Committee may also require that the exterior color and finish may not be changed without first securing committee approval.

#### **11.1.2 Interior Improvements**

Interior Improvements are exempt from pre-approval as long as bearing walls or roof are not affected.

### **11.2 Architectural Committee**

There shall be an Architectural Committee whose members shall be appointed by and serve at the pleasure of the Board. The Committee shall be composed at all times of not less than three (3) Members to have the powers, rights, and duties as herein set forth. The Board shall also fill any vacancy caused by the death, resignation, or any other inability of a Committee Member to serve on said Committee. Should a vacancy occur below a total of three (3) Members in said Committee, and the Board fails to appoint a new Member to fill said vacancy within thirty (30) days, a majority of the Architectural Committee's members may appoint a new member, subject to subsequent Board ratification. Any emergency action of the Architectural Committee may be taken by a majority of Members of said Committee without a formal meeting.

### **11.3 Submission of Plans; Action by Committee**

Plans and specifications for the proposed Improvement shall be submitted to the Committee or the OCA business office by personal delivery or certified mail, return receipt requested. In the event the Board fails to approve or disapprove the plans within sixty (60) days after said plans and specifications have been submitted to it, the Owner requesting said approval may submit a written notice to the Board advising them of the failure to so approve or disapprove. If the Board still fails to approve or disapprove said plans and specifications, within thirty (30) days after the receipt of said notice from the Owner, said plans shall be deemed approved.

### **11.4 Approval of Solar Energy Systems**

Any Owner proposing to install or use a solar energy system shall be subject to the same review and approval process as required in **Section 11.1** for any Improvements. However, only

reasonable restrictions on the installation and use of a solar energy system shall be permitted. Reasonable restrictions on a solar energy system are those restrictions which do not significantly increase the cost of the system or significantly decrease its efficiency or specific performance, as more specifically described in Civil Code Section 714. If an application for a solar energy system is not denied in writing within forty-five (45) days from the date of receipt of the application, the application shall be deemed approved, unless that delay is the result of a reasonable request for additional information.

#### **11.5 Fee for Review**

The Committee shall have the right to hire a licensed structural engineer or other consultant, the opinion of whom the Committee deems necessary in connection with its review of any plans submitted by an Owner and such Owner shall be liable for payment of such engineer's and/or consultant's fee. Before the expense of a hired consultant is added to one's approval request, the applicant is to be informed and offered the opportunity to alter or withdraw the request.

#### **11.6 Approval/Disapproval of Plans**

Any approval or disapproval of plans and specifications submitted to the Committee shall be in writing. An approval of plans by the Committee may be qualified. All qualifications imposed by the Committee must be in writing. If the plans and specifications are disapproved, in whole or in part, the written decision from the Committee shall include both an explanation of why the proposed change was disapproved and a description of the procedure for reconsideration of the decision by the Board.

#### **11.7 Architectural Guidelines**

The Committee may, subject to review by the Board adopt, amend and repeal architectural rules and regulations to be known as "Architectural Guidelines." The Architectural Guidelines rules shall interpret and implement the provisions of this Declaration and Civil Code Section 4765 by setting forth the standards and procedures for the review and approval of proposed Improvements, provided that the Architectural Guidelines shall not violate the minimum standards required by this Declaration. In the event of any conflict between the Architectural Guidelines and this Declaration, the Declaration shall control. The Architectural Guidelines shall be consistent with the procedures set forth in **Section 5.5** of this Declaration.

#### **11.8 Owner Responsibility for Modification**

As a condition of approval for a requested architectural change or addition, an Owner, on behalf of himself or herself and his or her successors-in-interest, shall assume all responsibilities for maintenance, repair, replacement and insurance for such change or addition. At the discretion of the Board or the Committee, an Owner may be required to verify such assumption of responsibility by written instrument acknowledged by such Owner on behalf of himself or herself and all successors-in-interest.

#### **11.9 Waiver**

The architectural standards and the enforcement thereof may vary from one term of the Committee or Board to another term of the Committee or Board. These variances shall not

constitute a waiver by the Committee or the Board of the right to adopt and enforce architectural standards under this Section. No decision by the Committee or Board shall bind subsequent decisions of the Committee or Board when reviewing subsequent plans and specifications for Owners. Nothing in this **Section 8.10** shall permit the Committee or the Board to retroactively enforce the Architectural Guidelines against any Owner whose architectural change was previously approved by a former Committee or Board pursuant to the then-existing Architectural Guidelines.

#### **11.10 Inspection of Work**

With consent of the Owner, which consent shall not be unreasonably withheld, any member or authorized representative of the Committee may, at any reasonable hour and upon reasonable notice, enter any Lot and inspect any work which has been carried out with Committee approval in order to assure that the instructions in the Committee's approval have been followed. A request for inspection shall be made by an Owner within six (6) months after substantial completion of the Improvements. Such entry shall be made with as little inconvenience to the Owner as reasonably possible, and any damage caused thereby shall be repaired by the Association. If the Committee finds that such work was not performed in substantial compliance with the approved plans and specifications, it shall notify the Owner in writing of such noncompliance, specifying the particulars of noncompliance and shall require the Owner to remedy the same within thirty (30) days from the date of notification of such noncompliance. If the noncompliance is not corrected within thirty (30) days, the Board may use the procedure set forth in **Article XVI** of this Declaration.

#### **11.11 Nonliability of Association or Committee Members**

Neither the Association, the Board, the Committee, nor their designated representatives shall be liable for damages to any Owner submitting plans or specifications to them for approval, unless the damages are due to willful misconduct or bad faith on the part of the Association, Board, Committee or their representatives.

The Committee's approval or disapproval of a submission shall be based solely on the considerations set forth in the Association's Governing Documents. The Committee shall not be responsible for reviewing structural safety and conformance with building or other codes.

#### **11.12 Variances**

The Board shall be entitled to allow reasonable variances with respect to any restrictions in the Governing Documents in order to overcome practical difficulties, avoid unnecessary expense or prevent unnecessary hardships, provided that the following conditions are met: (a) If the requested variance will necessitate deviation from, or modification of, a property use restriction that would otherwise apply under these Governing Documents, the Board must conduct a hearing on the proposed variance after giving at least ten (10) days prior written notice to the Board and to all Lots within one hundred (100) feet of the Lot to which the variance applies. The Architectural Committee shall provide the Board with a recommendation regarding the variance request prior to the hearing. The Owners receiving notice of the proposed variance shall have thirty (30) days in which to submit written comments or objections, and (b) After the 30-day comment period the Board shall make a good faith determination that (i) the requested

variance does not constitute a material deviation from the overall plan and scheme of development within the Property or from any restriction contained herein or that the proposal allows the objectives of the violated requirement(s) to be substantially achieved despite noncompliance; or (ii) the variance relates to a requirement hereunder that it is unnecessary or burdensome under the circumstances; or (iii) the variance, if granted, will not result in a material detriment, or create an unreasonable nuisance, with respect to any other Lot, Common Area or Owner within the Property.

#### **11.13 Annual Architectural Procedures Disclosure**

The Association shall annually provide its Members with notice ~~of any~~ regarding requirements set forth in the Architectural Guidelines. The notice shall describe the types of changes that require Association approval and shall explain the procedure used to review and approve or disapprove a proposed change.

The Association shall give a copy of the Architectural Guidelines to each new homeowner and also have copies available in the office for anyone who requests a copy.

#### **11.14 Cease and Desist**

In the event unapproved architectural Improvements are commenced by or on behalf of an Owner or his or her tenant, the Association shall have the right to take immediate action to halt such activity, including issuing a cease and desist order and obtaining immediate judicial relief necessary to preserve the status quo.

## **ARTICLE XII INSURANCE**

### **12.1 Association Insurance**

The Association shall purchase, obtain and maintain the following types of insurance, if and to the extent they are available.

#### **12.1.1 Fire and Casualty**

The Association shall obtain and maintain a master or blanket policy of fire and casualty insurance, replacement cost basis, on all Common Areas and the Lots within the Property including the Residences and other structures located thereon except as provided in **Sections 9.2 and 9.10** of this Declaration. The insurance shall be kept in full force and effect at all times.

#### **12.1.2 Liability**

A comprehensive public liability insurance policy insuring the Association, its agents, and the Owners and occupants of the Lots and their respective family members, guests, invitees, and agents against any liability incident to the ownership or use of the Common Area or any other Association owned or maintained real or personal property.



### **12.1.3 Worker's Compensation**

Worker's compensation insurance to the extent required by law.

### **12.1.4 Directors and Officers Liability**

Directors and officers liability insurance.

### **12.1.5 Fidelity Bond**

Fidelity bond coverage for the Association's directors, officers, and employees in an amount that is equal to or more than the combined amount of the reserves of the Association and total assessments for three months. The Association's fidelity bond shall also include coverage for computer fraud and funds transfer fraud. If the Association uses a managing agent or management company, the Association's fidelity bond shall additionally include coverage for dishonest acts by that person or entity and its employees. (Civil Code Section 5806)

### **12.1.6 Other Insurance**

Such other insurance as the Board in its discretion considers necessary or advisable.

## **12.2 Scope of Coverage**

The Board shall have the sole authority to determine the amount, terms, and coverage of any policy required hereunder. The amount, terms, and coverage of policies other than casualty required hereunder (including the type of endorsements, the amounts of the deductible, the named insureds, the loss payees, standard Mortgagee clauses, and notices of changes or cancellations) shall be no less than that which is customary for similar policies on similar projects in the area, except that the Board will make every effort to obtain the minimum coverages set forth in Civil Code Section 5805(b) to protect Owners from being named as parties to a lawsuit in regard to actions arising out of personal injuries occurring on the Common Areas. Casualty coverage shall be a "bare-walls" policy, unless the Board, in its sole discretion, determines that it is in the best interests of the Association for the policy to include some or all of the interior building fixtures such as carpet, wall coverings, cabinetry, or other improvements. Unless included under the Association's policy, each Owner shall be responsible for insuring such items as interior building fixtures and personal property within their policy (commonly referred to as an ISO Form HO-6 Policy).

## **12.3 Insurance Trustee**

Each Owner appoints the Association, or any insurance trustee designated by the Association, to act on behalf of the Owners in connection with all insurance matters arising from any insurance policy maintained by the Association, including, without limitation, representing the Owners in any proceeding, negotiation, settlement, or agreements.

## **12.4 Waiver of Subrogation**

Any insurance maintained by the Association shall contain a waiver of subrogation as to the Association's officers, directors, members, and Owners of the Lots and Mortgagees, and, if obtainable, a cross-liability or severability of interest endorsement insuring each insured against liability to each other insured.



### **12.5 No Duplicate Insurance Coverage**

No Owner shall separately insure the structures located on their Lot against loss by fire or other casualty covered by any insurance carried by the Association. If any Owner violates this provision, any diminution in insurance proceeds otherwise payable under the Association's policies that results from the existence of such other insurance will be chargeable to the Owner who acquired other insurance.

### **12.6 Owner's Insurance Obligations**

Owners shall obtain and maintain (i) property insurance insuring their personal property and fixtures (if such fixtures are not insured under **Section 12.2**) located in their Lots against loss and (ii) personal liability insurance insuring the Owner against liability arising from the ownership, operation, maintenance and use of the Owner's Lot. In addition, any improvements made by, or acquired by, an Owner within the Residence located on the Lot shall be separately insured by an Owner, but the insurance is to be limited to the type and nature of coverage commonly known as tenant's improvements. Any Owner failing to purchase said insurance waives any claim he or she may have against the Association for damage to the interior of the Residence located on his or her Lot, arising out of negligence, nuisance, or breach of contract on the part of the Association, so long as the damage or loss would have been covered under a standard Homeowner Policy (HO-6) had it been in force at the time of the loss. Said policy shall include a waiver of subrogation rights as against the Association, if applicable.

### **12.7 Insurance Claim**

In the event water intrusion causes damage to the Residence interior, Owners must first submit a claim on their Lot Unit Owner policy, such as an HO-6. Only if coverage is denied under the Lot Unit Owner's policy or said carrier requires tender to the Association's master policy, shall the Owner be permitted to submit said claim to the Association's master policy.

### **12.8 Insurance Deductible**

The amount of the deductible portion of any insurance coverage maintained by the Association shall be established in the reasonable discretion of the Board. In the event a claim is made against the insurance policy maintained by the Association, and proceeds from that policy are used to repair damage, the responsibility for the deductible shall be as follows:

#### **12.8.1 Damage Due to Act or Omission**

If the damage results from the act or omission of the Owner, whether such act or omission is negligent or willful, then the Owner shall be responsible for the deductible. If the damage results from the act or omission of the Association, whether such act or omission is negligent or willful, then the Association shall be responsible for the deductible.

#### **12.8.2 Damage from Owner-Maintained Item**

If the damage results from the failure of a component that the Owner is obligated to maintain or the point of origin of the cause of the damage was located in the Owner's Lot, and

regardless of whether the damages result from the Owner's negligence, such Owner shall be responsible to pay the deductible.

#### **12.8.3 Damage from Association-Maintained Item**

If the damage results from an item, the maintenance of which is the responsibility of the Association, the Association shall be responsible for the deductible.

#### **12.8.4 Damage from Multiple Sources**

If the damage results from more than one source, the responsibility for the deductible shall be allocated based on the percentage of fault.

#### **12.9 Annual Insurance Review**

The Board shall review the insurance carried by or on behalf of the Association at least annually for the purpose of determining if such insurance is adequate. Such responsibility may be performed and shall be deemed reasonably performed by the Board requesting the Association's insurance agent to verify that the insurance policies in existence meet the needs of the Association.

#### **12.10 Failure to Acquire Insurance**

The Association, and its directors and officers, shall have no liability to any Owner or Mortgagee if, after a good faith effort, it is unable to obtain any insurance required hereunder. Because the insurance is no longer available or, if available, can be obtained only at a cost that the Board, in its sole discretion, determines is unreasonable under the circumstances, or the Owners fail to approve any Assessment increase needed to fund the insurance premiums. In such event, the Board promptly shall notify each Owner and any Mortgagee entitled to notice that the specific insurance will not be obtained or renewed. In making a determination as to whether to acquire any such insurance, the Board may base its decision upon, among other things, a vote of the Owners.

#### **12.11 Coverage for Common Areas**

Notwithstanding any provisions contained in this Declaration to the contrary with regard to allocation of maintenance responsibilities between Owners and the Association, the Association shall obtain and provide casualty coverage as set forth in Section 9.1 of this Declaration.

### **ARTICLE XIII DAMAGE OR DESTRUCTION**

#### **13.1 Destruction; Proceeds Exceed or are Less than 85 Percent of Reconstruction Costs**

If there is a total or partial destruction of the improvements in the Development, and if the available proceeds of the insurance carried plus reserve account funds designated for the repair or replacement of capital improvements which have been damaged are sufficient to cover not less than eighty-five percent (85%) percent of the costs of repair and reconstruction, the improvements shall be promptly rebuilt unless, within ninety (90) days from the date of

destruction, Owners then holding at least seventy-five percent (75%) of the total voting power of Owners present and entitled to vote, in person or by proxy, at a duly constituted meeting or voting by written ballot, determine that repair and reconstruction shall not take place. If such funding is less than eighty-five percent (85%) of the costs of repair and reconstruction, the require vote to not proceed with repair and reconstruction would be at least sixty-six and two-thirds percent (66 2/3%) of the total voting power of Owners present and entitled to vote. If such a meeting is called, the Association shall solicit and obtain bids from at least two reputable contractors to repair and reconstruct the improvements in accordance with the original plans and shall present this information to the Owners at the meeting. If repair and reconstruction is to take place the Association shall be required to execute, acknowledge, and record in the office of the County Recorder of the County not later than one hundred twenty (120) days from the date of destruction, a certificate declaring the intention of the Owners to rebuild.

### **13.3 Apportionment of Assessments**

If the Owners determine to rebuild pursuant to **Sections 14.1 and 14.2**, each Owner shall be obligated to contribute his or her equal share of the cost of reconstruction or restoration over and above the available insurance proceeds. The Association may levy a Special Assessment equal to the cost of restoration or reconstruction over and above the insurance proceeds, which may be enforced under the lien provisions contained in **Article IV** or in any other manner provided in this Declaration.

### **13.4 Rebuilding Contract**

If the Owners determine to rebuild, the Board or its authorized representative shall, after obtaining bids from at least two (2) reputable contractors as required by the paragraphs above, award the repair and reconstruction work to the bidder of the Board's choice who meets the requirements set forth by the Board in soliciting bids. The Board shall have the authority to enter into a written contract with the contractor for the repair and reconstruction, and the insurance proceeds held by the trustee shall be disbursed to this contractor according to the terms of the contract. It shall be the obligation of the Association to take all steps necessary to assure the commencement and completion of authorized repair and reconstruction at the earliest possible date.

### **13.5 Rebuilding Not Authorized**

If the Owners determine not to rebuild, then, subject to the rights of Mortgagees, any insurance proceeds then available for such rebuilding shall be distributed to each Owner (of an uninhabitable damaged residence which is not to be rebuilt) according to the relative fair market values of his or her Lot. The Board shall select an independent appraiser who shall be a Member of the Society of Real Estate Appraisers ("SREA") or other nationally recognized appraisers' organization and who shall determine such relative values in accordance with the standards of such organizations as of a date immediately prior to such destruction. The Association shall have the duty, within 120 days from the date of destruction, to execute, acknowledge, and record in the office of the County Recorder of the County, a certificate declaring the intention of the Owners not to rebuild.

### **13.6 Minor Repair and Reconstruction**

The Association shall have the duty to repair and reconstruct improvements, without the consent of Owners and irrespective of the amount of available insurance proceeds, in all instances of partial destruction where the estimated cost of repair and reconstruction does not exceed Twenty Thousand Dollars (\$20,000.00) in the case of Common Area improvements. The Association can levy a special Assessment for the cost of repairing and reconstructing improvements to the extent insurance proceeds are unavailable, such Assessment to be levied as described in **Section IV**, but without the consent or approval of Owners, despite any contrary provisions in this Declaration.

## **ARTICLE XIV CONDEMNATION**

### **14.1 Association as Trustee for Owner**

If all or part of the Common Area shall be taken or condemned by any authority having the power of eminent domain, all compensation and damages for or on account of the taking of the Common Area, exclusive of compensation for consequential damages to certain affected Lots, shall be payable to the Association as trustee for all Owners and Mortgagees according to the loss or damages to their respective interest in the Common Area. The Association, acting through its Board, shall have the right to act on behalf of the Owners with respect to the negotiation, settlement and litigation of the issues with respect to the taking and compensation affecting the Common Area. Each Owner hereby designates and appoints the Association as his or her attorney-in-fact for such purposes.

## **ARTICLE XV DISPUTE RESOLUTION AND ENFORCEMENT**

### **15.1 Introduction**

This Article sets forth the methods available to the Board and membership for resolving disputes within the Association along with the Association's powers of enforcement of the Governing Documents.

### **15.2 Informal Notice of Violation**

The Board may authorize the issuance of an informal written notice of violation to be sent to any Owner or any resident therein who is violating a provision of the Governing Documents. The notice shall advise the Owner of the violation and request the Owner's voluntary cooperation in correcting the violation.

### **15.3 Disciplinary Proceedings**

The Board may take the following actions against any person or entity whose act or failure to act violates or threatens to violate any provision of the Governing Documents: (1) impose monetary penalties, including late charges and interests; (2) suspend voting rights in the Association until the violation has been cured; and (3) suspend use privileges for Common Area recreational facilities until the violation has been cured.

The determination of whether to impose any of the foregoing sanctions shall be within the sole discretion of the Board. The Board shall substantially comply with the due process requirements provided in Section 8.5 of the Bylaws before imposing any of the foregoing penalties.

#### **15.4 Internal Dispute Resolution Procedure**

The procedures set forth herein are for the purpose of resolving a dispute between the Association and Member involving their rights, duties or liabilities under the Governing Documents or the California Non-Profit Mutual Benefit Corporation Law. Either party to a dispute may invoke the following procedure.

##### **15.4.1 Meet and Confer**

The party may request the other party to meet and confer in an effort to resolve the dispute. The request shall be in writing.

##### **15.4.2 Rights to Meet and Confer**

A member of an Association may refuse a request to meet and confer. The Association may not refuse a request to meet and confer.

##### **15.4.3 Designation of Representative**

The Board shall designate at least one (1) member of the Board to meet and confer.

##### **15.4.4 Timeliness of Meeting**

The parties shall meet promptly at a mutually convenient time and place, explain their positions to each other and confer in good faith and in an effort to resolve the dispute.

##### **15.4.5 Agreement in Writing**

A resolution of the dispute agreed to by the parties shall be memorialized in writing and signed by the parties, including the Board designee on behalf of the Association.

##### **15.4.6 Agreement Judicially Enforceable**

An agreement reached under **Section 12.4** herein binds the parties and is judicially enforceable when it meets the requirements set forth in Civil Code Section 5915(c).

#### **15.5 Alternative Dispute Resolution Procedure**

Prior to the commencement of an enforcement action, the party initiating the case shall comply with Civil Code Sections 5925 through 5945 by serving a Request for Resolution on the other party in accordance with the statute.

#### **15.6 Litigation**

The Association or any Member shall have the right to enforce the Governing Documents by proceedings at law or in equity, including the right to prevent the violation of the Governing Documents, and/or the right to recover damages or other dues for such violation; provided, however, that the Association shall have the exclusive right to enforce Assessment liens. In any

action to enforce the Governing Documents, the prevailing party shall be entitled to an award of reasonable attorney fees and court costs.

### **15.7 Immediate, Temporary Relief**

Nothing in this Article shall be construed to prevent the Association or any Member from obtaining immediate, temporary judicial relief such as a temporary restraining order or other means necessary to preserve the status quo, pending compliance with the provisions of this Article or applicable law.

## **ARTICLE XVI RIGHTS OF LENDERS**

### **16.1 General**

Any Lot Owner may encumber his Lot by deed of trust or mortgage. The beneficiary of the deed of trust or the mortgagee of a mortgage is referred to in this Article as a "lender."

### **16.2 Breach of Restated Declaration**

A breach of any of the provisions of this Restated Declaration shall not affect or impair the lien or charge of any bona fide deed of trust or mortgage made in good faith and for value encumbering any of the Dwelling Units. A lender who acquires title to an Owner's Lot by foreclosure or deed in lieu of foreclosure shall not be obligated to cure any breach of this Restated Declaration which cannot be corrected or is of a type which is not practical or feasible to correct.

### **16.3 Loan After Foreclosure**

It is intended that any loan to facilitate the resale of any Dwelling Unit after foreclosure or deed in lieu of foreclosure is a loan made in good faith and for value and entitled to all of the rights and protection afforded to other lenders.

### **16.4 Unpaid Dues or Charges**

Where the lender of a first mortgage of record or other purchaser of a Dwelling Unit obtains title to the same pursuant to the remedies in the mortgage or as a result of foreclosure, such acquirer of title; his successors and assigns, shall not be liable for the share of the common expenses or assessments made by the Association chargeable to such Dwelling Unit which became due prior to the acquisition of title to such Dwelling Unit by such acquirer. Such unpaid share of common expenses or assessments shall be deemed to be common expenses collectible from all of the Dwelling Units including such acquirer, his successors and assigns.

### **16.5 Appearance at Meetings**

Because of its financial interest in the Development, a lender may appear at meetings of the voting Owners and of the Board of Directors to present objection if control or corrective measures to violations of this Restated Declaration have not been enforced.

#### **16.6 Furnish Information**

A lender is authorized to furnish information to the Board of Directors concerning the status of any loan encumbering a Lot.

#### **16.7 Insurance Clauses**

All applicable fire and extended coverage insurance policies shall contain loss payable clauses naming the lenders who encumber Lots by deed of trust or mortgage, as their interests may appear.

#### **16.8 Conflict**

If there is any conflict between any provision of this Article and any other provision in this Restated Declaration, the language contained under this Article shall control.

### **ARTICLE XVII GENERAL PROVISIONS**

#### **17.1 Severability**

Invalidation of any one of these covenants, conditions and restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

#### **17.2 Term**

The covenants, conditions and restrictions of this Declaration shall run with and bind the Development, and inure to the benefit of and shall be enforceable by the Association or any Owner, their respective legal representatives, heirs and successors and assigns for a period of thirty (30) years from the date this Declaration is recorded after which time they shall be automatically extended for successive periods of ten (10) years, unless an instrument in writing, signed by two-thirds ( $\frac{2}{3}$ ) of the then Owners, has been recorded agreeing to terminate this Declaration.

#### **17.3 Construction**

The provisions of this Declaration shall be liberally construed to effectuate its purposes of creating a uniform plan for the maintenance of a residential community of common recreational facilities and Common Areas. Paragraph headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction.

#### **17.4 Amendments**

This Declaration may be amended by the affirmative vote of Members representing a majority of a quorum, and the amendment shall become effective upon the recording within the Office of the County Recorder of San Diego County, California. For purposes of this section, a quorum consists of a majority of the total voting power of the Association.

### **17.5 Singular Includes Plural**

Whenever the context of this Declaration requires same, the singular shall include the plural and the masculine shall include the feminine.

### **17.6 Nuisance**

The result of every act or omission whereby any covenant contained in this Declaration is violated in whole or in part is hereby declared to be a nuisance, and every remedy against nuisance, either public or private, shall be applicable against every such act or omission.

### **17.7 Waiver**

The failure of any Owner, the Board, the Association, or its officers or agents to enforce any of the provisions set forth 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 upon the Association or the Board, or any of its officers or agents.

### **17.8 Cumulative Remedies**

Each remedy provided for in this Declaration shall be cumulative and not exclusive.

### **17.9 Conflict of Governing Documents**

If there is an inconsistency between the Articles and the Declaration, the Declaration controls. If there is any inconsistency between the Bylaws and the Articles, the Articles will control. The Association Rules cannot include a provision that is inconsistent with the Declaration, Articles or Bylaws.

### **17.10 Joint and Several Liability**

In the case of joint ownership of a Lot, the liability of each of the Owners thereof in connection with the liabilities and obligations of Owners set forth in or imposed by this Declaration shall be joint and several.

### **17.11 Annexation Pursuant to Approval**

Upon the vote or written consent of not less than sixty-seven percent (67%) of the Association voting power, any person who desires to add real property to the plan of this Declaration and to subject such property to the jurisdiction of the Association may file of record a supplementary declaration. A certificate of the president and secretary of the Association attached to any supplemental declaration recorded pursuant to this Section verifying that the required sixty-seven percent (67%) of the Association voting power has approved the recordation of such supplementary declaration shall be deemed conclusive proof thereof.

### **17.12 Statutory Changes; Conflicts; No Liability for Following Law**

Many provisions of this Declaration are drafted to comply with current California law applicable to the operation of a common interest subdivision. Provisions of these laws can and likely will change. In the event a law changes, the following shall apply:



**17.12.1 Successor Law Supersedes this Declaration**

In the event a law change supersedes provisions of this Declaration, such changed law shall control over provisions of this Declaration that conflict with the successor law.

**17.12.2 Changed Law Allows Declaration to Prevail**

If the changed law does not conflict with the provisions of this Declaration, this Declaration shall control.

**17.12.3 Changed Law Deletes Provisions Repeated in this Declaration**

If the changed law deletes any statutory requirement repeated in this Declaration, the Board may, after not less than thirty (30) days' notice to the Owners, record an amendment revising the provision of this Declaration affected by the new law to conform with the language of the new law. Such amendment to restate, verbatim, changed laws does not need to comply with the Owner approval requirements set forth in **Section 14.4**.

**17.12.4 No Liability for Following Changed Law**

Provided any federal, state or local statute, law or ordinance is inconsistent with any provision of this Declaration, and compliance with that statute, law or ordinance is mandatory, neither the Association, the Board, nor any director thereof, shall have any liability for complying with the federal, state or local statute, law or ordinance rather than with the inconsistent provision(s) of this Declaration.

**17.13 Non-Liability**

The Association shall not be liable to any Owner or his or her tenants, guests, or others, for damage to or loss of any real or personal property, or the cost or repair or replacement of any damaged property or portions of such Owner's Lot or Exclusive Use Common Area, unless such damage is caused by the gross-negligence of the Association, its Board, officers, agents, or employees.

IN WITNESS WHEREOF, *Carol Fineman* and *John F. Vogt*  
hereby declare under penalty of perjury under the laws of the State of California as required under Civil Code Section 4270(a) that:

(a) We are the President and Secretary, respectively, of the Oceanside Community Association, a California nonprofit mutual benefit corporation; and

(b) The foregoing 2020 Amended and Restated Declaration of Covenants, Conditions and Restrictions of the Oceanside Community Association was approved by the requisite percentage of the Members of the Association and if applicable, of the Eligible Mortgage Holders.

Dated: 12-4-2020

Carol A. Finkas  
Carol A. Finkas President  
OCEANSIDE COMMUNITY ASSOCIATION

Dated: 12-4-2020

John F. Vogt  
John F. Vogt, Secretary  
OCEANSIDE COMMUNITY ASSOCIATION

ACKNOWLEDGMENT

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

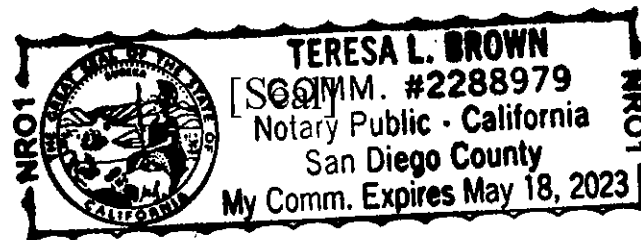
State of California )  
: s.s.  
County of San Diego )

On December 4<sup>2020</sup>, before me, Teresa L. Brown a Notary Public, personally appeared Carol A. Finkas, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

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

WITNESS my hand and official seal.

Teresa L. Brown





## **EXHIBIT A**

### **LEGAL DESCRIPTION OF THE DEVELOPMENT**

#### **Oceana Unit No. I**

Lots 1 to 52, inclusive, of Oceana, Unit No. I, City of Oceanside, county of San Diego, state of California, according to Map thereof No. 4155, filed in the Office of the County Recorder of said San Diego County, on April 9, 1963.

#### **Oceana Unit NO. I-A**

Lots 1 to 13, inclusive, of Oceana, Unit No. I, City of Oceanside, county of San Diego, state of California, according to Map thereof No. 5990, filed in the Office of the County Recorder of said San Diego County, on November 15, 1967.

#### **Oceana Unit No, II**

Lots 1 to 75, inclusive, of Oceana, Unit No. II, city of Oceanside, County of San Diego, State of California, according to Map thereof No. 5356, filed in the Office of the County Recorder of said San Diego County, on March 6, 1964.

#### **Oceana Unit No. III**

Lots 1 to 44, inclusive, of Oceana, Unit No. , city of Oceanside, County of San Diego, State of California, according to Map thereof No. 5413, filed in the Office of the county Recorder of said San Diego County, on July 2, 1964.

#### **Oceana Unit No. IV**

Lots 1 to 47, inclusive, of Oceana, Unit No. IV, city of Oceanside, county of San Diego, state of California, according to Map thereof No. 5430, filed in the Office of the County Recorder of said San Diego County, on July 24, 1964.

#### **Oceana Unit No. V**

Lots 1 to 84, inclusive, of Oceana, Unit No. V, city of Oceanside, County of San Diego, State of California, according to Map thereof No. 5460, filed in the Office of the County Recorder of said San Diego County, on Sept 3, 1964.

#### **Oceana Unit No. VI**

Lots 1 to 66, inclusive, of Oceana, Unit No. VI, City of Oceanside, County of San Diego, State of California, according to Map thereof No. 5539, filed in the Office of the county Recorder of said San Diego County, on February 26, 1965.

#### **Oceana Unit No. VII**

Lots 1 to 63, inclusive, of Oceana, Unit No. VII, City of Oceanside, County of San Diego, State of California, according to Map thereof No. 6107, filed in the Office of the County Recorder of said San Diego County, on May 16, 1968.

Oceana Unit No. VII-A

Lots 1 to 6, inclusive, of Oceana, Unit No. VII-A, City of Oceanside, County of San Diego, State of California, according to Map thereof No. 6106, filed in the Office of the County Recorder of said San Diego County, on May 16, 1968.

Oceana Unit No. VIII

Lots 1 to 113, inclusive, of Oceana, Unit No. VIII, City of Oceanside, County of San Diego, State of California, according to Map thereof No. 5619, filed in the Office of the County Recorder of said San Diego County, on August 26, 1965.

Oceana Unit No. IX

Lots 1 to 106, inclusive, of Oceana, Oceanside, County of San Diego, State of Map thereof No. 5727, filed in the Office said San Diego County, on May 5, 1966.

Oceana Unit No. X

Lots 1 to 36, inclusive, of Oceana, Unit No. X, City of Oceanside, County of San Diego, State of California, according to Map thereof No. 6203, filed in the Office of the county Recorder of said San Diego County, on October 9, 1968.

Oceana Unit No. XI

Lots 1 to 78, inclusive, of Oceana, Unit No. XI, City of Oceanside, County of San Diego, State of California, according to Map thereof No. 6333, filed in the Office of the County Recorder of said San Diego County, on April 8, 1969.

Oceana Unit No. XII

Lots 1 to 99, inclusive, of Oceana, Unit No. XII, City of Oceanside, County of San Diego, state of California, according to Map thereof No. 6404, filed in the Office of the County Recorder of said San Diego county, on June 26, 1969.

Oceana Unit No. XIV

Lots 1 to 65, inclusive, of Oceana, Unit No. XIV, City of Oceanside, County of San Diego, state of California, according to Map thereof No. 6650, filed in the Office of the County Recorder of said San Diego County, on May 22, 1970.

## **EXHIBIT B**

### **COMMON AREAS OF THE DEVELOPMENT**

#### Oceana Unit No. I

Lot 52 of Oceana, Unit No. I, City of Oceanside, County of San Diego, State of California, according to Map- thereof No. 4155, filed in the Office of the County Recorder of said San Diego County, on April 9, 1963.

#### Oceana Unit No. I-A

Lot 13 of Oceana, Unit No. I-A, City of Oceanside, County of San Diego, State of California, according to Map thereof No. 5990, filed in the Office of the County Recorder of said San Diego County, on November 15, 1967.

#### Oceana Unit No. II

Lot 75 of Oceana, Unit No. II, City of Oceanside, County of San Diego, State of California, according to Map thereof No. 5356, filed in the Office of the County Recorder of said San Diego County, on March 6, 1964.

#### Oceana Unit No. III

Lot 44 of Oceana, Unit No. III, City of Oceanside, County of San Diego, State of California, according to Map thereof No. 5413, filed in the Office of the County Recorder of said San Diego County, on July 2, 1964.

#### Oceana Unit No. IV

Lot 47 of Oceana, Unit No. IV, City of Oceanside, County of San Diego, State of California, according to Map thereof No. 5430, filed in the Office of the County Recorder of said San Diego County, on July 24, 1964.

#### Oceana Unit No. V

Lot 84 of Oceana, Unit No. V, City of Oceanside, County of San Diego, State of California, according to Map thereof No. 5460, filed in the Office of the County Recorder of said San Diego County, on September 3, 1964.

#### Oceana Unit No. VI

Lot 66 of Oceana, Unit No. VI, City of Oceanside, County of San Diego, State of California, according to Map thereof No. 55 3 9, filed in the Office of the County Recorder of said San Diego County, on February 26, 1965.

Oceana Unit No. VII

Lot 63 of Oceana, Unit No. VII, City of Oceanside, County of San Diego, State of California, according to Map thereof No. 6107, filed in the Office of the County Recorder of said San Diego County, on May 16, 1968.

Oceana Unit No. VII-A

Lot 6 of Oceana, Unit No. VII-A, City of Oceanside, County of San Diego, State of California, according to Map thereof No. 6106, filed in the Office of the County Recorder of said San Diego County, on May 16, 1968.

Oceana Unit No. VIII

Lot 113 of Oceana, Unit No. VIII, City of Oceanside, County of San Diego, State of California, according to Map thereof No. 5619, filed in the Office of the County Recorder of said San Diego County, on August 26, 1965.

Oceana Unit No. IX

Lot 106 of Oceana, Unit No. IX, City of Oceanside, County of San Diego, State of California, according to Map thereof No. 5727, filed in the Office of the County Recorder of said San Diego County, on May 5, 1966.

Oceana Unit No. X

Lot 36 of Oceana, Unit No. X, City of Oceanside, County of San Diego, State of California, according to Map thereof No. 6203, filed in the Office of the County Recorder of said San Diego County, on October 9, 1968.

Oceana Unit No. XI

Lot 78 of Oceana, Unit No. XI, City of Oceanside, County of San Diego, State of California, according to Map thereof No. 6333, filed in the Office of the County Recorder of said San Diego County, on April 8, 1969.

Oceana Unit No. XII

Lot 99 of Oceana, Unit No. XII, City of Oceanside, County of San Diego, state of California, according to Map thereof No. 6404, filed in the Office of the County Recorder of said San Diego county, on June 26, 1969.

Oceana Unit No. XIV

Lot 65 of Oceana, Unit No. XIV, City of Oceanside, County of San Diego, state of California, according to Map thereof No. 6650, filed in the Office of the County Recorder of said San Diego County, on May 22, 1970.



EXHIBIT "C" - MAINTENANCE LIST

The following is a listing of the items within the Project, the maintenance, repair and replacement duty for which Owners and the Association are responsible in accordance with Article VI, section 3 of the Declaration.

	COMPONENT(S)	OWNER	ASSOC.
1.	Air conditioning System - Each Dwelling unit	X	
2.	Appliances - Built-in & Free Standing	X	
3.	Bearing walls, Non-bearing Walls, Studs, Frames, Tie-downs, other Structural items	X	
4.	Cement block walls in units 8 & 9		X
5.	Carpeting - in Dwelling Units	X	
6.	Driveways/Parking Space - Concrete and Asphalt surfaces in Common Area		X
7.	Caulking - Exterior (during regular scheduled painting, exclusive of window glazing and homeowner additions)		X
8.	Calking - interior	X	
9.	Common Area Improvements		X
10.	Crawl Spaces in Attic (including personal contents)	X	
11.	Doorbell - All components	X	
12.	Drainage Systems (e.g. ditches, catch basins, and all below ground components)		X
13.	Drains - Bathtubs, Showers, Sinks	X	
14.	Drains - Curbs & Yards		X
15.	Dryer Vents - Cleaning & Repair	X	
16.	Drywall - Damage Repairs (e.g. cracks, inside minor localized water damage, dents, holes, etc.)	X	
17.	Drywall - Interior - Replace	X	
18.	Electrical Panel/Circuit Breakers/Interior	X	
19.	Electrical Switches, Sockets, Wall Plates - Interior	X	
20.	Electrical Wiring - From Meter to Interior & all inside house	X	
21.	Exhaust Fans	X	
22.	Fences & Gates - Exclusive Use Area, Divider fences	X	

23.	Fireplace & Chimney	x	
24.	Front Entry Landings in Common Area		x
25.	Front Entry Landings on Lot	x	
26.	Furnace - Dwelling Unit Systems	x	
27.	Garage Door Openers & Hardware	x	
28.	Garage/Carport - Common Area Private Use: All structural components		x
29.	Garage/Carport - Common Area Private Use: Homeowner interior changes	x	
30.	Garage/Carport - within the footprint of the homeowner's lot: Exterior stucco and painting		x
31.	Garage/Carport - within the footprint of the homeowner's lot: All maintenance and repairs, inclusive of termite treatment and related damage	x	
32.	Garage and Carport Roofs Units 1, 1A, 2, 3, 4, 5, 6, 8 & 9		x
33.	Garage and Carport Roofs Units 7, 10, 11, 12 & 14	x	
34.	Garbage Disposal	x	
35.	Gas Lines from Meter into House, Inside House	x	
36.	Glass	x	
37.	Gutters & Downspouts - components above ground	x	
38.	House Doors - All Components	x	
39.	Insulation	x	
40.	Landscaping - Common Area		x
41.	Landscaping - Enclosed Yards/Patio	x	
42.	Lighting Fixtures - Common Areas		x
43.	Lighting Fixtures - Homeowner Controlled	x	
44.	Linoleum & Vinyl Flooring - Inside Dwelling Units	x	
45.	Owner Installed Improvements	x	
46.	Painting - Interior	x	
47.	Painting - Exterior, With Scheduled Contract		x
48.	Plumbing Lines - Interior / owner-modified exterior	x	

49.	Plumbing Lines - Domestic Water Service in Common Area up to the Association Valve		X
50.	Pressure Regulators, Owner Shut Off Valve	X	
51.	Railings - Common Areas		X
52.	Roofs on Dwelling Units - Including Fascia Board	X	
53.	Sewer Lines - Exterior up to the Association Cleanout*		X
54.	Sewer Lines - Interior Dwelling to the Association Cleanout <sup>1</sup>	X	
55.	Slab (Including Patio Slabs)	X	
56.	Spraying for Household Pests (Ants, Fleas, etc.)	X	
57.	Spraying for Landscape Pests - Common Area		X
58.	Stucco Repair & Replacement		X
59.	Termites (wood-destroying pests and organisms) and related damage	X	
60.	Toilets - Wax Ring, Fixtures & Components	X	
61.	Water Heaters	X	
62.	Water Softeners	X	
63.	Water Intrusion Damage - HOA-maintained failure <sup>2</sup>		X
64.	Water Intrusion Damage - Owner-maintained failure <sup>3</sup>	X	
65.	Waterproofing - Sealing Walls, Foundations, Window Calking, Patio Walls, etc.	X	
66.	Window and Door - Glass, Flashing/Waterproofing, Frames, Hardware	X	
67.	Window and Slider Screens	X	
68.	Wiring - Telephone, TV, Internet	X	

<sup>1</sup> See also OCA Root Invasion Policy

<sup>2</sup> See also OCA Water Intrusion Policy

<sup>3</sup> See also OCA Water Intrusion Policy