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PETERS & FREEDMAN, L.L.P.  
191 Calle Magdalena, Suite 220  
Encinitas, California 92024  
Telephone: (760) 436-3441

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**SECOND RESTATED DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
OF  
OCEANA CONDOMINIUM OWNERS ASSOCIATION  
CITY OF OCEANSIDE, COUNTY OF SAN DIEGO  
STATE OF CALIFORNIA**

If this document contains any restriction based on race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, familial status, marital status, disability, 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.

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**SECOND RESTATED**  
**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**  
**OF**  
**OCEANA CONDOMINIUM OWNERS ASSOCIATION**

The Amended and Restated Declaration of Covenants, Conditions and Restrictions of OCEANA CONDOMINIUM OWNERS ASSOCIATION, recorded in the official records of San Diego County, California, on September 22, 1986, as Instrument No. 86-418495; Amendments to Amended and Restated Declaration of Covenants, Conditions and Restrictions, recorded in the official records of San Diego County, California, on May 28, 1999, as Instrument No. 1999-0371467 (collectively referred to herein as "First Restated Declaration") and any other amendments not specifically set forth herein but recorded prior to the date of the recording of this instrument, is hereby superceded, amended and restated in its entirety to read as follows:

**RECITALS**

(A) The First Restated Declaration established OCEANA CONDOMINIUM OWNERS ASSOCIATION ("Association") to oversee, manage, maintain and operate the real property ("Project") subject to the First Restated Declaration, plus all annexations to the Project. The Project subject to this Declaration is legally described in Exhibit "A" to this Second Restated Declaration.

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

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

(D) The Association now desires to amend and restate the First Restated Declaration and replace it in its entirety with this Second Restated Declaration, and that upon recordation of same, the Project shall be subject to the covenants, conditions, restrictions, rights, reservations, easements, equitable servitudes, liens and charges contained herein which shall run with the Project and be binding on all parties having or acquiring any right, title or interest in the Project, or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

(E) The Project is a "Senior Citizen Housing Community" as authorized by *Civil Code* Sections 51.3 et seq.



## ARTICLE 1

### DEFINITIONS

**Section 1.1.** "Architectural Control Committee" means the committee created in accordance with Article 7 of this Declaration.

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

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

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

**Section 1.5.** "Beneficiary" means a Mortgagee under a Mortgage or, as the case may be, the beneficiary of or holder of a note secured by a Deed of Trust, and/or the assignees of such Mortgagee, beneficiary or holder.

**Section 1.6.** "Board of Directors" or "Board" means the Board of Directors of the Association.

**Section 1.7.** "Bylaws" means the Bylaws of the Association, as such Bylaws may be amended from time to time.

**Section 1.8.** "City" means the City of Oceanside and its various departments, divisions, employees and representatives.

**Section 1.9.** "Common Area" means the entire Project, except all Condominiums, as defined in this Article and shown on the Condominium Plan. Unless the context clearly indicates a contrary intention, any reference herein to the "Common Area" shall also include any Common Facilities located thereon. As more particularly described in Article 1, Section 1.18, portions of the Common Area are designated as Exclusive Use Common Area whose use and enjoyment are restricted to the Owners and occupants of the Unit adjacent to such Exclusive Use Common Area.

**Section 1.10.** "Common Expense" means any use of Association funds authorized in the Governing Documents and includes, without limitation:

(A) All expenses or charges incurred by or on behalf of the Association for the management, maintenance, administration, insurance, operation, repairs, additions, alterations or reconstruction of the Common Area, Common Facilities that the Association is obligated to maintain or repair;

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

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

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

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

**Section 1.11.** "Common Facilities" means the swimming pool, spa, parking spaces, driveway, clubhouse, lobby, restrooms, maintenance shed, entry gate, trees, hedges, plantings, lawns, shrubs, landscaping, fences, utilities, beams, lighting fixtures, structures and other facilities constructed or installed, or to be constructed or installed, or currently located within the Common Area.

**Section 1.12.** "Condominium" means an estate in real property as described in the *Civil Code* consisting of a separate fee simple interest in the space within a Unit, and an undivided fractional interest as a tenant in common in all or any portion of the Common Area.

**Section 1.13.** "Condominium Building" shall mean and refer to a separate residential building containing one or more Units.

**Section 1.14.** "Condominium Plan" means any condominium plan and amendments thereto recorded for any phase of the Project, pursuant to the *Civil Code*.

**Section 1.15.** "County" means the County of San Diego, State of California, and its various departments, divisions, employees and representatives.

**Section 1.16.** "Declaration" means this instrument, including all of the Exhibits referred to herein (all of which shall be deemed incorporated herein by reference), as the same may be amended from time to time. The "First Restated Declaration" means and refers to the document referenced in the preamble to this Declaration.

**Section 1.17.** "Deed of Trust" or "Trust Deed" means a Mortgage or a Deed of Trust, as the case may be.

**Section 1.18.** "Exclusive Use Common Area" or "Limited Common Area" shall mean any portion of the Common Area designated by this Declaration and/or the Condominium Plan for the exclusive use of one or more, but fewer than all, of the Owners of the separate interests and which is or will be appurtenant to the separate interests or interest and shall consist of Patios, Balconies (including the railings) and Carport (including the storage cabinets). Unless otherwise provided herein or on the Condominium Plan, any shutters, awnings, windowboxes, door steps, doorsteps,

entryways, exterior doors, exterior door frames and hardware incident thereto, screens and windows or other fixtures designed to serve a single separate interest, but located outside the boundaries of the separate interests, are Exclusive Use Common Area. Internal and exterior wiring designed to serve a single separate interest, are exclusive use areas allocated exclusively to that separate interest. As set forth in the Condominium Plan, these Exclusive Use Common Area elements have specific boundaries. Therefore, the foregoing shall not be construed as determining maintenance responsibilities of the Owners and Association. The specific maintenance responsibilities are set forth in Article 10 of this Declaration.

**Section 1.19.** "Governing Documents" is a collective term that means and refers to the Declaration, Articles, Bylaws, Rules and Regulations, Architectural Guidelines, and any policies and procedures adopted by the Board.

**Section 1.20.** "Member" means every person or entity who holds a membership in the Association and whose rights as a Member are not suspended pursuant to Article 3, Section 3.2(D) hereof.

**Section 1.21.** "Mortgage" means any security device encumbering all or any portion of the Project, including any Deed of Trust. "Mortgagee" shall refer to the beneficiary of, or the holder of a note secured by a first Deed of Trust (Trust Deed) or, as the case may be, the Mortgagee under a first mortgage, and/or the assignee of such beneficiary, holder or Mortgagee.

**Section 1.22.** "Officer" means the President, Vice-President, Secretary, Treasurer of the Association, or any subordinate Officers, as set forth in the Bylaws.

**Section 1.23.** "Owner" means any person, firm, corporation or other entity which owns a fee simple interest (as recorded in the official records of the Office of the County Recorder) in a Condominium, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

**Section 1.24.** "Project" or "Real Property" means all parcels of real property (Common Area, Exclusive Use Common Area and Units) described and identified in Recital "A" hereof, together with all buildings, structures, utilities, Common Facilities, and all other improvements now located or hereafter constructed or installed thereon, and all appurtenances thereto.

**Section 1.25.** "Regular Assessment" means an Assessment levied against an Owner and his or her Condominium in accordance with Article 5, Section 5.3, hereof.

**Section 1.26.** "Reimbursement Assessment" means an Assessment levied against an Owner and his or her Condominium in accordance with Article 5, Section 5.5 hereof.

**Section 1.27.** "Residential Use" means occupancy and use of a Unit for dwelling purposes in conformity with this Declaration and the requirements imposed by applicable zoning or other applicable laws or governmental regulations limiting the number of persons who may occupy residential dwellings.

**Section 1.28.** "Rules and Regulations" means the rules, regulations and policies adopted by the Board of Directors of the Association, pursuant to the *Civil Code* and this Declaration, as the same may be in effect from time to time.

**Section 1.29.** "Special Assessment" means an Assessment levied against an Owner and his or her Condominium in accordance with Article 5, Section 5.4 hereof.

**Section 1.30.** "Unit" or "Living Unit" means the elements of a Condominium that are not owned in common with the Owners of Condominiums in the Project, such Units and their respective boundaries being shown and particularly described in the Condominium Plan, deeds conveying Condominiums, and this Declaration.

"Unit" does not include other interests in real property that are less than estates in real property, such as exclusive or non-exclusive easements. In interpreting deeds and plans, the existing physical boundaries of the Unit, or of a Unit reconstructed in substantial accordance with the original plan, shall be conclusively presumed to be its boundaries, rather than the description expressed in the deed or Condominium Plan or in the deed and those of the building and regardless of settling or lateral movement of the building. Whenever reference to a Unit is made in this Declaration, in the Condominium Plan, in any deed, or elsewhere, it shall be assumed that such reference is made to the Unit as a whole, including each of its component elements.

The following are not part of any Unit: soffits, furred down ceilings, bearing walls, columns, vertical supports, floors, roofs, foundations, balconies, patios, patio walls and fences, pipes, ducts, flues, conduits, wires and other utility installations, wherever located, except the outlets thereof when located in the Unit. The foregoing shall not be construed as determining maintenance responsibilities of the Owners and Association. The specific maintenance responsibilities are set forth in Article 10 of this Declaration.

**Section 1.31.** "Voting Power" means the number of Units eligible to vote at any election or vote of the Owners. Owner(s)' voting privileges that have been suspended shall not be included into the Voting Power during the effective period of any such suspension.

**ARTICLE 2**

**MEMBERSHIP AND VOTING RIGHTS IN ASSOCIATION**

**Section 2.1. Membership.** All Condominium Owners, by virtue of their ownership of a Condominium, shall be a Member of the Association and shall be entitled to vote on all matters upon which Members of the Association are entitled to vote pursuant to the Declaration and in accordance with the Articles and Bylaws which are incorporated herein. Membership shall be appurtenant to and may not be separated from ownership of any Condominium. Each Member is obligated to promptly, fully and faithfully comply with and conform to the Articles, Declaration, Bylaws, Rules and Regulations pertaining to the Association.

**Section 2.2. Voting Rights.** As more specifically set forth in the Bylaws, the Association has one (1) class of voting membership.

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

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

### **ARTICLE 3**

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

**Section 3.1. Elements of Condominium Ownership.** Ownership of each Condominium within the Project shall include a Unit, an undivided fractional interest in the Common Area as a tenant in common, which fraction shall have a numerator of one (1) and a denominator equal to the total number of Units within the applicable Condominium Plan. Said undivided interest in the Common Area cannot be altered or changed as long as the prohibition against partition remains in effect as provided in Article 14 of this Declaration.

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

(A) The right of the Association to limit the number of guests of Owners using the recreational areas of the Common Facilities;

(B) The right of the Association to limit the use of the recreational areas of the Common Facilities by Owners not in possession of a Unit;

(C) The right of the Board to adopt reasonable Rules and Regulations in accordance with the provisions of Article 4, Section 4.3(A) and California law;

(D) The right of the Association to temporarily suspend the voting rights and right to use the recreational portions of the Common Facilities by an Owner for any period during which any Assessments remain unpaid. In addition, the Association may suspend an Owner's right to use the recreational portions of the Common Facilities for any infraction of this Declaration, the Bylaws and/or the published Rules and Regulations by that Owner, his or her lessees, or guests. If the Association has a contract for bulk cable television, satellite and/or internet service for the Units, the Association may suspend said service to any Owner's Unit for any period during which any Assessments remain unpaid or for any infraction of the Governing Documents by that Owner, his or her lessees, or guests. Any action to suspend an Owner's rights shall only be valid after a hearing by the Board, in accordance with the provisions of the Governing Documents and the *Civil Code*. If the Board decides to impose a penalty or suspension, written notice of the penalty or suspension shall be provided to the Owner within fifteen (15) days after the date of the hearing in accordance with the *Civil Code*. For the purpose of this subsection, notice shall be given by any method reasonably calculated to provide actual notice;

(E) The right of the Association to grant licenses or easements on, over and under the Common Area to public utilities or governmental entities or agencies; provided that such easement shall not unreasonably interfere with the right of any Owner to the use and enjoyment of his or her Unit and the Common Area;

(F) Subject to the limitations contained in the Declaration, the right of the Association to grant licenses or easements to individual Owners over the Common Area with a value of less than five percent (5%) of the Association's gross fiscal budget;

(G) The right of the Association to charge deposit fees and other administrative costs for use of the Common Facilities situated upon the Common Area; and

(H) The right of the Association, in accordance with this Declaration, to borrow money for the purpose of improving the Common Area and to hypothecate any or all real or personal property owned by the Association.

**Section 3.3. Exclusive Use Common Area.** Each Exclusive Use Common Area (i.e., Patios, Balconies and Carports) shall be (1) appurtenant to the Unit which bears the same number as the Exclusive Use Common Area as set forth on the Condominium Plan, and (2) used only for the purposes set forth in this Declaration. The right to use an Exclusive Use Common Area shall be exercisable only by the Owner(s) of the Condominium appurtenant thereto and/or said Owner's tenants and licensee(s). Conveyance of a Condominium shall effect conveyance of Exclusive Use Common Area appurtenant thereto and transfer all rights thereto to the vested Owner of the Condominium. Any license(s) thereto shall be terminated upon such conveyance. No Exclusive Use Common Area or any rights thereto (other than said revokable licenses) shall be transferred or conveyed apart from conveyance of the Condominium to which it is appurtenant. Each Exclusive Use Common Area shall be deemed to be Common Area for the purposes set forth in this Declaration which are not inconsistent with this Article. If the storage closet in the Carport has been modified, the Owner is responsible to maintain the storage closet. No storage closet may be modified unless the Owner has first complied with the provisions of Article 7, regarding approval for architectural modifications.

**Section 3.4. Encroachment Easements.** The Owner of each Condominium is hereby granted an easement over all adjoining Units and the Common Area for the purpose of accommodating any minor encroachments due to engineering errors, errors in original construction, settlement or shifting of any building, or any other cause. There shall be easements for the maintenance of said encroachments as long as they shall exist, and the rights and obligations of Owners shall not be altered in any way by said encroachments, settlement or shifting, provided, however, that in no event shall an easement for encroachment be created in favor of any Owner if said encroachment occurred due to the willful misconduct of an Owner. In the event any portion of a structure on the property is partially or totally destroyed and then repaired or rebuilt, each Owner agrees that minor encroachments over adjoining Common Area shall be an easement for the maintenance of said encroachments so long as they shall exist.

**Section 3.5. Persons Subject to Governing Documents.** All present and future Owners, tenants and occupants of Condominiums within the Project shall be subject to, and shall comply with, each and every provision of the Governing Documents, as the same or any of them shall be amended from time to time, unless a particular provision is specifically restricted in its application to one or more of such classes of persons (i.e., Owners, tenants, invitees, etc.). The acceptance of a deed to any Condominium, the entering into a lease, sublease or contract of sale with respect to any Condominium, or the occupancy of any Condominium shall constitute the consent and agreement of such Owner, tenant or occupant that each and all of the provisions of this Declaration, as the same or any of them may be amended from time to time, shall be binding upon said person and that said person will observe and comply with the Governing Documents. The Owners hereby delegate and assign to the Association, acting through the Board, the power and authority of enforcement against the tenant for breaches resulting from the violation of the Declaration, Bylaws and the Rules and Regulations adopted pursuant thereto, including the power and authority to evict the tenant on behalf of and for the benefit of the Owner, in accordance with the terms hereof.

**Section 3.6. Waiver of Use.** No Owner may exempt himself from personal liability for Assessments duly levied by the Association, nor release the Condominium owned by him or her from the liens, charges and other provisions of this Declaration, the Articles, Bylaws and Rules and Regulations, by waiver of the use and enjoyment of the Common Area or the abandonment of his or her Condominium.

**Section 3.7. Obligations of Owners.** Owners of Condominiums within the Project shall be subject to the following:

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

(B) **Payment of Assessments and Compliance With Rules.** Each Owner shall pay when due each Regular, Special and Reimbursement Assessment levied against the Owner and his or her Condominium and shall observe, comply with and abide by any and all Rules and Regulations set

forth in, or promulgated by the Association pursuant to any Governing Document for the purpose of protecting the interests of all Owners or protecting the Common Area and Common Facilities.

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

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

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

**Section 3.8. Delegation of Use.** Any Owner may delegate his or her rights of enjoyment in the Project, including the Common Area and Common Facilities, to the members of his or her family, guests, and invitees, and to such other persons as may be permitted by the Governing Documents and the Association Rules and Regulations. Neither an Owner of a Unit who has sold same to a contract purchaser thereof or has leased or rented same, nor members of his or her family, guests and invitees shall be entitled to use and enjoy the recreational areas of the Common Area while such Owner's Unit is occupied by such contract purchaser, lessee or renter. As specifically set forth in Article 8 of this Declaration, each Owner shall notify the Association of the names of any contract purchasers, lessees or renters of such Owner's Unit. Any rights of enjoyment delegated pursuant hereto are subject to suspension to the same extent that rights of the Owners are subject thereto.

**Section 3.9. Interest in Common Area.** No Owner may sell, assign, lease or convey his or her interest in the Common Area, separate and apart from his or her Unit.

#### **ARTICLE 4**

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

**Section 4.1. Standard of Care; Limitation of Liability.** Each Director shall perform his or her duties as a Director, including duties as a member of any committee of the Board upon which the Director may serve, in good faith, in a manner such Director believes to be in the best interests of the Association and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances. In performing the duties of a Director, a Director shall be entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, in each case prepared or presented by:

(A) One (1) or more Officers or employees of the Association whom the Director reasonably believes to be reliable and competent in the matters presented;



(B) Counsel, independent accountants or other persons as to matters which the Director reasonably believes to be within such person's professional or expert competence;

(C) A committee of the Board upon which the Director does not serve, as to matters within its designated authority, which committee the Director believes to merit confidence, so long as, in any such case, the Director acts in good faith, after reasonable inquiry when the need therefor is indicated by the circumstances and without knowledge that would cause such reliance to be unwarranted.

A person who performs the duties of a Director in accordance with the foregoing, shall have no liability based upon any failure or alleged failure to discharge the person's obligations as a Director.

In discharging their duties and responsibilities, the Board, Committee members and Officers act on behalf of and as representative of the Association, which acts on behalf of and as representative of the Owners, and no member of the Board of Directors shall be individually or personally liable or obligated for performance or failure of performance of such duties or responsibilities unless he or she fails to act in the manner set forth in this Section.

**Section 4.2. Management Control by the Board.** The Board shall manage the affairs of the Association and shall have all the powers and duties necessary for the administration of the Project subject only to such limitations on the exercise of such powers as are set forth in the Governing Documents.

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

**Section 4.3. Powers of the Board.** In addition to the general powers set forth above, the Board shall have the following specific powers:

(A) **Rule-Making Power.** Subject to the provisions of the Governing Documents and California law, the Board shall have the right to adopt reasonable Rules and Regulations and to amend the same from time to time relating to the use of the Common Area and Units, and all other facilities situated thereon by Owners and by their tenants or guests, and the conduct of such persons with respect to vehicle parking, outside storage, disposal of waste materials, drying of laundry, control of pets and other activities reasonably contemplated under the Association's Governing Documents. The Rules and Regulations may include the establishment of a system of fines and penalties.

So long as required by the *Civil Code*, at least thirty (30) days prior to adopting, amending or repealing rules that relate to use of the Common Area, Units, member discipline (including monetary penalties for violation of the Governing Documents), delinquent Assessment payment plans, and procedures regarding resolution of Assessment disputes, the Board shall provide the Owners with written notice of the proposed Rule change. This notice shall include the text of the proposed rule change and a description of the purpose and effect of such proposed rule change. The Rules and

Regulations may be amended only by the vote of a majority of the entire Board at a duly held meeting after consideration of any comments made by the Owners. Within fifteen (15) days after making any rule change, the Board shall deliver notice of the rule change to every Owner.

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

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

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

(B) Enforcement Power. As more specifically set forth in Article 16 of this Declaration, the Board shall have the power, but not the obligation, to enforce the Governing Documents, by the imposition of reasonable monetary fines, Reimbursement Assessments for costs incurred in compelling compliance with the Association's Governing Documents, and suspend the right to use Common Facilities and voting privileges. These powers, however, shall not be construed as limiting any other legal means of enforcing such provisions. Any fines and/or Reimbursement Assessments so imposed shall be considered an Assessment against the Condominium and may be collected in the manner provided for collection of other Assessments, except that fines shall not be recoverable through the imposition of a lien against the Owner's Condominium enforceable through foreclosure, but the same may be recovered by the Association through other legal processes.

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

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

(E) Vacancies. To fill vacancies on the Board of Directors or in any committee, except a vacancy created by the removal of a Board member, by the Association's Owners.

(F) Bank Accounts. To open bank accounts on behalf of the Association and designate the signatories to such bank accounts.

(G) Convey, Sell or Grant Property. Subject to the limitations set forth in Section 4.5(C) of this Article, the Board may convey, sell, or grant permits, licenses, utility easements, and other

easements, necessary for the proper maintenance or operation of the Project under, through, or over the common elements, as may be reasonably necessary to or desirable for the ongoing development and operation of the Project.

(H) Borrowing Money. Subject to the limitations set forth in Section 4.5(A) of this Article, the Board may borrow money for the purposes of improvement or restoration of the Common Area and Common Facilities.

(I) Legal Action. To institute, prosecute, defend, settle or intervene in proceedings in the name of the Association, any action affecting or relating to the Common Area or Common Facilities, or any action in which the Owners and/or the Association have an interest.

**Section 4.4. Duties of the Association.** In addition to the powers delegated to it by its governing documents, and without limiting their generality, the Association, acting by and through the Board and its agents, has the obligation to conduct all business affairs of common interest for all Owners and to cause to be performed each of the duties set forth below:

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

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

(C) Utilities and Services. The Board shall provide water, sewer, gas, electric, refuse collection, janitorial and gardening service for the Common Area, provide water, sewer and refuse service to all Units, and may make electrical service, cable T.V. service and such other utilities, as the Board may determine, available to all Units.

(D) Provide Insurance. The Board shall secure and maintain policies of insurance, as more particularly provided in Article 11 of this Declaration.

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

(F) Budget and Financial Statements. The Board shall prepare budgets and financial statements for the Association as provided in the Bylaws and as required by the *Civil Code*.

(G) Distribute Documents and Perform Other Duties. The Board shall perform duties and prepare and distribute to the Owners documents required by the *Civil Code*.

**Section 4.5. Limitations on Authority of Board.** The Board shall not take any of the actions listed below except with the vote or written consent of a majority of the Voting Power of the Owners of the Association:

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

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

(C) Sell Property. Except as provided in subsection (D) of this Section, sell property of the Association in excess of or having a fair market value in excess of five percent (5%) of the budgeted gross expenses of the Association for that fiscal year.

(D) Convey Property. Convey, sell or grant easements, licenses and/or permits to Owners to use the Common Area with a value of more than five percent (5%) of the budgeted gross expenses of the Association for that fiscal year. For purposes of the *Civil Code*, the affirmative vote of zero percent (0%) of the Owners is required for the Board to convey, sell or grant exclusive use of any portion of the Common Area to any Owner if the value of said portion of the Common Area is less than five percent (5%) of the budgeted gross expenses of the Association for that fiscal year. Notwithstanding the provisions of this section, the Board shall not be obligated to obtain a vote of the Owners if any of the exceptions contained in the *Civil Code*, inclusive, apply to any conveyance, sale or grant of easement, license and/or permit.

**Section 4.6. Limit on Third Person Contracts.** The Board shall not, without obtaining the consent of a majority of the Voting Power of the Owners, enter into contracts with third persons for the furnishing of goods or services for the Common Area of the Association for a term longer than one (1) year with the following exceptions:

(A) A contract with a public utility company if the rates charged for the materials or services are regulated by the Public Utilities Commission; provided, however, that the term of the contract shall not exceed the shortest term for which the supplier will contract at the regulated rate;

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

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

**Section 4.7. Management Agreements.** Any agreement for the management of the Project shall contain the following provisions:

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

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

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

**Section 4.8. Right of Entry.**

(A) For the purposes of constructing, maintaining and repairing the Common Area and Condominium Building, enforcing the architectural and land use restrictions of the Governing Documents, or making necessary repairs that an Owner has failed to perform, the Association's Officers, agents or employees shall have the right, subject to the provisions of subsection (C) of this Section and after reasonable notice to Owner(s), to enter any Unit, any portion of the Unit at reasonable hours.

(B) In addition to and not in limitation of all other rights, the Association may enter into Units and Exclusive Use Common Area for emergency, security, or safety purposes, which right may be exercised by the Association's Board of Directors, officers, agents, employees, managers, and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their respective duties. In an emergency situation, if practicable, prior to entering the Unit, or Exclusive Use Common Area a reasonable attempt will be made to notify the occupant and the Owner of the Unit of the Association's need and intent to enter the Unit and/or Exclusive Use Common Area.

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

## **ARTICLE 5**

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

**Section 5.1. Assessments Generally.**

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

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

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

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

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

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

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

**Section 5.3. Regular Assessments.**

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

of the votes at a meeting or election of the Association. For purposes of this Section, "quorum" means more than fifty-percent (50%) of the Owners of the Association.

(B) Mailing Notice of Assessment. The Board of Directors shall mail to each Owner at the street address of the Owner's Unit, or at such other address as the Owner may from time to time designate in writing to the Association, a statement of the amount of the Regular Assessment for the next succeeding fiscal year no less than thirty (30) days nor more than ninety (90) days prior to the beginning of the next fiscal year.

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

(D) Ability to Change Assessments. The Board of Directors may change the amount of Assessments at any time upon not less than thirty (30) nor more than ninety (90) days prior written notice to the Owners.

**Section 5.4. Special Assessments.** In addition to the Regular Assessments, authorized above, the Board may levy Special Assessments for the purpose of defraying, in whole or in part, the cost of any capital improvement to the Common Area or such other purpose as may be determined by the Board; provided, however, that no Special Assessment shall exceed, in the aggregate during any fiscal year of the Association, an amount equal to five percent (5%) of the budgeted gross expenses of the Association for that fiscal year, without the vote or written assent of Owners constituting a quorum, casting a majority of the votes at a meeting or election of the Association. For purposes of this Section, "quorum" means more than fifty-percent (50%) of the Owners of the Association. All such Special Assessments shall be levied upon each Condominium in the same proportion as Regular Assessments are levied.

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

- (1) An extraordinary expense required by an order of a court;
- (2) An extraordinary expense necessary to repair or maintain the Common Area, Common Facilities or any portion of the Units which the Association is obligated to maintain where a threat to personal safety is discovered; or
- (3) An extraordinary expense necessary to repair or maintain the Common Area, Common Facilities or any portion of the Units which the Association is obligated to maintain

that could not have been reasonably foreseen by the Board in preparing and distributing the budget pursuant to Section 5.3(A) above, provided that, prior to the imposition or collection of an Assessment under this paragraph, the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process. The Board's resolution shall be distributed to the Owners together with the notice of Assessment.

**Section 5.5. Reimbursement Assessments.**

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

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

(2) Expenses Incurred in Gaining Membership Compliance. In the event that the Association incurs any costs or expenses, to accomplish (a) the payment of delinquent Assessments, (b) any repair, maintenance or replacement to any portion of the Project that the Owner is responsible to maintain under the Governing Documents but has failed to undertake or complete in a timely fashion, or (c) to otherwise bring the Owner and/or his or her Condominium into compliance with any provision of the Governing Documents, the amount incurred by the Association (including reasonable costs imposed hereunder, title company fees, accounting fees, court costs and reasonable attorney's fees) shall be assessed and charged solely to and against such Owner as a Reimbursement Assessment.

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

(4) Unpaid Fines, Fees or other Charges. If an Owner does not pay a fine levied against him or her for a violation of the Governing Documents within thirty (30) days after



the Board has notified the Owner of the fine, then the Board shall have the right to levy a Reimbursement Assessment against such Owner. If an Owner does not pay any other fee or charge duly levied against him or her within thirty (30) days after the Board has notified the Owner of the fine, then the Board shall have the right to levy a Reimbursement Assessment against such Owner. Unless expressly permitted under California law, any lien against the Owner's Condominium for nonpayment of a Reimbursement Assessment levied pursuant to this subsection (4) shall not be enforceable by nonjudicial foreclosure of the Condominium.

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

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

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

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

**Section 5.8. Remedies of the Association for Non-Payment of Assessments.** The Association shall have the power to impose Assessments as provided in these Governing Documents. Such Assessments are the personal obligation of the Owner against whom they are assessed and are a lien against that Condominium. The Association shall have the authority to create and enforce a lien with the power of sale on each separate Condominium to secure payment of the amount of any Assessment, to the full extent permitted by applicable law. The obligation and the lien for Assessments may also include: a late or delinquency charge in the amount of ten dollars (\$10.00) or ten percent (10%) of the amount of each Assessment or installment not paid when due, whichever is greater, or such higher amount as may be authorized by the laws of the State of California; interest on each Assessment or installment not paid when due and on any delinquency fee or late charge pertaining thereto commencing thirty (30) days after the date the charge was first due and payable at the rate of twelve percent (12%) per annum, or such higher rate as may be authorized by the laws of the State of California; the costs of collection, including court costs, the expenses of sale, any expense required for the protection and preservation of the Condominium, and reasonable attorney's

fees actually incurred; and the fair rental value of the Condominium from the time of institution of suit until the sale at foreclosure or other satisfaction of any judgment.

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

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

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

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

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

**Section 5.12. Waiver of Exemptions.** Each Owner does hereby waive, to the extent of any liens created pursuant to this Article, the benefit of any homestead or exemption laws of the State of California in effect at the time any Assessment, or installment thereof, becomes delinquent or any lien is imposed pursuant to the terms hereof.

**Section 5.13. Uniform Rate of Assessments.** Except as otherwise specifically provided herein, Regular and Special Assessments, other than Reimbursement Assessments, must be fixed at a uniform rate for all Condominiums.

## **ARTICLE 6**

### **USE RESTRICTIONS**

**Section 6.1. Senior Citizen Housing Community.** The Project is a "Senior Citizen Housing Community" as authorized by *Civil Code* Sections 51.3 et seq. and as set forth herein.

(A) For the purposes of this Section, the following definitions apply:

(1) "Qualifying resident" or "senior citizen" means a person fifty-five (55) years of age or older residing in the Project.

(2) "Qualified permanent resident" means a person who meets both of the following requirements:

(a) Was residing with the qualifying resident or senior citizen prior to the death, hospitalization, or other prolonged absence of, or the dissolution of marriage with, the qualifying resident or senior citizen.

(b) Was forty-five (45) years of age or older, or was a spouse, cohabitant, or person providing primary physical or economic support to the qualifying resident or senior citizen.

(3) "Qualified permanent resident" also means 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 as defined in paragraph (2) who needs to live with the senior citizen or qualified permanent resident because of the disabling condition, illness, or injury. For purposes of this section, "disabled" means a person who has a disability as defined in *Civil Code* Section 54(b). A "disabling injury or illness" means an illness or injury which results in a condition meeting the definition of disability set forth in subdivision *Civil Code* Section 54(b).

(a) For any person who is a qualified permanent resident under this paragraph whose disabling condition ends, the Board may require the formerly disabled resident to cease residing in the Development upon receipt of six months' written notice; provided, however, that the

Board may allow the person to remain a resident for up to one (1) year after the disabling condition ends.

- (b) The Board may take action to prohibit or terminate occupancy by a person who is a qualified permanent resident under this paragraph if the Board finds, based on credible and objective evidence, 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, however, that the action to prohibit or terminate the occupancy may be taken only after doing both of the following: (1) Providing 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; (2) Giving due consideration to the relevant, credible, and objective information provided in the hearing. The evidence shall be taken and held in a confidential manner, pursuant to a closed session, by the Board in order to preserve the privacy of the affected persons. 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.

(4) "Co-habitant" refers to persons who live together as husband and wife, or persons who are domestic partners within the meaning of Section 297 of the *Family Code*.

(5) "Permitted health care resident" means a person hired to provide live-in, long-term, or terminal health care to a qualifying resident, or a family member of the qualifying resident providing that care. For the purposes of this section, the care provided by a permitted health care resident must be substantial in nature and must provide either assistance with necessary daily activities or medical treatment, or both. A permitted health care resident shall be entitled to continue his or her occupancy, residency, or use of the Unit as a permitted resident in the absence of the senior citizen from the Unit only if both of the following are applicable:

- (a) The senior citizen became absent from the Unit due to hospitalization or other necessary medical treatment and expects to return to his or her Unit within ninety (90) days from the date the absence began.
- (b) 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 health care resident be allowed to remain in order to be present when the senior citizen returns to reside in the Development. Upon written request by the senior citizen or an authorized person acting for the senior citizen, the Board shall have the discretion to allow a permitted health care resident to remain for a time period longer than ninety (90) days from the date that the

senior citizen's absence began, if it appears that the senior citizen will return within a period of time not to exceed an additional ninety (90) days.

(B) One (1) person in each Unit must be required to be a senior citizen who intends to reside in the Unit as his or her primary residence on a permanent basis. Any other occupant in the same Unit must be a qualified permanent resident, a permitted health care resident, or a person under fifty-five (55) years of age whose occupancy is permitted under *Civil Code* Section 51.4(b).

(C) Temporary residency, as a guest of a senior citizen or qualified permanent resident, by a person of less than fifty-five (55) years of age is allowed for not more than sixty (60) days in any twelve (12) month period of time.

(D) Upon the death or dissolution of marriage, or upon hospitalization, or other prolonged absence of the qualifying resident, any qualified permanent resident shall be entitled to continue his or her occupancy, residency, or use of the Unit as a permitted resident. This subdivision shall not apply to a permitted health care resident.

(E) The occupancy of a Unit by a permitted health care resident is allowed during any period that the person is actually providing live-in, long-term, or hospice health care to a qualifying resident for compensation. For purposes of this subdivision, the term "for compensation" shall include provisions of lodging and food in exchange for care.

## Section 6.2. Occupancy.

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

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

(B) Residential Use. Each Unit shall be used for residential purposes. Trade or business may be conducted in or from a Unit, so long as there is no material impact on the Common Area due to the operation or conduction of any trade or business. The terms "business" and "trade," as used in this provision, shall be construed to have their ordinary or generally accepted meanings, and shall include, without limitation, any occupation, work, or activity undertaken on an on-going basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (1) such activity is engaged in full or part-time; (2) such activity is intended to or does generate a profit; or (3) a license is required therefor.

(C) Lessee/Tenant Bound by Governing Documents. As more particularly set forth in Article 8, each Owner shall have the right to lease his or her Unit and interest in the Common Area

together, provided that such lease is in writing and provides that the tenant shall be bound by and obligated to the provisions of the Governing Documents.

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

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

**Section 6.3. Pets.**

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

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

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

**Section 6.4. Signs, Flags and Banners.**

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

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

(C) Common Area. No signs shall be erected or displayed on the Common Area, except signs placed by authority of the Board. The Board, on behalf of the Association, shall have the right

to erect reasonable and appropriate signs on the Common Area. Flagpoles are not permitted to be installed in the ground in the Common Area.

**Section 6.5. Antennas and Similar Devices.** Antennas and Satellite dishes that are one (1) meter or less in diameter may be installed within an Owner's Unit or his or her Exclusive Use Common Area without approval of the Association. However, no such dish may be installed on the Common Area, including attaching them to roofs and sides of buildings, without prior written approval of the Association. The Association may require reasonable screening, establish preferred locations, and impose other restrictions as permitted by applicable federal and state law, provided they do not preclude an acceptable signal or unreasonably increase the cost or cause unreasonable delay in the installation of same. These restrictions are subject to change based on federal and state law.

**Section 6.6. Vehicles and Parking.** Automobiles must be parked properly within the Project to ensure the following objectives: (1) access to living units by emergency vehicles; (2) adequate parking for visitors; (3) pedestrian and vehicle safety; and (4) preserving the aesthetic quality of Project. The Board of Directors may establish Rules and administrative bodies in order to serve those objectives. The following specific restrictions shall apply:

(A) Owners, tenants, family members and other occupants of the Unit shall only park in their assigned Carport space (or in other Unit's assigned Carport space with express permission from the Owner or occupant). A listing and diagram of the assigned Carport spaces is attached hereto as Exhibit "B." No Owner or occupant shall park in guest parking spaces at any time. Except for the storage cabinets, Carports may not be used for storage purposes. Vehicles must not be stored in the Carport at any time.

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

(C) Moving trucks and storage boxes (e.g., "PODS") may be parked in the Project for up to eight (8) hours during customary daytime hours for the purpose of loading and unloading. These vehicles shall not be parked in any manner that blocks the parking spaces or driveway. There shall be no overnight parking of moving trucks and/or storage boxes (e.g., "PODS") without the prior written approval of the Board.

(D) Vehicles which have rust or other severe deterioration on the exterior or are in disrepair, inoperable, unlicensed, unregistered, or vehicles leaking fluids shall not be permitted to park in the Project.

(E) All vehicles operated within the Project shall be operated in a safe manner at a speed not to exceed ten (10) miles per hour.

(F) The Board may adopt rules for special use of parking spaces normally reserved for guests, and place reasonable restrictions on the types, condition, and appearance of vehicles that may park in the Project. The Board shall have the power to make reasonable Rules regarding the use of and storage in Carports.

**Section 6.7. Impairment of Units and Easements: Structural Alterations.** An Owner or occupant shall not perform nor commence any work that will impair the structural soundness or integrity or the mechanical systems of another Unit, Common Area or impair any easement, nor do any act nor allow any condition to exist which will adversely affect the other Units or their Owners or occupants. No structural alterations to the interior of any Unit shall be made and no plumbing or electrical work within any bearing or common walls shall be made by any Owner without the prior written consent of the Association.

**Section 6.8. Rubbish, Trash, and Garbage.** All rubbish, trash and garbage shall be regularly removed from the Unit, and shall not be allowed to accumulate outside of any Unit. Trash, garbage, or other waste shall be kept only in sanitary containers. No Owners of a Condominium shall permit or cause any trash or refuse to be kept on any portion of the Project subject to this Declaration other than in the receptacles customarily used therefor. All equipment, garbage cans, wood piles or storage piles shall be kept screened and concealed from view of neighboring Units and Common Area.

**Section 6.9. Nuisance.**

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

(B) Nothing shall be done within any Unit, or in, on, or to the Common Area which may impair the structural integrity of any building, or which would structurally change any building located therein. Except as otherwise provided herein, nothing shall be altered or constructed in or removed from the Common Area except upon the written consent of the Board or an Architectural Control Committee appointed by the Board.

**Section 6.10. Unsightly or Unkempt Conditions.** The pursuit of hobbies or other activities, including without limitations, the assembly and/or disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly, or unkempt conditions, shall not be pursued or undertaken on any part of the Unit nor on or within any part of the Project which unreasonably interferes with the Common Area. All gates or other doors to any patio or service areas, enclosures or fences on any part of the Project shall be kept closed at all times when not in use.



**Section 6.11. Dangerous Use of Units.** No Unit or Improvement situated therein shall be occupied or used for any purpose or in any manner which shall cause such Improvement to be uninsurable against loss by fire or the perils of the extended coverage endorsement to the California Standard Fire Policy form, or cause any such policy or policies representing such insurance to be canceled or suspended, or the company issuing the same to refuse renewal thereof.

**Section 6.12. Responsibility for Damage to the Project.** Each Owner shall be legally liable to the Association for all damages to the Common Area or any area in which the Association has the maintenance obligation, including but not limited to the buildings, Common Facilities and landscaping caused by such Owner, his or her licensee(s) or any occupant of such Owner's Condominium. In the event, after written request by the Board, the Owner fails to pay the Association for the damage caused by the Owner, his or her licensee(s) or any occupant of such Owner's Condominium as such liability may be determined under California law, the Board, by majority vote, may impose a Reimbursement Assessment against the Owner in the same manner and with the same remedies as previously described in the Governing Documents.

**Section 6.13. Use of Common Area.** Except as otherwise provided herein, the Common Area shall be improved and used only for the following purposes:

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

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

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

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

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

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

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

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

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

**Section 6.14. Window Covers.** Curtains, drapes, shutters or blinds may be installed as window covers. No window shall be covered with aluminum foil, sheets, etc. The Board shall have the power to make reasonable rules regarding window coverings which are visible from the exterior of the Unit.

**Section 6.15. Rules of Association.** Each Owner and his or her lessee, licensees, residents, occupants or guests of a Unit shall comply with the provisions of this Declaration, the Bylaws, and the Rules and Regulations of the Association, which may be amended from time to time. Failure to comply with any such provisions, decisions, or resolutions, shall be grounds for an action to recover sums due, for damages, or for injunctive relief, or for any other remedy permitted by law or permitted by the terms of this Declaration.

**Section 6.16. No Exterior Clotheslines.** No exterior clotheslines shall be erected or maintained and there shall be no outside drying or laundering of clothes on the property or on any deck, terrace, patio or balcony in a manner which is visible from any neighboring Unit or the Common Area.

**Section 6.17. Use of Exclusive Use Common Area.** The Exclusive Use Common Area, i.e., Patios, Balconies and Carports, shall be reserved for the sole and exclusive use of the Unit appurtenant thereto as indicated in the Condominium Plan. Subject to Rules and Regulations and Architectural Guidelines adopted by the Board, each Owner shall have the right to place furniture and potted plants upon the Patio or Balcony which he or she has the exclusive right to use.

**Section 6.18. No Smoking in the Project.** Smoking is prohibited everywhere within the Project, including, but not limited to, in (1) the individual Units; (2) the Exclusive Use Common Area (Patio, Balcony and Carport); and (3) all other indoor and outdoor Common Area and Common Facilities. No Owner shall smoke, or permit smoking by any occupant, agent, tenant, invitee, licensee, guest, friend, or family member, anywhere on the Project. For purposes hereof, smoking shall include the inhaling, exhaling, breathing, carrying, or possessing of any lighted cigarette, cigar, pipe, other product containing any amount of tobacco, or other similar heated or lit product whether or not containing tobacco.

Notwithstanding the said prohibition against smoking, the Board in its sole discretion, may designate (or remove from designation), from time to time, an outdoor area for smoking, provided the smoking area(s) shall not cause secondhand smoke to drift into indoor Common Area, Exclusive Use Common Area, or individual Units.

(A) While this restriction is intended to render the Project (except to the extent provided in the immediately preceding paragraph) smoke free, the Board is not a guarantor of a smoke-free environment hereunder. The Board shall have the right, but not the obligation, to enforce this restriction if the Board determines, in its sole discretion, that it is appropriate to do so in any individual case or circumstance. If the Board determines to take any such action, then in addition to its other rights and remedies under the Governing Documents, at law, and in equity, the Board shall be entitled to recover its costs and expenses, including all attorneys' fees and court costs, incurred in enforcing this restriction.

(B) If the Board determines, in its sole discretion and for any reason, not to pursue enforcement of this restriction in any individual case or circumstance, any Owner may bring his or her own separate action to enforce this restriction against any other Owner who violates (or whose occupant, agent, tenant, invitee, licensee, guest, friend, or family member violates) this provision. If an Owner who brings such an action succeeds in establishing that the other Owner has violated this restriction, the Owner bringing such action shall be entitled to recover his or her costs and expenses, including reasonable attorneys' fees and court costs, incurred in such action from the other Owner.

(C) Grandfathering Provision. Notwithstanding the foregoing, any resident of a Unit who is a smoker at the time of the recording of this Declaration, shall be temporarily exempt from enforcement of this smoking restriction in the Unit by the Board, if the Unit Owner of such Condominium signs and delivers to the Board a notice identifying each smoker then residing in the Unit, and such notice is delivered to the Board no later than thirty (30) days after the recording of this Declaration. Such a resident is referred to hereafter as a "Grandfathered Resident." Any temporary exemption of a Grandfathered Resident hereunder shall apply only to smoking within the Unit, and shall be subject to such conditions as the Board, in its sole discretion, may impose by written condition, rule, or regulation, and the following conditions:

(1) The temporary exemption shall apply only to smoking inside the Unit, and the Grandfathered Resident shall be subject to all other provisions of this smoking restriction at all times; and

(2) The temporary exemption shall terminate when the Grandfathered Resident vacates, or no longer resides in, the Unit; and

(3) The Board, acting in its sole discretion, may terminate the partial and temporary exemption of a Grandfathered Resident upon the occurrence of any one of the following: (a) the Board receives one or more complaints of second-hand smoke detectable in other Units or the Common Area; or (b) the Grandfathered Resident or Unit Owner of such Unit violates any condition contained in this grandfathering provision, violates any other provisions of this smoking restriction, or violates any written condition, rule, or regulation adopted by the Board applicable to the Grandfathered Resident.

(D) Any Owner who leases and/or sells his or her Condominium shall specifically disclose to prospective tenants, purchasers and real estate agents that smoking is prohibited everywhere within the Project, including within the Units.

**Section 6.19. Code of Conduct.** All Owners, their family members, tenants, guests, invitees, outside vendors shall adhere to a code of conduct as may be adopted by the Board in connection with their treatment, actions, language and behavior towards other Owners, Board members, Officers, committee members, Association staff, employees, agents, and vendors. Abusive, harassing and/or disrespectful behavior will not be tolerated. Violations of this Section shall also constitute violations of the Governing Documents.

## **ARTICLE 7**

### **ARCHITECTURAL CONTROL**

**Section 7.1. Architectural Control Committee.** The Board may appoint an Architectural Control Committee (the "Committee") which consists of at least three (3) members, none of whom shall be required to meet any particular qualifications, except that members appointed to the Committee by the Board shall be Members of the Association. The Board may act as the Committee.

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

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

**Section 7.3. Approval of Improvements.**

(A) Notwithstanding anything contained in this Declaration expressly or impliedly to the contrary, no building, fence, wall, balcony, patio or balcony screen, cover, tent, awning or other structure or Improvement shall be constructed or maintained upon the Project, nor shall any exterior addition, change or alteration be made in, on or to the Project, or any part thereof, until the plans and specifications showing the nature, shape, dimensions, materials and location of the same shall be submitted to the Committee and approved in writing as to the harmony of design and location in relation to surrounding improvements and topography by the Board.

(1) With respect to minor additions to or alterations of the exterior of a Unit, such as decorative items, wiring, or other non-structural items, the Architectural Committee and Board shall exercise its discretion liberally with a view towards promoting uniformity and thereby enhancing the attractiveness of the property as a whole.

(2) The Committee shall recommend to the Board whether or not the prevention or removal of any unauthorized and unapproved constructions of Improvements should be undertaken. The Board, on behalf of the Association, may then exercise all available legal and equitable remedies to prevent or remove any unauthorized and/or unapproved construction of Improvements on the Project property or any portion thereof.

(3) For purposes of this Declaration, the term "Improvement" includes, without limitation, the construction, installation, alteration, or remodeling of any buildings, walls, patios, balconies, Carport storage closets, fences, landscaping, landscape structures, skylights, solar heating equipment, spas, antennas, utility lines, or any structure of any kind. In no event shall the term "Improvement" be interpreted to include projects which are restricted to the Unit interior and which do not involve the roof or load bearing wall thereof.

(B) The Board shall approve or disapprove plans submitted to it, in writing, within sixty (60) days. If a plan is disapproved, the disapproval must include a description of why the plan was disapproved. The Board can condition its approval of an Improvement subject to certain conditions being met, including, but not limited to, requiring the Owner to enter into a separate agreement for an easement, license, maintenance and/or indemnification. In the case of such "conditional" approval, the Improvement will not be considered approved unless or until all stated conditions have been met. In the event the Board fails to respond to the submitted plans within sixty (60) days, the applicant may send written notice, via certified mail, to the Board advising the Board that the plans will be deemed approved if not disapproved thirty (30) days from the receipt of said certified letter.

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

(D) An Owner will obtain the approval of the Board with respect to such Owner's plans, specifications, plats and schemes pursuant to this paragraph before submitting the same to the City for a building permit or other approval of any kind that may be required. Notwithstanding the foregoing, prior to an Owner submitting plans, specifications, plats and/or schemes to the Committee pursuant to this Article, such Owner shall consult the City's staff to identify and determine all regulations, standards, guidelines and other criteria that will be applicable to such Owner and the approval which such Owner intends to request of the Board. No approval by the Board shall be deemed to excuse an Owner from compliance with any and all applicable laws, ordinances, rules, codes or regulations of all governmental agencies having jurisdiction. Approval by the Board shall not constitute a representation by the Board that the proposed Improvements comply with laws, ordinances, rules, codes or regulations and it shall be the responsibility of each Owner to determine such compliance and to take all steps and acquire all permits at the Owner's sole expense as may be required to properly and legally complete such Improvements. In the event of any conflict in the conditions of approval of any proposed Improvements imposed by the City and the Association, the

more restrictive of such conditions shall be controlling. Further, nothing herein shall limit the Association from imposing conditions of approval of any proposed Improvements which are more restrictive than conditions as may be imposed by the City.

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

**Section 7.5. Architectural Guidelines.** The Committee may, from time to time, make recommendations to the Board for the adoption, amendment or repeal of rules and regulations, to be known as "Architectural Guidelines." The Board's approval, amendment or repeal of Architectural Guidelines which pertain to procedures for reviewing and approving/disapproving proposed architectural changes shall be made subject to the *Civil Code* by a decision of a majority of the entire Board. The Architectural Guidelines shall interpret and implement this Declaration by setting forth the standards and procedures for Board and Committee review and the guidelines for design and placement of Improvements and/or alterations. The Governing Documents may not prohibit, or include conditions that have the effect of prohibiting, the use of low water-using plants as a group. The Association is prohibited from adopting regulations that would prohibit or restrict compliance with water efficient landscape ordinances and regulations or restrictions on use of water adopted pursuant to the *Water Code*.

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

**Section 7.7. Liability.** Neither the Association, nor the Board, Committee (or any member thereof) shall be liable to any Owner, occupant or to any other party, for any damage, loss or prejudice suffered or claimed on account of (a) the approval or disapproval of any plans, drawings, or specifications, or (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications; provided that with respect to the liability of a member, such member has acted in good faith on the basis of actual knowledge possessed by him or her.

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

**Section 7.9. Approval of Single Board Member.** There shall be no approval of plans and specifications by any single Board member. In the event a single Board member approves architectural plans and specifications, such approval should not be relied upon and shall not be deemed approval by the Board.

**Section 7.10. Completion of Improvements.** Unless expressly extended in writing by the Board or Committee, all Improvements must be completed within one (1) year from the commencement of construction of any approved Improvement.

**Section 7.11. Inspection.** Any member or agent of the Committee or Board may, from time to time, at any reasonable hour or hours and upon reasonable notice, enter and inspect any Unit for the purpose of carrying out its duties herein, in accordance with Rules adopted by the Board.

## **ARTICLE 8**

### **RENTING/LEASING OF CONDOMINIUMS**

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

**Section 8.2. Leasing Provisions.** All Leasing at Oceana shall be in writing and shall be governed by the following provisions:

(A) **Leases Subject to Governing Documents.** All leases shall be subject in all respects to the provisions of this Declaration, the Bylaws and the Rules and Regulations and any failure by the lessee to comply with the terms of such documents shall be a default under the lease. All leases shall be in writing, shall be subject to the provisions of the Governing Documents and shall include the following language: "THIS LEASE IS SUBJECT IN ALL RESPECTS TO THE PROVISIONS OF THE GOVERNING DOCUMENTS OF OCEANA CONDOMINIUM OWNERS ASSOCIATION, AND ANY AMENDMENTS TO THOSE DOCUMENTS. THE FAILURE OF LESSEE TO COMPLY WITH THE TERMS OF THE AFOREMENTIONED DOCUMENTS SHALL BE CONSIDERED A DEFAULT UNDER THIS LEASE." Failure of the Owner to include the above language in the lease shall not be a defense to the Owner's or tenant's violation of the Governing Documents.

(B) **Owners to Provide Copies.** The Owner must make available to the tenant copies of the Governing Documents. However, the failure of the Owner to provide his or her tenant with current copies of the Governing Documents shall not be a defense to any violation of the Governing Documents by the tenant.

(C) **No Severability.** No Owner shall lease his or her interest in the Common Area separate and apart from his or her Unit, nor his or her Unit separate and apart from his or her interest in the Common Area. All leases must be for the entire Condominium, and not merely parts thereof, unless the Owner remains in occupancy.

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

(E) No Subleasing; Minimum Lease Term. There shall be no subleasing of Units or assignment of leases unless approved in writing by the Board. All leases must be for a term of no less than twelve (12) months.

(F) Liability for Delinquent Assessments. In the event that Owner is delinquent in the payment of any Assessment, upon written request by the Board, the tenant shall pay to the Association the rental payments due to the Owner, but not to exceed the rental payments unpaid at the time of the Association's request. All such payments thus made shall reduce the tenant's obligation to lessor by like amount. Payment of Assessments shall be deemed necessary for maintenance of the habitability of the Unit. Prior to informing the tenant of his or her obligation to remit rental payments to the Association, the Owner shall be given notice and an opportunity to be heard before the Board, in compliance with the provisions of the Governing Documents and current California law.

(G) Compliance with Governing Documents. Lessee and lessee's guests, residents, and occupants shall abide by and comply with all provisions of the Governing Documents, as they may be amended from time to time, and the violation of same shall constitute a default under their lease. The residency limitations governing all leases shall be set forth by the policy of the Board. If a tenant or an occupant violates the Governing Documents for which a Reimbursement Assessment is imposed, such Reimbursement Assessment shall be the joint responsibility of the Owner and/or tenant. Unpaid Reimbursement Assessments may constitute a lien against the Condominium, as allowed by law.

(H) Enforcement Against Tenant by Association. The Owners hereby delegate and assign to the Association, acting through the Board, the power and authority of enforcement against the tenant for breaches resulting from the violation of the Governing Documents including the power and authority to evict the tenant on behalf of and for the benefit of the Owner, in accordance with the terms hereof. In the event the Association proceeds to evict the tenant, any costs, including attorneys' fees and court costs, associated with the eviction shall be assessed against the Lot and the Owner(s) thereof, as a Reimbursement Assessment, such being deemed hereby as an expense which benefits the leased Condominium and the Owner(s) thereof. The power and authority assigned pursuant to this subsection shall not be construed to obligate the Association from exercising said power and authority.

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

(J) Existing Leases. Leases existing on the effective date of this Declaration shall be permitted to continue in accordance with the terms of the Governing Documents as it existed prior



to the effective date of this Declaration. However, any assignment, extension, renewal, or modification of any lease agreement, including, but not limited to, changes in the terms or duration of occupancy, shall be considered a termination of the old lease and commencement of a new lease which must comply with this Article.

**Section 8.3. Ownership Prior to Leasing.** All Condominiums must be owned by an Owner for a period of not less than twelve (12) months prior to leasing the Condominium. Where a transfer of ownership occurs during a pre-existing lease term, said lease may not be extended or a new lease entered into with the prior Owner. Upon expiration of the pre-existing lease term, the new Owner may not lease his or her Unit for a period of twelve (12) months. This Section shall become effective thirty (30) days after the date this Declaration was recorded and shall not be applicable to Owners who acquired their Condominiums prior to the effective date of this Section.

**Section 8.4. Rental Ceiling.** Owners within the Association have determined that the increasing number of renter occupied Units has impaired the nature of the community, has increased the cost of administration and has impaired the ability of current Owners to obtain re-financing and prospective purchasers to obtain financing. Therefore, the Owners have determined to limit the number of Condominiums leased at any one time to a maximum of thirty percent (30%) (16 Condominiums of the total 54) ("Rental Ceiling") as more particularly set forth in this Article. Leases that are determined to be exempt from the Rental Ceiling, as set forth in this Article, shall not be counted towards the Rental Ceiling, but all other provisions of this Article apply, except as specifically exempted. The following shall not count towards the Rental Ceiling:

(A) Where the Owner is a full-time resident of the Unit and a lease exists between the Owner and any other person or persons occupying the Unit with the Owner. (That is, an Owner may lease an undivided interest in the Unit or share costs with another person or persons, or have such other arrangement with a co-occupant as they may decide, other than just renting a room, and such living arrangement shall not count towards the Rental Ceiling).

(B) Where the Condominium is owned by the trustee of a trust and the person or persons with the beneficial interest under the trust are the residents of the Unit.

(C) Where the Condominium is owned by a corporation, limited liability company, partnership or other entity and the resident(s) of the Unit is a one-third or greater percentage owner of the stock of the corporation, a partner in the partnership or having a like substantial interest in any other owning entity.

(D) Where the Owner does not reside in the Unit, but where members related by blood or marriage to an Owner occupy the Unit without monetary compensation to the Owner.

**Section 8.5. Effective Date of Rental Ceiling.** The Rental Ceiling described in Section 8.4 of this Article shall become effective thirty (30) days after the date this Declaration was recorded in the Office of the County Recorder of San Diego County, California and shall not apply to Owners who acquired their Condominiums any time prior to the effective date of this Section.

**Section 8.6. Effect of Rental Ceiling.** If the number of Condominiums leased in the Project equals the Rental Ceiling, an Owner may not lease his or her Condominium. If an Owner wishes to lease a Condominium but is prohibited from doing so because of the Rental Ceiling, the Association shall place the Owner's name on a waiting list as more particularly described in Section 8.7.

**Section 8.7. Rental Waiting List.**

(A) The Board shall maintain a list of Owners who desire to lease their Condominiums but are prohibited from renting by reason of the Rental Ceiling ("Rental Waiting List"). The list shall be created in order of date of written request of an Owner to lease his or her Condominium. Where more than one (1) written request is received on the same day, the order on the Rental Waiting List shall be determined by random drawing. The Board has the right to establish procedures to effectuate the operation of the Rental Ceiling and Rental Waiting List.

(B) The Association will approve leasing of Condominiums in the order listed on the Rental Waiting List and in a number such that the total number of written requests approved for lease, together with Condominiums already leased, does not exceed the Rental Ceiling. Owners shall not be permitted to put his or her name on the Rental Waiting List if his or her Condominium is currently leased.

(C) Leases that are entered into by Owners of Condominiums subject to the Rental Ceiling provision of this Article shall be for a term not less than twelve (12) months and not in excess of twenty-four (24) months. Any provisions contained in the lease that are contrary to those time frames (e.g., month-to-month tenancy at end of lease term) are void and unenforceable. Owners are required to submit a copy of the lease to the Association. Financial information on the lease may be redacted.

(D) Each Owner who has leased his or her Condominium shall give written notice to the Association of any expiration non-renewal (of leases under twenty-four (24) months) or other termination of a lease within ten (10) days of the date that the Owner learns of the expiration, non-renewal or other termination of the lease. If the lease expires or is terminated by either party thereto, upon written request to the Association, the name of the Owner will be placed at the end of the Rental Waiting List, and no lease shall be approved for that Owner's Condominium until all other Owners whose names had previously been added to the Rental Waiting List have been given the opportunity to rent or lease their Condominiums.

(E) If the number of the Condominiums leased is below the Rental Ceiling as a result of the expiration, or other termination of a lease or otherwise, the Association will notify, in writing, the Owner on the Rental Waiting List of his or her position on the Rental Waiting List and that Owner shall have the opportunity to lease his or her Condominium in accordance with the Governing Documents. This section is subject to the Hardship Exemption set forth in Section 8.8 of this Article.

**Section 8.8. Hardship Exemption.** Where, on written application from an Owner, the Board determines that a hardship exists whereby that Owner would suffer serious harm by virtue of the Rental Ceiling contained in Section 8.4 or the one (1) year ownership requirement of Section 8.3, the Board may, in its sole and absolute discretion, grant an Owner a waiver of any leasing restriction for a period of time as determined by the Board, but not to exceed twelve (12) months, with the possibility of renewal upon application by the Unit Owner (the "Hardship Exemption"). Notwithstanding any provision of Section 8.7 above, the Owner receiving a Hardship Exemption may apply for and be placed on a Rental Waiting List, or may remain on such list if he or she is on the list at the time of the granting of the Hardship Exemption. The following circumstances shall presumptively be deemed a hardship:

- (A) Military deployment;
- (B) Probate proceedings following the death of an Owner;
- (C) An Owner required to move to an assisted living facility because of illness or injury.

**Section 8.9. Rental Processing Fees.** The Board is authorized to establish and charge reasonable fees in connection with the leasing of Condominiums and for maintaining tenant information, in order to defray the added administrative and physical costs of such activities. Such administrative fees and costs shall be collectible as a Reimbursement Assessment.

**Section 8.10 Insurance Carried by Tenants.** The Board is authorized to establish Rules and Regulations affecting leasing, including that tenants must obtain and provide proof of insurance.

**Section 8.11. Exceptions to Leasing Requirements.** Notwithstanding anything to the contrary herein, this Article shall not be applicable in the following circumstances:

- (A) Where an Owner occupies his or her Unit as a primary residence, with only members of his or her immediate family;
- (B) The lease of a Condominium acquired by the Association following a foreclosure of the Association's lien for Assessments or to the lease of a Condominium by a receiver appointed on motion of the Association in connection with a lien foreclosure action filed by the Association.
- (C) To a Mortgagee, institutional holder or loan servicer in possession of a Condominium following the default on a Mortgage except that such entity shall provide the Association with a copy of the lease and contact information regarding the tenant and the responsible person acting for the Owner.

**Section 8.12. Existing Leases.** Leases existing up to thirty (30) days after the date this Declaration was recorded in the Office of the County Recorder of the County of San Diego shall be permitted to continue in accordance with the terms of the Governing Documents. However, any assignment, extension, renewal, or modification of any lease agreement, including, but not limited to, changes in the terms or duration of occupancy, shall be considered a termination of the old lease and commencement of a new lease which must comply with this Article, if the Condominium has been

transferred to a new Owner after thirty (30) days of the date this Declaration was recorded, except as exempted under Section 8.8.

## ARTICLE 9

### PROHIBITION OF TIMESHARES

**Section 9.1. Timeshare Prohibition.** Use of any Unit in a manner which is consistent with timeshare projects, timeshare estates, timeshare programs and timeshare uses as defined in this Declaration and/or pursuant to Section 11212 of the California *Business and Professions Code* is prohibited.

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

(B) For the purpose of this Section, the term "timeshare use" includes, but is not limited to, any contractual right of exclusive occupancy, whether fixed for a specific time period or not, which does not fall within the definition of a "timeshare Estate," including, without limitation, a vacation license, prepaid hotel reservations, club membership, limited partnership, trust agreement, or vacation bond.

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

## ARTICLE 10

### MAINTENANCE RESPONSIBILITIES

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

**Section 10.2. Common Area and Common Facilities.** Except for Exclusive Use Common Area, the Association shall be solely responsible for all maintenance, repair, upkeep and replacement of facilities within the Common Area, including the Common Facilities, private streets, curbs, swales, parking areas, mailbox structures, landscaping, private water and sewer systems, and monument sign.

The Association shall pay all charges for utilities supplied to the Project except those metered or charged separately to the Units.

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

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

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

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

*Assoc  
outside  
owner  
inside*

(C) The Association may cause the temporary removal of any occupant for such periods and at such times as are necessary for prompt, effective treatment of wood-destroying pests or organisms. The cost of the temporary relocation is to be borne by the Owner of the separate interest affected. Not less than fifteen (15) days nor more than thirty (30) days notice of the need to temporarily vacate shall be given occupants and to the Owners. The notice shall state: 1) the reason for the temporary relocation; 2) the date and time of the beginning of the treatment; 3) the anticipated date and time of termination of treatment; and 4) that the occupants will be responsible for their own accommodations during the temporary relocation. Notice is deemed complete if a copy is personally delivered or mailed first-class to the occupants and a copy is sent to the non-occupying Owners via first class mail. The costs of temporary relocation during the repair and maintenance of the areas within the responsibility of the Association shall be borne by the Owner of the Condominium.

**Section 10.4. Owner Maintenance Responsibilities.**

(A) Except as specifically provided in Section 10.3, above, each Owner shall be responsible for the maintenance and repair of the interior surfaces of his or her Unit, including without limitation, the equipment and fixtures in the Unit, ceilings, windows, window frames, doors, door frames, showers, baths, plumbing within the Unit, sinks, toilets, electrical sockets, switches, wiring, air conditioners and all related equipment and wiring, heating units, outlets, fans, windows and sliding glass doors (exterior and interior), window and door screens (interior and exterior), deck coverings, carpeting, interior floor surfaces, lighting installations, water heater, furnace, electrical appliances and telephone equipment of the owned Unit in a clean, sanitary, workable and attractive condition.

(B) Except for the balcony railings and Carports, Owners shall also be responsible for the maintenance, repair and replacement of the Exclusive Use Common Area (i.e., Balconies and Patios) in a clean, sanitary, workable and attractive condition. The Owners' responsibility to maintain, repair and replace the Exclusive Use Common Area, includes without limitation, the ceilings, doors, door frames, window frames, window tracks, interior floor surfaces. Each Owner shall also be responsible for the maintenance and repair and treatment of pests or organisms, including wood destroying pests or organisms in the Exclusive Use Common Area.

(C) Each Owner shall be responsible for the maintenance, repair and replacement of all pipes, ducts, drains, flues, chutes, conduits, wires, cables and systems that solely supply plumbing, electrical, cable, HVAC or other utility/convenience services ("Utilities") to his or her Unit and which are located within the outside perimeter of the exterior bearing walls of the Unit, within or underneath the floor/slab of the Unit, above the ceiling of the Unit, and within the non-bearing separation walls within the Unit. The foregoing Utilities and components shall be the responsibility of the Owners to maintain, repair and replace, notwithstanding that such components may be located outside the physical boundaries of the Unit (i.e., in the Common Area) and may, at other locations, connect to systems supplying Utilities to other Units. The Association shall maintain, repair and replace all Utilities that are located within the outside perimeter of the exterior bearing walls of the Unit, within or underneath the floor/slab of the Unit, or above the ceiling of the Unit, which do not solely service an Owner's Unit.

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

(E) Each Owner shall be responsible for the repair and/or replacement of items within the interior of his or her Unit and Exclusive Use Common Area, including, but not limited to cabinets, fixtures, appliances, flooring, and personal property, that may be damaged from water that may leak or flow into the Unit or Exclusive Use Common Area from within the Unit, the Common Area, Exclusive Use Common Area or any part of the Condominium Building, unless such damage is determined by a court, arbitrator or other tribunal to be caused by the gross negligence of the Association, its Board, Officers, or designated agents.

Each Owner shall promptly make repairs to the Unit and/or any Exclusive Use Common Area components that result from water damage, including performing remediation to prevent and/or

remove mold. Each Owner shall be responsible for any and all damage to the Common Area or other Units due to the Owner's failure to promptly perform such work. The Association reserves the right to enter the Unit and/or Exclusive Use Common Area, in accordance with the provisions of Article 4, Section 4.8, to perform repairs and/or remediation in order to protect the Common Area and Condominium Building, from any resultant damage from water and/or mold.

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

**Section 10.5. Failure of Owner to Carry Out Maintenance Responsibilities.** In the event that the Owner of a Condominium fails to perform his or her maintenance responsibilities, the Board shall have the right, but not the obligation, through itself or its agents, to perform appropriate maintenance and/or repairs at the expense of the Owner. In such event, in addition to other penalties and disciplinary measures imposed by the Board, the Board may levy a Reimbursement Assessment against such Owner in the amount equal to all direct and indirect costs and expenses incurred by the Board in its performance of such maintenance and/or repairs. Any claim against the Board shall not constitute a defense or offset in any action of the Board for nonpayment of any amounts which may have been assessed hereunder.

**Section 10.6. Liability for Damage.**

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

(B) The Association shall be responsible for performing the repair of any damage to the Common Area or items over which the Association has control at the responsible Owner's expense. The responsible Owner shall perform the repair of any damage to his or her own property. The Owner of any other property which sustained damage shall perform the repair of any such damage, and may charge the cost of repairs and any relocation costs to the responsible Owner.

(C) If the responsible Owner disputes or refuses to pay any repair costs incurred by the Association or the Owner of any other property which sustained damage, the Association, after reasonable notice and an opportunity for a hearing, may charge the cost of those repairs to such Owner as a Reimbursement Assessment, with the full authority to lien on such amount in the event of non-payment.

(D) If the damage is such as may be covered by any insurance carried by the Association, the Board may, in its sole discretion, elect to submit the claim for the cost of repairs to its insurance carrier. Provided the submitted claim is covered by the Association's insurance, the responsible Owner shall pay the cost of any deductible applicable to the covered claim. If the submitted claim is not covered by the Association's insurance, or the Board elects not to submit the claim, the responsible Owner shall be responsible for the total cost of repair.

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

**Section 10.7. Cooperative Maintenance Obligations; Easements.**

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

(B) Each Owner hereby grants to other Owners and the Association easements to enter into each Unit and to have the utility companies enter into Units to repair the plumbing and electrical systems located thereon, subject to the following limitations. Entry into a Unit for emergency purposes may be immediate; provided, however, such entry shall be made with as little inconvenience as possible to the Owner and any damage caused thereby shall be repaired by the entering party. Entry into a Unit for other than emergency repairs shall be made only after three (3) days notice has been given to the Owner and shall be made with as little inconvenience as possible to the Owner and any damage caused thereby shall be repaired by the entering party.

**Section 10.8. No 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 property, or the cost of repair or replacement of any damaged property or portions of such Owner's Condominium unless such damage is caused by the gross negligence of the Association, its Board, Officers, agents or employees.

**Section 10.9. Owner Maintenance of Vacant Units/Notification to Association.** Owners have a duty to inspect and maintain their Condominiums, even if they are vacant. If, at any time, an Owner discovers or otherwise becomes aware of any condition within the Common Area that may constitute a risk to the health, safety or welfare of the Owners, their family members, tenants, and any other persons entering the Development, the Owner shall notify Association representatives of the condition as soon as possible.

**ARTICLE 11**

**INSURANCE**

**Section 11.1. Types of Insurance Coverage.** The Association shall obtain and continue in effect the following:

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



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

Such policy or the endorsement made a part thereof, shall, to the extent available, provide that the insurer issuing the policy agrees to abide by decisions of the Association made in accordance with the provisions of Article 12 of this Declaration as to whether or not to repair, reconstruct or restore all or any damaged or destroyed portion of the Common Facilities.

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

(B) General Liability. A general liability policy for full extended coverage, including but not limited to, vandalism, malicious mischief, public liability with a cross-liability endorsement. The limits of such insurance shall not be less than \$2,000,000.00 or any amount greater as determined by the Board from time to time.

(C) Directors and Officers Insurance. The Association shall obtain directors and officers insurance covering errors and omissions for officers and directors, and if desirable, committee members of the Association in an amount of at least \$500,000.00 per occurrence.

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

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

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

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

Each Owner appoints the Board 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 agreement.

**Section 11.2. Owner's Insurance.** Each Owner shall obtain and maintain at his or her sole expense, insurance to protect against any damage to, or loss of the Owner's property, and the cost of repair or replacement of damaged items, including, but not limited to, any Improvements made by an Owner, any personal property, built-in cabinets, decorations, floor and wall coverings, appliances, fixtures or other items therein, or any exterior items for which said Owner is responsible which damage is caused by any Common Area component or any component maintained by the Association or by any failure thereof. The Owner's policy shall be the primary policy for any claims for damages or loss of Owner's property. The Association shall not be liable to any Owner or his or her tenants, invitees, guests or others, for damage to or loss of any such property, or the cost of repair or replacement of any damaged property or portions of such Owner's Unit, unless such damage is caused by the gross negligence of the Association, its Board, Officers, agents or employees.

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

**Section 11.3. Individual Fire and Casualty Insurance.** Except as provided in this Section, no Owner can separately insure his or her Unit or any part of it against loss by fire or other casualty covered by the Association's blanket insurance carried under this Article. If any Owner violates this provision, any diminution in insurance proceeds otherwise payable pursuant to the provisions of this Section that results from the existence of such other insurance will be chargeable to the Owner who acquired such insurance, and the Owner will be liable to the Association to the extent of any diminution.

**Section 11.4. Trustee for Policies.** The Association, acting through its Board of Directors, is hereby appointed and shall be deemed trustee of the interests of all named insureds under policies of insurance purchased and maintained by the Association. All insurance proceeds under any such policies as provided for in Section 11.1 of this Article shall be paid to the Board of Directors as trustees. The Board shall have full power to receive the proceeds and to deal therewith as provided herein. Insurance proceeds shall be used by the Association for the repair or replacement of the property for which the insurance was carried or otherwise disposed of as provided in Article 12 of this Declaration. The Board is hereby granted the authority to negotiate loss settlements with the appropriate insurance carriers. Any two (2) Officers of the Association may sign a loss claim form and release form in connection with the settlement of a loss claim, and such signatures shall be binding on all the named insureds. Notwithstanding the foregoing, there may be named as an insured a representative chosen by the Board, including a trustee with whom the Association may enter into an insurance trust agreement or any successor to such trustee who shall have exclusive authority to negotiate losses under any policy providing property or liability insurance and to perform such other functions necessary to accomplish this purpose.

**Section 11.5. Waiver of Claims Against Association and Others.** All insurance obtained by the Association shall be maintained by the Association for the benefit of the Association, the Owners and the Mortgagees as their interests may appear. As to each of said policies which will not be voided or impaired thereby, the Owners hereby waive and release all claims against the Association, the Board, and agents and employees of each of the foregoing, with respect to any loss covered by such insurance whether or not caused by negligence of or breach of any agreement by said persons, but to the extent of insurance proceeds received in compensation for such loss only.

**Section 11.6. Making Claims to the Association's Insurance.** Only the Association, acting through its Board, or designated agent, is authorized to present claims to any of the Association's insurance agents. Owners shall not make claims directly to any of the Association's insurance agents, insurers or policies. In the event the Association incurs any cost or damage by an Owner's violation of this Section, the Association will levy a Reimbursement Assessment against such Owner in the amount equal to all direct and indirect costs and expenses incurred by the Association.

**Section 11.7. Insurance Policy Deductibles.** The Board shall have the power, in its sole discretion, to determine the amount of any deductible applicable to any insurance policy carried by the Association. In the event of a loss for which Association coverage is used, the following shall apply:

(A) If the damage or loss is caused by the negligence or misconduct of any Owner, or resident, guest, tenant or invitee of an Owner, the responsible Owner shall be liable for costs not covered due to the deductible.

(B) Owners shall be responsible for any costs not covered due to the deductible if the damage or loss occurs to the Owners' real or personal property, or other property for which the Owner is responsible to maintain.

(C) The Association shall be responsible for any costs not covered due to the deductible if the damage or loss occurs to any item owned by the Association, or for which the Association is responsible to maintain.

(D) If the damage or loss occurs to any Unit or Common Area, the responsibility for the payment of any costs not covered due to the deductible shall be apportioned among the affected parties on the basis of the ratio of each parties' cost of repair to the total costs of repair.

**Section 11.8. Board's Authority to Revise Insurance Coverage.** Subject to the provisions of Section 11.1, the Board shall have the power and right to deviate from the insurance requirements contained in this Article in any manner that the Board, in its reasonable business discretion, considers to be in the best interests of the Association. If the Board elects to materially reduce the coverage from the coverage required in this Article, the Board shall make all reasonable efforts to notify the Owners of the reduction in coverage and the reasons therefor at least thirty (30) days prior to the effective date of the reduction. The Association, and its directors and officers, shall have no liability to any Owner or Mortgagee if, after a good faith effort, the Association is unable to obtain any insurance required hereunder because the insurance is no longer available, or, if available, the insurance 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.

## ARTICLE 12

### DESTRUCTION OF IMPROVEMENTS

**Section 12.1. Insurance Proceeds Sufficient.** In the event of damage to or the partial destruction of the improvements in the Project, and if the available proceeds of the insurance are sufficient to cover not less than eighty-five percent (85%) of the cost of repair or reconstruction thereof, the damaged or destroyed improvements shall be promptly repaired and rebuilt unless, within ninety (90) days from the date of such damage or destruction, at a duly constituted meeting of the Association, Owners representing seventy-five percent (75%) of the Voting Power of the Association determine that such repair and reconstruction shall not take place.

**Section 12.2. Insurance Proceeds Insufficient.**

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

**Section 12.3. Assessments.** If the Owners determine to rebuild, each Owner shall be obligated to contribute such funds as may be necessary to pay his or her proportionate share of the cost of construction, over and above the insurance proceeds, and the proportionate share of each Owner shall be based on the proportion of square footage of each Unit to the total square footage to be reconstructed at such time and in such amount as the Board shall determine is necessary to cover the costs of reconstruction in excess of insurance proceeds. In the event of the failure or refusal of any Owner to make his or her proportionate contribution, the Board may levy a Special Assessment against such Owner, and enforce such Assessment as provided in Article 5.

**Section 12.4. Failure to Rebuild.** If a majority of the Owners do not agree to the repair or rebuilding of the Common Area, then each Owner (and his or her Mortgagee(s) as their respective interests shall then appear) shall be entitled to receive that portion of insurance proceeds equal to the proportion of the decrease in fair market value of his or her Unit as compared to the aggregate decrease in fair market values of all the Units caused by such damage or destruction. For purposes hereof, fair market value shall be determined by a qualified real estate appraiser selected by the Board and hired by and at the expense of the Association. Should a dispute arise as to the distribution of insurance proceeds, the dispute shall be decided by arbitration.

**Section 12.5. Interior Repairs.** Any reconstruction undertaken pursuant to the foregoing provisions shall cover only the exterior and structural components of the damaged or destroyed Units, and such other damage to such Units as may be covered by insurance and maintained by the Association. If a destroyed Unit is so rebuilt, the Owner of such Unit shall be obligated to repair and rebuild the damaged portions of the interior of his or her Unit in a good and workmanlike manner at such Owner's expense substantially in accord with the original plans and specifications therefor; provided, however, that any such Owner may, with the written consent of the Board, reconstruct or repair the same pursuant to new or changed plans and specifications. In the event the Board fails to approve or disapprove such changed plans and specifications within sixty (60) days of receipt thereof, they shall be deemed to have been approved.

### ARTICLE 13

#### CONDEMNATION

**Section 13.1. Condemnation.** If any portion of the Project is taken by condemnation, eminent domain or any proceeding in lieu thereof, then:

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

(B) In the event of any taking of the Common Area, the Owners of the Common Area, and their Mortgagees, shall be entitled to receive the award for such taking in proportion to the interest of each in the Common Area; provided, however, that should it be determined to repair or rebuild any portion of the Common Area, such proceeds shall be paid to the Association for that purpose in the same manner and subject to the same terms, conditions and limitations as are set forth above in Article 12 for repairing damaged or destroyed portions of the Common Area. A decision to repair or rebuild shall be made in the same manner and subject to the same conditions and limitations as provided above in Article 12 for determining whether to rebuild or repair following damage or destruction.

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

## ARTICLE 14

### PARTITION PROHIBITED

**Section 14.1. Partition.** Each of the Owners of a Condominium is prohibited from participating or in any other way severing or separating such Ownership from any of the other Ownerships in the Common Area, except upon a showing that:

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

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

(C) That the Project has been in existence in excess of fifty (50) years, that it is obsolete and uneconomic, and that Owners holding in aggregate more than a fifty percent (50%) interest in the Common Area are opposed to repair or restoration of the Project.

Notwithstanding the foregoing, if any Condominium shall be owned by two (2) or more co-tenants as tenants in common or as joint tenants, nothing herein shall be deemed to prevent a judicial partition by sale as between such co-tenants.

**Section 14.2. Power of Attorney.** The Association is hereby granted an irrevocable power of attorney to sell the Project for the benefit of all the Owners thereof when partition of the Owners' interest in said Project may be had pursuant to this Article. The power of attorney herein granted may be exercised upon the vote or written consent of Owners holding in the aggregate at least two-thirds (2/3) of the interest in the Common Area by any three (3) members of the Board who are hereby authorized to record a certificate of exercise in the Office of the San Diego County Recorder, which certificate shall be conclusive evidence thereof in favor of any person relying thereon in good faith.

## ARTICLE 15

### PROTECTION OF MORTGAGEES

**Section 15.1. Subordination of Liens.** The liens created under Article 5 hereof upon any Condominium shall be subject and subordinate to, and shall not affect the rights of the Mortgagee under any recorded first Mortgage upon such Condominium made in good faith and for value, provided that after the foreclosure of any such Mortgage, the amount of all Regular Assessments and all Special Assessments to the extent they relate to expenses incurred subsequent to such foreclosure, assessed hereunder to the purchaser at such foreclosure sale, as an Owner after date of such foreclosure sale, shall become shall become a lien upon such Condominium upon recordation of a notice as provided in Article 5.

**Section 15.2. Effect of Amendment.** No amendment to this Declaration shall affect the rights of any Mortgagee who does not join in the execution thereof, provided that prior to recordation of such amendment, the Mortgage is recorded and written and notice of its delivery and recordation, signed by the Mortgagee and Mortgagor, is given to the Association.

**Section 15.3. Subordination Agreement.** By subordination agreement executed by the Association, the benefits of Sections 15.1 and 15.2 above may be extended to Mortgages not otherwise entitled thereto.

**Section 15.4. Effect of Breach.** No breach of any of the foregoing covenants and restrictions shall cause any forfeiture of title or reservation or bestow any right of re-entry whatsoever, but violation of any one (1) or more of these covenants or restrictions may be enjoined or abated by any Owner or by the Association, by action of any Court or competent jurisdiction, and damages may be also awarded against such violations, provided, however, that any such violations shall not defeat or render invalid the lien of any Mortgage or Deed of Trust made in good faith and for value as to said property or any part thereof, but said covenants and restrictions shall be binding upon and effective against any Owner of said property or portions thereof whose title thereto is required by foreclosure, trustee's sale or otherwise.

## **ARTICLE 16**

### **ENFORCEMENT**

**Section 16.1. Enforcement.** Each Owner, lessee, licensee, guest, resident and occupant of a Condominium shall comply with the provisions of the Governing Documents and decisions and resolutions of the Association or its duly authorized representative. Failure to comply with any such provisions, decisions or resolutions shall be grounds for enforcement action by the Association, or any Owner, which may include but not be limited to the following, in addition to other remedies afforded by law. Nothing in this Declaration shall be construed to obligate the Association, acting through the Board, to enforce the Governing Documents, but rather is a right conferred onto the Association:

(A) **Suspension of Rights.** The Association may temporarily suspend the voting rights and right to use the recreational areas of the Common Area by an Owner for any period during which any Assessments remain unpaid. Additionally, the Association may suspend the voting rights and right to use the recreational facilities within the Common Area for up to thirty (30) days due to a violation of the Governing Documents by any Owner, or his or her guests, tenants, or family members. If the Association has a contract for bulk cable television and/or internet service for the Units, the Association may suspend said service to any Owner's Unit for any period during which any Assessments remain unpaid or for any infraction of the Governing Documents by that Owner, his or her lessees, or guests. No suspension shall take place unless the procedures set forth in subsection (D) have been taken.

(B) **Fines/Monetary Penalties.** The Board may impose fines and/or monetary penalties against an Owner for his or her family members', guests', tenants' or agents' violation of the Governing Documents, after due process, as set forth in subsection (D). Prior to imposing any such

penalties, the Board shall adopt and distribute to each Owner, by personal delivery or first class mail, a schedule of the penalties. The Board shall only be required to distribute additional schedules upon any amendments to such schedule being made.

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

(D) Due Process. Such suspension, fines, or Reimbursement Assessments may occur only after the Owner has been given at least ten (10) days notice; and an opportunity to be heard before the Board before the effective date of the action, as set forth in the *Civil Code*. Within fifteen (15) days after the hearing, the Board shall give the Owner written notice of the action taken against the Owner, in conformance with the *Civil Code*.

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

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

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

(H) Right of Entry. The Board shall have the right of entry into a Unit and Exclusive Use Common Area to remedy violations of the Governing Documents, and where necessary to protect, preserve and maintain the Common Area, as set forth in Article 4, Section 4.8.

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

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

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



**Section 16.2. Nuisance.** Failure to comply with the provisions of the Governing Documents and decisions and resolutions of the Association is hereby declared to be and constitute a nuisance, and every remedy allowed by law or equity against a nuisance shall be applicable against every such result and may be exercised by any Owner, or the Board.

**Section 16.3. Violation of Law.** Any violation of any state, municipal or local law, ordinance or regulation, pertaining to the ownership, occupation or use of the Project or any part thereof is hereby declared to be a violation of this Declaration and subject to any or all of the enforcement procedures set forth herein.

**Section 16.4. No Waiver.** The failure of the Board, or any Owner to enforce any of the provisions contained in the Governing Documents shall not constitute a waiver of the right to enforce the same thereafter, nor shall such failure result in or impose any liability on the Association or the Board.

**Section 16.5. Attorneys' Fees.** In the event the Association, or any Owner, shall commence litigation to enforce any of the covenants, conditions or restrictions herein contained, the prevailing party in said action shall be entitled to actual attorneys' fees and costs reasonably incurred.

**Section 16.6. Cumulative Remedies.** Each and all legal or equitable remedies provided for herein shall be deemed to be cumulative.

## **ARTICLE 17**

### **AMENDMENTS**

**Section 17.1. General.** This Declaration may be amended at any time and from time to time by the vote or written consent of a majority of the Voting Power of the Association. So long as required by California law, the vote will be conducted by a secret ballot in accordance with the requirements of California law. The initial deadline may be extended if an insufficient number of ballots, as determined by the Board, has been received. Thereafter, the deadline to return ballots may be extended for such periods of time as the Board may set. An amendment becomes effective after (a) the approval of the required percentage of Owners has been given, (b) that fact has been certified in the form of a written document executed and acknowledged by an Officer designated by the Association for that purpose or, if no such designation is made, by the President and Secretary of the Association and (c) the document has been recorded in the Office of the County Recorder of San Diego County, California.

## **ARTICLE 18**

### **GENERAL PROVISIONS**

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

Association. All such duties and powers shall be exercised by the Board unless specifically reserved to the Owners.

**Section 18.2. Notices.** Any notice to be given to an Owner or Mortgagee under the provisions of the Governing Documents shall be in writing and may be delivered personally or by first class mail, postage prepaid to the latest recorded address in the business records of the Association. If delivery is made by mail, it shall be deemed to have been delivered upon deposit in the United States mail. Notice may also be given via e-mail, facsimile, or other electronic means, if the recipient has agreed to that method of delivery pursuant to the provisions of *Corporations Code* Section 20. If a document is delivered by electronic means, delivery is complete at the time of transmission.

**Section 18.3. Extension of Declaration.** Each and all of these Covenants, Conditions and Restrictions shall terminate on December 31, 2062, after which date they shall automatically be extended for successive periods of ten (10) years unless an instrument in writing, signed by at least a majority of the Owners of Condominiums in the Project, has been recorded within the six (6) months immediately preceding the beginning of any such successive period, agreeing to terminate the Declaration.

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

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

**Section 18.6. Indemnification.**

(A) Every Director and every Officer past or present of the Association shall be indemnified by the Association against expenses and liabilities, including reasonable attorney's fees and cost incurred or imposed upon him or her in connection with any proceeding in which such Director or Officer may be a party, or in which such officer or Director may become involved, by reason of his or her being, or having been, a Director or an Officer of the Association, or any settlement thereof, except in such cases wherein the Director or Officer is adjudged guilty of gross negligence or malfeasance in the performance of his or her duties.

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

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

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

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

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

**Section 18.11. Conflicts.** If there are conflicts or inconsistencies between the provisions of California law, this Declaration, the Articles of Incorporation, the Bylaws and the Rules and Regulations, the provisions of California laws, the Declaration, the Articles of Incorporation, the Bylaws and the Rules and Regulations (in that order) shall prevail.

**Section 18.12. References to Code Sections.** In the event any of the statutes or laws referenced herein are amended, modified, re-numbered or otherwise changed, the references herein shall be deemed to refer to the statutes or laws as amended, modified, re-numbered or otherwise changed. If a statute or law is repealed deleted, any reference herein shall be deemed to refer to any successor statute or law.

**CERTIFICATE OF AMENDMENT**

I, the undersigned, do hereby certify:

1. That I am the duly elected and acting Secretary/Treasurer of OCEANA CONDOMINIUM OWNERS ASSOCIATION, a California Nonprofit Mutual Benefit Corporation;

2. That the foregoing SECOND RESTATED DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS comprising 52 pages, was duly adopted by a vote of at least two-thirds (2/3rds) of the owners of the Association.

IN WITNESS WHEREOF I hereunto subscribe my name this 17 day of OCT, 2013.

OCEANA CONDOMINIUM OWNERS ASSOCIATION

By: *Veronica Leathers*  
Veronica Leathers, Secretary/Treasurer

State of California )  
County of San Diego )

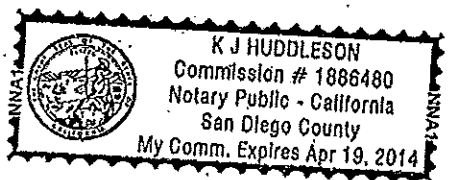
On Oct 17, 2013 before me KJ Huddleson a Notary Public, personally appeared Veronica Leathers who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/~~she~~/they executed the same in his/~~her~~/their authorized capacity(ies), and that by his/~~her~~/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature *KJ Huddleson*

(seal)



**CERTIFICATE OF AMENDMENT**

I, the undersigned, do hereby certify:

1. That I am the duly elected and acting President of OCEANA CONDOMINIUM OWNERS ASSOCIATION, a California Nonprofit Mutual Benefit Corporation;

2. That the foregoing SECOND RESTATED DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS comprising 52 pages, was duly adopted by a vote of at least two-thirds (2/3rds) of the owners of the Association.

IN WITNESS WHEREOF I hereunto subscribe my name this 17 day of October, 2013.

OCEANA CONDOMINIUM OWNERS ASSOCIATION

By: Arlene Rosky  
Arlene Rosky, President

State of California )  
County of San Diego )

On Oct 17, 2013 before me KJ Huddleson a Notary Public, personally appeared Arlene Rosky who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/~~she~~/they executed the same in his/~~her~~/their authorized capacity(ies), and that by his/~~her~~/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature [Handwritten Signature]

(seal)



Exhibit "A"

LEGAL DESCRIPTION

OCEANA CONDOMINIUM OWNERS ASSOCIATION

LOT 1 OF OCEANA CONDOMINIUMS, IN THE CITY OF OCEANSIDE,  
COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP  
THEREOF NO. 6699, FILED IN THE OFFICE OF THE COUNTY RECORDER  
OF SAN DIEGO COUNTY, JULY 29, 1970.

**Exhibit "B"**  
**Carport Parking Assignments**

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**3612 VISTA BELLA**

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EXHIBIT "C"

MAINTENANCE MATRIX

The following is a listing of the items within the Project for which Owners and the Association are responsible for the routine maintenance, repair and replacement duty, in accordance with the Declaration and may not apply to situations where damage is caused by the negligence or wilful misconduct of any party.

This Matrix is provided for convenience as to the general determination of responsibility for the maintenance, repair and replacement of various components of the Project. The physical boundaries of the various components of the Project, such as the Unit, Common Area, and Exclusive Use Common Area, as defined under the applicable Condominium Plans, are not determinative of the responsibility for routine maintenance, repair and replacement.

In certain situations, the Association's insurance coverage may provide for the repair/replacement of components that are designated as the Owners' maintenance responsibility under the Declaration, including this Matrix. These circumstances shall not be deemed to be, or construed as, modifying the routine maintenance, repair and replacement duties set forth herein.

COMPONENT(S)	OWNER	ASSN.
Air Conditioning	X	
Appliances - Built In - Units	X	
Appliances - Freestanding	X	
Attic/Crawl Space (except for personal contents and Utilities serving one Unit)		X
Balcony Cleaning and Maintenance and interior surfaces	X	
Balcony Railings		X
Balcony Painting		X
Carpeting - In Units	X	
Carport - Asphalt/Concrete Surfaces (except oil spills and debris)		X
Carport - Cleaning of oil spills and debris	X	
Carport - Storage Closets (except where modified by Owners with approval)		X
Carport - Storage Closets - modified by Owners (with approval)	X	
Carport - Structure (except Storage Closets modified by Owners with approval)		X



COMPONENT(S)	OWNER	ASSN.
Caulking - Exterior		X
Caulking - Interior	X	
Ceilings - interior surface of Unit	X	
Clubhouse		X
Common Area and Common Area Facilities		X
Driveway		X
Doorbell - Exterior Components/Button Switch	X	
Doorbell - Interior Components; Wiring	X	
Doors - Entry - Frame and Door	X	
Doors - Entry - Locks and Hardware	X	
Doors - Entry - Painting - Exterior Surface		X
Doors - Entry - Painting - Interior Surface	X	
Doors - Entry - Weatherstripping/Waterproofing	X	
Doors - Interior	X	
Drainage Systems (e.g., ditches, catch basins)		X
Drains - Bathtubs, Showers, Sinks	X	
Drains - Curb		X
Drains - Balcony and Patio	X	
Driveways		X
Dryer Vents - Cleaning	X	
Dryer Vents - Repair	X	
Drywall - Damage Repairs (e.g., cracks, inside minor localized water damage, dents, holes, etc.)	X	
Drywall - Interior - Replace	X	
Electrical Panel/Circuit Breakers - Unit	X	
Electrical Switches, Sockets, Wall Plates - Unit	X	
Entry Gate and Systems		X

COMPONENT(S)	OWNER	ASSN.
Exhaust Fans - Units	X	
Exterior Building Surface		X
Exterior Faucets, Handles, Washers except those on Patio/Balcony		X
Exterior Faucets, Handles, Washers - Patio and Balcony	X	
Fences - Common Area		X
Floor	X	
Floor Covering (i.e., carpet, tile, vinyl, wood, etc.)	X	
Foundation		X
Front Entry Landings		X
Furnace - Unit Systems	X	
Garbage Disposal	X	
Gas Lines - Common Area or those serving more than one Unit wherever located		X
Glass - Unit Windows/Doors, including frame and tracks	X	
Gutters and Downspouts		X
Insulation - Unit	X	
Iron Fences		X
Landscaping - Common Area, Greenbelt		X
Lighting Fixtures (Common Areas excluding Exclusive Use Common Areas and those controlled by Owners)		X
Lighting Fixtures - Inside Units	X	
Lighting Fixtures - Outside - Front (Homeowner controlled - except the ones on the exterior of the Condominium Building on the ground floor)	X	
Lighting Fixtures - Outside on exterior of Condominium Building on ground floor - Owner pays for electricity		X
Lobby		X
Mailbox - Lock	X	
Mailbox - Structures		X

COMPONENT(S)	OWNER	ASSN.
Maintenance Shed		X
Monument Sign		X
Painting - Common Area Facilities and Exterior of Condominium Buildings		X
Painting - Interior of Unit	X	
Parking Spaces		X
Patio (interior)	X	
Plumbing Fixtures - Interior (toilets, tubs, sinks, faucets, etc.)	X	
Plumbing Lines - Common Area or those serving more than one Unit wherever located		X
Plumbing Lines - Solely serving one Unit and located within the outside perimeter of the exterior bearing walls of the Unit, within or underneath the floor/slab of the Unit, above the ceiling of the Unit, and within the non-bearing separation walls within the Unit	X	
Pool, Spa and related Equipment		X
Pressure Regulators		X
Restrooms - Common Area		X
Roof Shingles/Tiles		X
Roof Underlayment		X
Roof Vents		X
Sewer Lines - Common Area or those serving more than one Unit wherever located		X
Sewer Lines - Solely serving one Unit and located within the outside perimeter of the exterior bearing walls of the Unit, within or underneath the floor/slab of the Unit, above the ceiling of the Unit, and within the non-bearing separation walls within the Unit	X	
Sidewalks - Common Areas		X
Skylights	X	
Slab		X
Sliding Patio/Balcony Door Flashing/Waterproofing	X	

COMPONENT(S)	OWNER	ASSN.
Sliding Patio/Balcony Door Frames and Tracks	X	
Sliding Patio/Balcony Door Hardware	X	
Sliding Patio/Balcony Doors/Screens	X	
Spraying for Household Pests (ants, fleas, etc.) in the interior of the Unit	X	
Spraying for Landscaping Pests (ants, fleas, etc.) on the exterior of the Unit		X
Stucco Painting/Coloring		X
Stucco Repair and Replacement		X
Termites - Structural		X
Trim - Wood - Exterior - Maintenance and Replacement		X
Trim - Wood - Exterior - Painting		X
Walls - Bearing, Studs, Frames, Tiedowns, Other Structural Items		X
Walls - Non-bearing in Unit	X	
Wallpaper/Paneling	X	
Water Heater - Common Area		X
Windows and Screens	X	
Window Flashing, Frames, and Hardware	X	
Wiring - Electrical - Common Area or those serving more than one Unit wherever located		X
Wiring - Electrical - Solely serving one Unit and located within the outside perimeter of the exterior bearing walls of the Unit, within or underneath the floor/slab of the Unit, above the ceiling of the Unit, and within the non-bearing separation walls within the Unit	X	
Wiring - Telephone, Cable TV, Satellite, etc. for Unit	X	

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Revised: October 14, 2013