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LA COSTA DE MARBELLA HOA

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Attn: Signe Osteen

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**RESTATEMENT OF AMENDED DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS
OF
LA COSTA DE MARBELLA HOMEOWNERS ASSOCIATION**

TABLE OF CONTENTS

PREAMBLE Preamble - 1

ARTICLE I - DEFINITIONS

Section 1.1 - Declarant I - 1
 Section 1.2 - Condominium Property I - 1
 Section 1.3 - Owner I - 1
 Section 1.4 - Condominium Plan I - 1
 Section 1.5 - Condominium I - 1
 Section 1.6 - Unit I - 1
 Section 1.7 - Common Area I - 2
 Section 1.8 - Exclusive Use Area I - 2
 Section 1.9 - Mortgage I - 2
 Section 1.10 - Mortgagee I - 2
 Section 1.11 - Corporation I - 3
 Section 1.12 - Board I - 3

ARTICLE II - PROPERTY RIGHTS

Section 2.1 - Property Subject to Declaration . . II - 1
 Section 2.2 - Elements of Condominium II - 1
 Section 2.3 - Entry or Use Rights II - 1
 Section 2.4 - Nonexclusive Easements II - 2
 Section 2.5 - Partition Prohibited II - 3
 Section 2.6 - Encroachments II - 3

ARTICLE III - ASSOCIATION, ADMINISTRATION, MEMBERSHIP AND VOTING RIGHTS

Section 3.1 - Association to Manage Common Areas III - 1
 Section 3.2 - Membership III - 1
 Section 3.3 - Transfer III - 1
 Section 3.4 - Voting Rights III - 1

ARTICLE IV - ASSESSMENTS

Section 4.1 - Creation of the Lien and Personal
 Obligation of Assessments IV - 1
 Section 4.2 - Purpose of Assessments IV - 1
 Section 4.3 - Annual Assessment IV - 2
 Section 4.4 - Special Assessments for Capital
 Improvements or Extraordinary
 Expenses; Reserves for Replacement;
 Trust Funds IV - 3
 Section 4.5 - Division of Assessments IV - 4
 Section 4.6 - Effect of Nonpayment of Assessments IV - 4
 Section 4.7 - Transfer of Unit by Sale or
 Foreclosure IV - 4
 Section 4.8 - Enforcement; Remedies IV - 5

ARTICLE V - DUTIES AND POWERS OF THE ASSOCIATION

Section 5.1	- General Powers and Authority	V - 1
Section 5.1.1	- Assessments	V - 1
Section 5.1.2	- Adoption of Rules	V - 1
Section 5.1.3	- Enforcement of Violations	V - 1
Section 5.1.4	- Delegation of Authority	V - 3
Section 5.1.5	- Right of Entry	V - 3
Section 5.1.6	- Easements	V - 3
Section 5.1.7	- Acquisition and Disposition of Property	V - 3
Section 5.1.8	- Loans	V - 4
Section 5.1.9	- Dedication	V - 4
Section 5.1.10	- Contracts	V - 4
Section 5.2	- Duties of the Association	V - 4
Section 5.2.1	- Maintenance and Operation of Common Areas	V - 4
Section 5.2.2	- Financial Statements	V - 5
Section 5.2.3	- Insurance	V - 5
Section 5.2.4	- Discharge of Liens	V - 5
Section 5.2.5	- Assessments	V - 5
Section 5.2.6	- Payment of Expenses	V - 5
Section 5.2.7	- Enforcement	V - 5
Section 5.2.8	- Limitation on Board Authority	V - 5
Section 5.3	- Limitation on Liability of Officers and Directors	V - 7

ARTICLE VI - MAINTENANCE

Section 6.1	- Association's Responsibility	VI - 1
Section 6.2	- Member's Responsibility	VI - 1
Section 6.3	- Failure of Member to Maintain	VI - 2

ARTICLE VII - USE RESTRICTIONS

Section 7.1	- Residential Purposes Only	VII - 1
Section 7.2	- Uninsurable Against Loss	VII - 1
Section 7.3	- Animals	VII - 1
Section 7.4	- Nuisance	VII - 1
Section 7.5	- Signs	VII - 1
Section 7.6	- Antenna	VII - 2
Section 7.7	- Offensive Activity, Structural Integrity, Alterations on Common Area	VII - 2
Section 7.8	- Equipment and Rubbish Removal	VII - 2
Section 7.9	- Fences	VII - 2
Section 7.10	- Clotheslines	VII - 2
Section 7.11	- Power Equipment, Automobile Overhaul	VII - 3
Section 7.12	- Common Area Uses	VII - 3
Section 7.13	- Exclusive Use Areas	VII - 4
Section 7.14	- Alterations To Common Area	VII - 4
Section 7.15	- Damage To Common Area	VII - 4

Section 7.16 - Owner Improvements To Units VII - 4
 Section 7.17 - Balcony, Entryway and
 Patio Areas VII - 5
 Section 7.18 - Leases VII - 5
 Section 7.18.1- Lessee Information Provided by
 Owner to Association VII - 6
 Section 7.18.2- Liabilities and Obligations of
 Owner to Association VII - 6
 Section 7.18.3- Written Agreement of Lessee VII - 7

ARTICLE VIII - ARCHITECTURAL CONTROL

Section 8.1 - Architectural Control VIII - 1
 Section 8.2 - Architectural Committee VIII - 2

ARTICLE IX - INSURANCE

Section 9.1 - Insurance Coverage IX - 1
 Section 9.2 - Insurance Trustee IX - 1
 Section 9.3 - Waive of Subrogation IX - 2
 Section 9.4 - No Separate Insurance IX - 2
 Section 9.5 - Insurance Unavailable IX - 3

ARTICLE X - DESTRUCTION OF IMPROVEMENTS

Section 10.1 - Damage and Destruction Affecting
 the Common Area X - 1
 Section 10.2 - Partial Destruction X - 2
 Section 10.3 - Total Destruction X - 3
 Section 10.4 - Individual Units X - 4
 Section 10.5 - Partition X - 4
 Section 10.6 - Air Space X - 5

ARTICLE XI - GENERAL PROVISIONS

Section 11.1 - Enforcement XI - 1
 Section 11.2 - Severability XI - 1
 Section 11.3 - Term XI - 1
 Section 11.4 - Construction XI - 2
 Section 11.5 - Amendments XI - 2
 Section 11.6 - Singular Includes Plural XI - 2

RESTATEMENT OF AMENDED DECLARATION OF
COVENANTS CONDITIONS AND RESTRICTIONS OF
LA COSTA DE MARBELLA HOMEOWNERS ASSOCIATION

THIS RESTATEMENT OF DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS is made this _____ day of _____, 1990, by the owners of LA COSTA DE MARBELLA HOMEOWNERS ASSOCIATION.

A. A Declaration of Covenants, Conditions and Restrictions was recorded on January 7, 1975, at File/Page 75-004016 of the San Diego County Recorder's office by LA COSTA DE MARBELLA ASSOCIATES, a Partnership, and imposed uniform restrictions affecting the use and ownership of the following described real property:

Lot 1 of Carlsbad Tract No. 73-7 according to Map thereof No. 7921, filed in the Office of the County Recorder of San Diego County, April 15, 1974.

B. LA COSTA DE MARBELLA HOMEOWNERS ASSOCIATION, hereinafter called "Declarant," is a California nonprofit corporation and management body for the project.

C. There currently exists upon the above described real property a condominium project subject to the provisions of the Davis-Sterling Common Interest Development Act (California Civil Code (1350, et. seq.)). The owner of a condominium has a separate interest in an individual condominium unit and an

undivided interest as a tenant in common in the condominium common area.

D. That certain Declaration of Covenants, Conditions and Restrictions executed by LA COSTA DE MARBELLA ASSOCIATES, a Partnership, as Declarant, on January 7, 1975, and recorded in the Office of the County Recorder of San Diego County, California, at File/Page No. 75004016, is hereby amended, modified, and restated in its entirety to read as hereinafter set forth. Upon recordation in the Office of the San Diego County Recorder of this Amendment and Restatement; the provisions contained in the Declaration referred to above and the subsequent amendments to the Declaration, shall be superseded in their entirety. Nothing contained in this Amendment and Restatement shall abrogate or change any obligations incurred under the original Declaration or subsequent amendments prior to the recordation of this Amendment and Restatement.

E. It is Declarant's intention to impose upon said property mutually beneficial restrictions under a general plan of improvement for the benefit of all Condominium units and the respective Owners thereof; and,

F. The Declarant, pursuant to a common plan, is desirous of imposing certain covenants, conditions and restrictions for the benefit of Declarant and any and all future and current Owners of the property.

G. This Restatement of Amended Declaration of Covenants, Conditions and Restrictions has been approved by Sixty-Six and two-thirds percent (66-2/3%) or more of the total voting power of the Association in accordance with Article XVII, of the

Declaration.

NOW, THEREFORE, Declarant hereby declares that the Project is held and shall be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied, and improved subject to the following covenants, conditions, and restrictions, all of which are declared and agreed to be in furtherance of a plan for the improvement of said property and are established and agreed upon for the purpose of enhancing and perfecting the value, desirability, and attractiveness of the Project and every part thereof. All of the covenants, conditions, and restrictions shall run with the real property and shall be binding upon all parties having or acquiring any right, title, or interest therein or any part thereof, and shall be for the benefit of each Owner of any portion of said Project or any interest therein, and shall inure to the benefit of and be binding upon each successor in interest to the Owners thereof.

ARTICLE I

DEFINITIONS

DEFINITIONS. The terms used herein shall have the following meanings:

1. 1 "Declarant" shall mean and refer to LA COSTA DE MARBELLA HOMEOWNERS ASSOCIATION, a California non-profit corporation.

1. 2 "Condominium Property" shall mean and refer to that certain real property located in the County of San Diego, State of California, more particularly described on the first page of this Declaration. "Condominium Property" shall also mean "project" as that term may be used herein.

1. 3 "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Condominium, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

1. 4 "Condominium Plan" shall mean and refer to the condominium plan recorded pursuant to California Civil Code Sec. 1351 covering the Condominium Property, including such amendments thereto as may from time to time be recorded.

1. 5 "Condominium" shall mean and refer to a fee simple estate in the Condominium Property or portions thereof as defined in California Civil Code Sec. 783 and shall consist of a fee interest in a Unit and Garage Area and an undivided fractional interest as tenant in common in the Common Area.

1. 6 "Unit" shall mean and refer to that portion of the

Condominium Property shown and designated as such on the Condominium Plan, the boundaries of which are the interior surfaces of the perimeter walls, the finished surfaces of the floors and of the ceilings, windows and doors thereof, and includes both the portions of the building so described and the air space so encompassed; provided, however, that the following are not part of any Unit: Bearing walls, columns, floors, roofs, foundations, central services, pipes, ducts, flues, chutes, conduits, wires and other utility installations, wherever located, except outlets thereof when located within a Unit. (provided, however, gas outlets, including decorative devices, will be part of the Common Area). The physical boundaries of a Unit as constructed or any Unit reconstructed in substantial accordance with the original plans therefor, shall be conclusively presumed to be the boundaries rather than any metes and bounds description expressed in any deed or plan, regardless of any minor variance between boundaries shown in any deed or plan and those of the building.

1. 7 **"Common Area"** shall mean and refer to all portions of the Condominium Property not located within a Unit or Garage Area. Garage Areas are air spaces shown and described on the Condominium Plan.

1. 8 **"Exclusive Use Area"** shall mean and refer to those portions of the Common Area designated as such on the Condominium Plan and shall consist of: Patio, balcony and entryway areas.

1. 9 **"Mortgage"** shall mean and refer to a deed of trust as well as a mortgage.

1.10 **"Mortgagee"** shall mean and refer to a beneficiary

under or holder of a deed of trust, as well as a mortgagee.

1.11 "Corporation" shall mean and refer to LA COSTA DE MARBELLA HOMEOWNERS CORPORATION, a California corporation.

1.12 "Board" shall mean and refer to the Board of Directors of the Corporation.

ARTICLE II
PROPERTY RIGHTS

2.1 PROPERTY SUBJECT TO DECLARATION. All the real property previously described in the Preamble and the improvements thereon, shall be subject to this Declaration.

2.2 ELEMENTS OF CONDOMINIUM. Ownership of each Condominium within the Project shall include a Unit; an undivided interest in the Common Area, as specified in the deed to each Owner; exclusive use common area as designated in the Condominium Plan; a membership in the Association; and any exclusive or nonexclusive easement or easements appurtenant to such Condominium over the Common Area as described in this Declaration, the Condominium Plan and the deed to the Condominium.

2.3 ENTRY OR USE RIGHTS. Each Condominium and its Unit or the Common Area, as the case may be, shall be subject to the following rights of entry and use:

(a) The right of the Association, or its agents, to enter any Unit to cure any violation or breach of this Declaration or the By-Laws or the Association Rules, provided that at least thirty (30) days prior written notice of such violation or breach (except in cases of emergency) has been given to the Owner, and provided that, within the thirty (30) day period such Owner had not acted to cure such violation or breach. The Association shall be entitled to levy a special assessment for its costs of effecting such cure against the Owner in accordance with the procedures in these documents. The rights of entry and cure shall be

immediate in case of an emergency originating upon or threatening any Unit, whether or not its Owner is present.

(b) The right of the Association, or its agents, to enter any of the Units to perform its obligations and duties under this Declaration, including obligations or duties with respect to construction, maintenance, or repair for the benefit of the Common Area or the Owners in common; watering, planting, cutting, removing, and otherwise caring for the landscaping upon the Common Area, cleaning, repairing, replacing and otherwise maintaining underground utility lines serving each Unit. The rights shall be immediate in case of an emergency originating upon or threatening any unit, whether or not its Owner is present.

(c) The right of any Owner, or Owner's representatives, to enter the Unit of any other Owner for purposes of performing installations, alterations or repairs to mechanical or electrical services, including installation of television antennae and related cables, which are reasonably necessary for the use and enjoyment of his Unit, provided requests for entry are made in advance and that entry is at a time convenient to the Owner whose Unit is being entered upon. In case of emergency, the right of entry shall be immediate.

2.4 NON-EXCLUSIVE EASEMENTS. Each Member shall have a non-exclusive easement for use and enjoyment of the Common Area and for ingress, egress, and support over and through the Common Area. These easements shall be appurtenant to, and shall pass with the title to, each unit and shall be subordinate to the

exclusive easements granted elsewhere in this Declaration, as well as to the right of the Association to regulate time and manner of use, to charge reasonable admission fees, and to perform its obligations under this Declaration.

2.5 PARTITION PROHIBITED. The common areas shall remain undivided as set forth above. Except as provided by California Civil Code Sec. 1359 or authorized under this Declaration, no owner shall bring any action for partition of the common areas, it being agreed that this restriction is necessary in order to preserve the rights of the owners with respect to the operation and management of the project. Judicial partition by sale of a single condominium owned by two (2) or more persons and division of the sale proceeds is not prohibited hereby, but partition of title to a single condominium is prohibited.

2.6 ENCROACHMENTS. If any portion of the Common Area encroaches on any Unit or if any portion of a Unit encroaches on the Common Area, regardless of the cause, a valid easement exists for such encroachment and for the maintenance of it as long as it remains, and all Units and the Common Area are made subject to such easements. If any structure containing a Unit is partially or totally destroyed and then rebuilt and any encroachment on the Common Area results, a valid easement exists for such encroachment and for the maintenance of it as long as it remains, and, all Units and the Common Area are made subject to such easements.

ARTICLE III

ASSOCIATION, ADMINISTRATION, MEMBERSHIP AND VOTING RIGHTS

3.1 ASSOCIATION TO MANAGE COMMON AREAS: The management of the common area shall be vested in the Association in accordance with its bylaws. The members covenant and agree that the administration of the project shall be in accordance with the provisions of this Declaration, the Articles, Bylaws and Rules of the Association.

3.2 MEMBERSHIP. The owner of a condominium shall automatically, upon becoming the owner of same, be a member of the Association, and shall remain a member thereof until such time as the ownership ceases for any reason, at which time the membership in the Association shall automatically cease. Membership shall be held in accordance with the Articles and By-Laws of the Association.

3.3 TRANSFER. The Association membership held by any owner in the Property shall not be transferred, pledged or alienated in any way except upon the sale of an ownership interest and then only to the purchaser. 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 the owner should fail or refuse to transfer the membership registered in his name to the purchaser of such unit, the Association shall have the right to record the transfer upon the books of the Association.

3.4 VOTING RIGHTS. The Association shall have one class of membership. When more than one person holds an interest in

any condominium, all such persons shall be members. Each condominium in the Property is entitled to one vote. The vote for such condominium shall be exercised as the owners of interest therein decide, but in no event shall more than one vote be cast with respect to any condominium.

ARTICLE IV
ASSESSMENTS

4.1 CREATION OF THE LIEN AND PERSONAL OBLIGATION OF ASSESSMENTS: Each owner of any unit by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments for purposes permitted herein, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the unit and shall be a continuing lien upon the separate interest against which each such assessment is made, the lien to become effective upon recordation of a notice of assessment. Each such assessment together with interest, costs, and reasonable attorneys' fees, shall also be the personal obligation of the person who was the owner of such unit at the time when the assessment fell due. No member may exempt himself from liability for this contribution towards the common expenses by waiver of the use or enjoyment of any of the common areas or by the abandonment of his unit.

4.2 PURPOSE OF ASSESSMENTS: The assessments levied by the Association shall be used exclusively to promote the economic interest, recreation, health, safety, and welfare of all the residents in the entire project and for the improvement and maintenance of the common area and those other portions of the property for which the Association is responsible and for the

common good of the project.

4.3 ANNUAL ASSESSMENT: The Board of Directors shall determine and fix the amount of the annual assessment against each unit and send written notice thereof to every member not less than forty-five (45) days nor more than sixty (60) days in advance of each annual assessment period. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified unit have been paid. Such a certificate shall be conclusive evidence of such payment.

The Board of Directors of the Association may not impose a regular assessment that is more than twenty percent (20%) greater than the regular assessment for the Association's preceding fiscal year or impose special assessments which in aggregate exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year without the approval of owners casting a majority of the votes at a meeting or election of the Association at which a quorum is present.

This Section does not limit assessment increases necessary for emergency situations. For purposes of this Section, an emergency situation is any one of the following:

- (1) An extraordinary expense required by an order of a court.
- (2) An extraordinary expense necessary to repair or maintain the common area for which the Association is responsible where a threat to personal safety is discovered.

(3) An extraordinary expense necessary to repair or maintain the common area that could have not been reasonably foreseen by the Board in preparing and distributing the current year's operating budget.

4.4 SPECIAL ASSESSMENTS FOR CAPITAL IMPROVEMENTS OR EXTRAORDINARY EXPENSES; RESERVES FOR REPLACEMENT.

The Board of Directors may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the common area, including fixtures and personal property related thereto, or for extraordinary expenses incurred by the Association, provided that in the event special assessments exceed in the aggregate five percent (5%) of the budgeted gross expenses of the Association for that fiscal year, the vote or written consent of a majority of those voting of the Association where a quorum is represented shall be required.

As part of the regular annual assessments for maintenance authorized above, the Board of Directors shall annually fix the amount to be contributed pro rata by each member to reserve funds for the purpose of defraying, in whole or in part, the cost or estimated cost of any reconstruction, repair or replacement of improvements, including fixtures and personal property related thereto. Such determination shall be made after consideration of the need for additional funds and of the Association's capital position. The Board shall maintain a separate account for those funds. The Board shall fix the method of payment of such assessments and shall be empowered to

permit either lump sum or monthly payments. Separate records shall be maintained for all funds deposited to the said account, which shall be designated as a "Reserve Account."

Amounts received by the Association as contributions, assessments or dues from the members shall be held in one or more accounts. Deposits shall be made, and funds accounted for so that reserves for capital improvements and for replacement, can be clearly separated from funds for operating expenses or repair and maintenance funds. Capital improvement and replacement funds shall be used solely for capital improvements and replacements of those areas within the project for which the association has the responsibility to maintain.

4.5 DIVISION OF ASSESSMENTS: All assessments, both annual and special, shall be charged to and divided among the members equally.

4.6 EFFECT OF NONPAYMENT OF ASSESSMENTS: Regular and special assessments are delinquent fifteen (15) days after they become due. A late charge not exceeding ten percent (10%) of the delinquent assessment or ten dollars (\$10.00), whichever is greater shall be imposed upon any delinquent payment. Interest on delinquent assessments and late charges shall be imposed at an annual percentage rate of twelve percent (12%) interest commencing thirty (30) days after the assessments become due. Late charges and interest on past due amounts may be modified by the board in accordance with any changes permitted by state law.

4.7 TRANSFER OF UNIT BY SALE OR FORECLOSURE: Sale or transfer of any unit shall not affect the assessment lien. However, the sale of any unit pursuant to mortgage

foreclosure of a first mortgage shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer (except for assessment liens recorded prior to the mortgage). No sale or transfer shall relieve such unit from liability for any assessments thereafter becoming due or from the lien thereof.

4.8 ENFORCEMENT; REMEDIES: If an assessment is delinquent, the Association may record a notice of delinquent assessment and establish a lien against the condominium of the delinquent owner, notwithstanding any provision of this Declaration to the contrary, the lien of the assessment lien provided for herein shall be subordinate to the lien of any first mortgage or first deed of trust upon any condominium. The notice of delinquent assessment shall state the amount of the assessment, collection costs, attorney's fees, late charges, and interest, a description of the condominium against which the assessment and other sums are levied, the name of the record owner, and the name and address of the trustee authorized by the Association to enforce the lien by sale. The notice shall be signed by any officer of the Association or any agent designated by the Association.

An assessment lien may be enforced in any manner permitted by law, including sale by the court, sale by the trustee designated in the notice of delinquent assessment, or sale by a trustee substituted pursuant to California Civil Code Sec. 2934(a). Any sale shall be conducted in accordance with the

provisions of Secs. 2924, 2924b, 2924c, 2924F, 2924g, and 2924h of the California Civil Code, or any successor statutes thereto, applicable to the exercise of powers of sale in mortgages and deeds of trust, or in any other manner permitted by law. Nothing herein shall preclude the Association from bringing an action directly against an owner for breach of the personal obligation to pay assessments.

The Association, acting on behalf of the condominium owners, shall have the power to bid for the condominium at foreclosure sale, and to acquire and hold, lease, mortgage, and convey the same.

During the period a condominium is owned by the Association, following foreclosure: (1) No right to vote shall be exercised on behalf of the condominium; (2) no assessment shall be assessed or levied on the condominium; and (3) each other condominium shall be charged, in addition to its usual assessment, its share of the assessment that would have been charged to such condominium had it not been acquired by the Association as a result of foreclosure. Suit to recover a money judgment for unpaid common expenses, and attorneys' fees shall be maintainable without foreclosing or waiving the lien securing the same.

After acquiring title to the condominium at foreclosure sale following notice and publication, the Association may execute, acknowledge, and record a deed conveying title to the condominium which deed shall be binding on the owners, successors, and all other parties.

The Board may temporarily suspend the voting rights and the right to use recreational facilities of a member who is in default in payment of any assessment, after notice and hearing, as provided in the By-Laws.

ARTICLE V

DUTIES AND POWERS OF THE ASSOCIATION

5.1 GENERAL POWERS AND AUTHORITY. The Association shall have all the powers of a nonprofit corporation under California law, subject only to the limitations in the Governing Documents of the Association. It may perform all acts which may be necessary for or incidental to the performance of the obligations and duties imposed upon it by this Declaration or the other Governing Documents. Its powers shall include, but are not limited to, the following:

5.1.1 Assessments. The Association shall have the power to establish, fix, and levy assessments against the Members in accordance with the procedures set out in this Declaration and subject to the limitations therein.

5.1.2 Adoption of Rules. The Association shall have the power to adopt reasonable operating rules governing the use of the Common Area and any facilities located thereon, and of any other Association property. Such rules may include, but are not limited to, reasonable restrictions on use by the Members and their guests, rules of conduct, and the setting of reasonable fees for the use of recreational facilities. A copy of the current Association rules shall be given to each Member.

5.1.3 Enforcement of Violations. In addition to any other enforcement rights described in this Declaration and the By-Laws, or authorized by law and subject to any restrictions on the Association's enforcement rights, including any due process requirements, imposed by this

Declaration, the By-Laws, or by law, the Association may take any of the following actions against any person or entity whose act or failure to act violates or threatens to violate any provision of this Declaration, the By-Laws, or Association Rules:

- (a) impose monetary penalties, including late charges and interest,
- (b) suspend voting rights in the Association,
- (c) suspend use privileges for the Common Area, and,
- (d) commence a legal action for damages, injunctive relief, or both.

The determination of whether to impose any of the foregoing sanctions shall be within the sole discretion of the Association. Any legal action may be brought in the name of the Association on its own behalf and on behalf of any Owner who consents, and the prevailing party in any such action shall be entitled to recover costs and reasonable attorneys' fees. The Association may take more than one of the foregoing enforcement actions against any one violation or threatened violation, provided that a suspension of use privileges shall not exceed 30 days (unless the suspension is for delinquent assessments) and a monetary penalty shall not exceed \$100.00 (excluding late charges imposed for delinquent assessments) for any one violation. The Association, in its sole discretion, may resolve or settle any dispute, including any legal action, under such terms and conditions as it considers appropriate.

The enforcement of monetary penalties is subject to the restrictions described in the By-Laws.

5.1.4 Delegation of Authority. The Association, acting through the Board, shall have the power to delegate its authority, duties, and responsibilities to such committees, officers, or employees as are allowed under the Governing Documents. The Board of Directors may contract for the assistance of a reputable property management agent to assist it and its officers in carrying out its duties.

5.1.5 Right of Entry. The Association's agents or employees shall have the right to enter any unit when necessary in connection with any maintenance, landscaping, or construction for which the Association is responsible. Such entry shall be made with as little inconvenience to the Member as is practicable, and any damage caused thereby shall be repaired by the Association at its own expense.

5.1.6 Easements. The Association shall have authority, by document signed or approved by a majority of the total voting power of the Association to grant easements in addition to those shown on the Map, where necessary for utilities, cable television, and sewer facilities over the common area to serve the common and open space areas and the condominiums.

5.1.7 Acquisition and Disposition of Property. The Association shall have the power to acquire (by gift, purchase or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, or otherwise dispose of real or personal property in connec-

tion with the affairs of the Association.

5.1.8 Loans. The Association shall have the power to borrow money, and, except as otherwise provided herein, only with the assent (by vote or written consent) of a majority of the total voting power of the Association, to mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred.

5.1.9 Dedication. The Association shall have the power to dedicate all or any part of the common area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication shall be effective unless approved by three-fourths (3/4) of the total voting power of the Association.

5.1.10 Contracts. The Association shall have the power to contract for goods and/or services for the common area(s), facilities and interests or for the Association, subject to limitations of the governing documents.

5.2 Duties of the Association. In addition to the duties delegated to the Association or its agents and employees elsewhere in these Governing Documents, the Association shall be responsible for the following:

5.2.1 Maintenance and Operation of Common Areas. The Association, acting through the Board, shall operate and maintain the Common Areas and the facilities located thereon; such duty shall include providing maintenance of the Common Areas as provided in Article VI.

5.2.2 Financial Statements. The Association shall regularly prepare, review and distribute financial statements to the Members in accordance with the Bylaws.

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

5.2.4 Discharge of Liens. The Association shall discharge by payment, if necessary, any lien against the common area, and charge the cost thereof to the member or members responsible for the existence of the lien (after notice and a hearing, as provided in the By-Laws).

5.2.5 Assessments. The Association shall fix, levy, collect, and enforce assessments.

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

5.2.7 Enforcement. The Association shall enforce this Declaration.

5.2.8 Limitation on Board Authority. Except with the vote or written assent of the Owners holding a majority of the voting rights, the Board shall not take any of the following actions:

- (i) Incur aggregate expenditures for capital improvements to the Common Area in any fiscal year in excess of five percent of the budgeted gross expenses of the

Association for that fiscal year;

(ii) Sell during any fiscal year property of the Association having an aggregate fair market value greater than five percent of the budgeted gross expenses of the Association for that fiscal year;

(iii) Pay compensation to members of the Board or to officers of the Association for services performed in the conduct of the Association's business, provided that the Board may reimburse a member for expenses incurred in carrying on the business of the Association; or

(iv) Enter into a contract with a third person to furnish goods or services for the Common Area or the Association for a term longer than one 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 the term does not exceed the shortest term for which the supplier will contract at the regulated rate;

(b) Prepaid casualty or liability insurance policies not to exceed three

years' duration provided the policy permits for short rate cancellation by the insured; and

(c) Lease agreements for laundry room fixtures and equipment not to exceed five years' duration.

5.3 Limitation on Liability of Officers and Directors.

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

ARTICLE VI

MAINTENANCE

6.1 EXCLUSIVE RESPONSIBILITY OF BOARD. Except as otherwise provided herein or in the Articles of Incorporation or By-Laws, the Board shall have the sole and exclusive right and duty to manage, operate, control, repair, replace or restore all of the Common Area or any portion thereof, together with the improvements, trees, shrubbery, plants and grass thereon, all as more fully set forth in this Declaration.

6.2 RESPONSIBILITIES OF OWNERS. Each Owner shall be responsible for the maintenance, repair and replacement of all unit and garage doors, including all hardware and frames incident thereto, including glass doors, and windows and screens enclosing his Unit, the interior of his Unit, and shall also be responsible for the maintenance and repair of the plumbing, electrical and heating systems servicing his Unit and located within the exterior bearing walls of said Unit, including television cable equipment and connections, and all appliances and equipment located in said Unit. Each Owner shall also be responsible for the maintenance of his Garage Area, including, but not limited to, garage doors and hardware incident thereto. The owners shall not be responsible for painting the exterior of garage or entry doors appurtenant to their units. Owners are responsible for maintenance, repair and replacement of any air conditioning equipment servicing their unit whether located within or outside the unit boundaries.

6.3 FAILURE OF MEMBER TO MAINTAIN. If the Board of Directors determines that: (1) any Member has failed or refused to discharge properly his obligation with regard to the maintenance, repair, or replacement of items for which he is responsible hereunder, including a failure to maintain, repair, or replace a condition which may increase the possibility of fire or other loss or damage to the Properties; or (2) that the need for maintenance, repair, or replacement which is the responsibility of the Association hereunder is caused through the willful or negligent act of a Member, his family, guests, lessees, or invitees, then, in those events, the Association shall give the Member written notice of the Association's intent to provide necessary maintenance repair or replacement at Member's sole cost and expense, and setting forth with reasonable particularity the maintenance, repair, or replacement deemed necessary the cost thereof. However, in an emergency situation, the Association may proceed immediately without notice.

The Member shall have fifteen (15) days within which to make those repairs or maintenance or pay to the Association the amounts claimed due. Further, the Member may request, in writing, a hearing before the Board on his responsibility to perform or pay for the requested maintenance within ten (10) days of receipt of the Association notice. If after the hearing, the Board determines the maintenance to be the Member's responsibility, then, he shall be informed and granted fifteen (15) days to perform or pay to the Association the cost of maintenance.

If any Member does not comply with the provisions hereof, the Association may provide any such maintenance, repair, or replacement at the Member's sole cost and expense and said cost shall be added to and become a part of the assessment for which such Member is obligated.

ARTICLE VII

USE RESTRICTIONS

7. 1 RESIDENTIAL PURPOSES ONLY. Each unit shall be improved, used and occupied for private single-family dwelling purposes only, and no business or commercial activity shall be conducted therein without the prior written consent of the Board.

7. 2 UNINSURABLE AGAINST LOSS. No portion of the Condominium Property shall be occupied or used for any purpose or in any manner which shall (i) cause either to be uninsurable against loss by fire or the perils insured against by an extended coverage endorsement to the California Standard Fire Policy form, or (ii) cause any policy or policies representing such insurance to be canceled or suspended or the company issuing the same to refuse renewal thereof.

7. 3 ANIMALS. No animals, livestock, birds or poultry shall be brought within the Condominium Property except as may be permitted by rules established by the Board.

7. 4 NUISANCE. No Unit or Garage Area (as shown on the Condominium Plan) shall be used in such manner as to obstruct or interfere with the enjoyment of occupants of other Unit (or Garage Area) or annoy them by unreasonable noises or otherwise, nor shall any nuisance be committed or permitted to occur in any Unit or Garage Area.

7. 5 SIGNS. No signs other than one sign not to exceed 200 square inches in size advertising a Condominium for sale shall be erected or displayed for public view in any Unit or Garage Area. No signs shall be erected or displayed on the Common Area except signs placed by authority of the Board.

7. 6 ANTENNA. There shall be no outside television or radio antenna constructed, installed or maintained on the Condominium Property for any purpose whatsoever, without the prior written consent of the Board.

7. 7 OFFENSIVE ACTIVITY, STRUCTURAL INTEGRITY, ALTERATIONS ON COMMON AREA. No noxious or offensive activity shall be carried on in any Unit, Garage Area or on the Common Area, nor shall anything be done therein which may be or become an annoyance or nuisance to the other Owners. Nothing shall be done in any Unit or Garage Area, or in, on or to the Common Area which will impair the structural integrity of any building, or which would structurally change any building located therein. Nothing shall be altered or constructed in or removed from the Common Area, except upon the written consent of the Board.

7. 8 EQUIPMENT AND RUBBISH REMOVAL. All equipment, garbage cans, wood piles, or storage piles shall be kept screened and concealed from view of neighboring Units, streets and Common Area. All rubbish, trash or garbage shall be regularly removed from each Unit and Garage Area and shall not be allowed to accumulate therein or on the Common Area.

7. 9 FENCES. No fences, hedges or walls, shall be erected or maintained upon the Common Area, except such as are installed in accordance with the initial construction of the buildings located on the Condominium Property, or as provided by the Board.

7.10 CLOTHESLINES. No exterior clothes lines shall be erected or maintained and there shall be no outside drying or laundering of clothes on the Common Area (including any patio, entryway or balcony).

7.11 POWER EQUIPMENT, AUTOMOBILE OVERHAUL. No power equipment, hobby shops, or carpenter shops shall be maintained in said Condominium Property except with the prior approval of the Board. No automobile overhaul or maintenance work, other than emergency work, shall be permitted on said Condominium Property.

7.12 COMMON AREA USES. The Common Area, shall be improved and used only for the following purposes:

- (a) Affording vehicular passage to the parking areas and pedestrian movement within the said Condominium Property including access to the Unit.
- (b) Recreational use by the Owners and occupants of Units (and their guests) in the Condominium Property subject to rules established by the Board.
- (c) Beautification and providing privacy to the residents of the Condominium Property 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.
- (e) Storage of personal property in areas provided therefor as may be designated and approved by the Board.
- (f) No part of the Common Area shall be obstructed so as to interfere with its use for the purpose hereinabove permitted.

7.13 EXCLUSIVE USE AREAS. Each Exclusive Use Area shall be (i) appurtenant to a Condominium and (ii) used only for the purposes set forth on the Condominium Plan. The right to so use an Exclusive Use Area shall be exercisable only by the Owner(s) of the Condominium appurtenant thereto and/or said Owner's licensee(s). Conveyance of a Condominium shall effect conveyance of Exclusive Use Areas appurtenant thereto and transfer of all rights thereto to the vested owner of the Condominium. Any license(s) thereto shall be terminated upon such conveyance. No Exclusive Use Area or any rights thereto (other than said revocable licenses) shall be transferred or conveyed apart from conveyance of the Condominium to which it is appurtenant. Each Exclusive Use Area shall be deemed to be Common Area for all those purposes set forth in this Declaration which are not inconsistent with this paragraph or the paragraph herein entitled "RESPONSIBILITIES OF OWNERS."

7.14 ALTERATIONS TO COMMON AREA. Except as otherwise provided herein, no Owner shall make any alteration or improvement to the Common Area, or remove any planting, structure, furnishing or other improvement therefrom except with the written consent of the Board or the Architectural Committee.

7.15 DAMAGE TO COMMON AREA. Each Owner shall be legally liable to the Board for all damages to the Common Area or to any improvements thereof or thereto (including, but not limited to, the buildings, recreation facilities and landscaping) caused by such Owner or any occupant of such Owner's Unit.

7.16 OWNER IMPROVEMENTS TO UNITS. Each Owner shall have the right, at his sole cost and expense, to maintain, repair,

paint, paper, panel, plaster, tile and finish the interior surfaces of the ceilings, floors, window frames, door frames, trim and perimeter walls of his Unit and the surfaces of the bearing walls and partitions located within said Unit. Each Owner shall have the right, at his expense, to substitute new finished surfaces in place of those existing on said ceiling, floors and walls. Each owner shall be responsible for maintenance and repair of windows and doors and their respective frames and hardware as specified in Section 6.2.

7.17 BALCONY, ENTRYWAY AND PATIO AREAS. Each Owner shall have the right to place furniture and potted plants upon any balcony, entryway or patio area which he has the exclusive right to use. Nothing contained herein shall give any Owner the right to paint, decorate, remodel, or alter said Exclusive Use Areas or any other part of the Common Area without the prior written consent of the Board.

7.18 LEASES. Any agreement for the leasing or rental of a Condominium (hereinafter in this Section referred to as a "Lease") shall provide that the terms of such Lease shall be subject in all respects to the provisions of this Declaration, and any Amendment hereto, the Articles of Incorporation, the Bylaws, the Association Rules and Regulations, and any applicable agreements between the Association and any of the Federal agencies. Said Lease shall further provide that any failure by the Lessee thereunder to comply with the terms of the foregoing documents shall be a default under the Lease. All Leases shall be in writing. Any Owner who shall lease his Condominium shall be responsible for assuring compliance by such Owner's Lessee

with this Declaration, the Articles of Incorporation, the Bylaws and the Association Rules and Regulations as set forth herein.

7.18.1 Lease Information Provided by Owner to Association. The owner of said leased or rented Condominium has the duty and obligation to furnish the Board of Directors with the name or names of the individuals currently leasing or renting said Condominium and to maintain the current mailing address of said Condominium Owner.

7.18.2 Liabilities and Obligations of Owner to Association. In addition, any Owner leasing or renting his Condominium shall be liable to the Association for all obligations contained in this Declaration, including, but not limited to, the following:

(a) the obligation to pay assessments in respect to his Condominium; and

(b) be liable and responsible to the Association for any violations of this Declaration committed by his Lessee (or any persons entering his Condominium or the Common Areas with the permission of or at the request of his Lessee) including payment of any special assessment levied by the Association for a violation of the Covenants, Conditions and Restrictions, Bylaws, Articles and Association Rules and Regulations by an Owner's Lessee(s); and

(c) be deemed to have agreed, in connection with such renting or leasing, that upon being requested to do so by the Association he will immediately take such action or

actions in respect to his Lessee as may be necessary or required to cause such Lessee to fully comply with each and all of the terms and provisions of this Declaration, the Bylaws, Articles and/or Association Rules and Regulations (and upon failing to take such action and after fifteen (15) days written notice to the Owner, the Association may, on behalf of such Owner, then take such action or actions, including the institution of proceedings in unlawful detainer, if required, against such Lessee, and the costs of all such actions taken by the Association shall be charged to such Owner, and the Association may obtain reimbursement therefor by any remedy set forth in this Declaration or at law); and

(d) be deemed to have agreed to save, hold harmless, indemnify and defend the Association of and from any and all claims, demands, actions, causes of action, liabilities, damages and expenses arising out of, or incurred, as a result of the leasing or renting by such Owner of his Condominium, together with all costs, expenses and attorney fees resulting therefrom.

7.18.3 Written Agreement of Lessee. Prior to renting or leasing his Condominium, the Owner shall obtain and deliver to the Board from his proposed Lessee a written statement to the effect that such Lessee agrees to be subject to, bound by, and abide by, each and all of the terms and provisions of this Declaration, the Articles, the Bylaws and Association Rules and Regulations.

ARTICLE VIII

ARCHITECTURAL CONTROL

8.1 ARCHITECTURAL CONTROL. No building, fence, wall, obstruction, outside or exterior wiring, balcony, screen, patio, patio cover, tent, awning, carport, carport cover, improvement or structure of any kind shall be commenced, installed, erected, painted, repainted or maintained upon the property, nor shall any alteration or improvement of any kind be made thereto until the same has been approved in writing by the Board, or by an Architectural Control Committee appointed by the Board.

Plans and specifications showing the nature, kind, shape, color, size, materials and location of such improvements, alterations, etc., shall be submitted to the Board or to the Architectural Control Committee for approval as to quality of workmanship and design and harmony of external design with existing structures, and as to location in relation to surrounding structures, topography, and finish grade elevation. No permission or approval shall be required to repaint in accordance with Declarant's original color scheme, or to rebuild in accordance with Declarant's original plans and specifications. No permission or approval shall be required to repaint in accordance with a color scheme previously approved by the Board or the Committee, or to rebuild in accordance with plans and specifications previously approved by the Board or by the Committee. Nothing contained herein shall be construed to limit the right of an owner to paint the interior of his unit any color desired.

8.2 ARCHITECTURAL COMMITTEE. The committee for the control of structural and landscaping architecture and design (Architectural Review Committee) within the subdivision shall consist of three members approved by the Board or shall consist of the currently elected board of directors if a committee has not been previously appointed.

In the event the Committee fails to approve or disapprove plans and specifications within forty-five (45) days after the same have been submitted to it, approval will not be required and the related covenants shall be deemed to have been fully complied with.

126
ARTICLE IX

INSURANCE

9.1 INSURANCE COVERAGE. The Association shall obtain and maintain the following insurance:

(1) A casualty policy insuring the full replacement value of improvements and fixtures on the property;

(2) A comprehensive public liability insurance the Association, its agents, and the owners and occupants of the condominiums and their respective family members, guests, invitees, and agents against any liability incident to the ownership or use of the common area or any other Association owned or maintained real or personal property;

(3) Workers' compensation insurance to the extent required by law

(4) Officers and directors liability insurance; and

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

The amount, terms, and coverage of any policy required hereunder (including the type of endorsements, the amount of the deductible, the named insureds, the loss payees, standard mortgage clauses, and notices of changes or cancellations) shall be no less than that which is customary for similar policies on similar projects in the area.

9.2 INSURANCE TRUSTEE. Each owner appoints the Association or any insurance trustee designated by the Association to act on behalf of the owners in connection with all insurance matters arising from any insurance policy maintained by the Association,

Order: X03493XIX
Address: 2419 La Costa Ave Unit A

Order Date: 09-13-2022

ARTICLE IX - Page 1

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including, without limitation, representing the owners in any proceeding, negotiation, settlement, or agreements.

9.3 WAIVER OF SUBROGATION. Any insurance maintained by the Association shall contain "waiver of subrogation" as to the Association and its officers, directors, and members, the owners and occupants of the condominiums and mortgagees, and, if obtainable, a cross-liability or severability of interest endorsement insuring each insured against liability to each other insured. The Association shall periodically (and not less than once every three (3) years) review all insurance policies maintained by the Association to determine the adequacy of the coverage and to adjust the policies accordingly.

All individually owned insurance shall contain a waiver of subrogation as to the Association and its officers, directors, and members, of the owners and occupants of the condominiums and of mortgagees.

9.4 NO SEPARATE INSURANCE. No condominium owner shall separately insure his or her condominium against loss by fire or other casualty covered by any insurance carried by the Association. If any owner violates this provision, any diminution in insurance proceeds otherwise payable under the Association's policies that results from the existence of such other insurance will be chargeable to the owner who acquired other insurance. Any owner can insure his or her personal property against loss and obtain any personal liability insurance that he or she desires. In addition, any improvements made by an owner within his or her unit may be separately insured by the owner, but the insurance is to be limited to the type and nature

of coverage commonly known as "tenant's improvements."

9.5 INSURANCE UNAVAILABLE. The Association, and its directors and officers, shall have no liability to any owner or mortgagee if, after a good faith effort, it is unable to obtain the liability insurance required hereunder, because the insurance is no longer available or, if available, can be obtained only at a cost that the Board in its sole discretion determines is unreasonable under the circumstances, or the members fail to approve any assessment increase needed to fund the insurance premiums. In such event, the Board immediately shall notify each member and any mortgagee entitled to notice that the liability insurance will not be obtained or renewed. In such event, each Owner, upon receiving notice, would be entitled to obtain coverage to protect themselves from liability.

ARTICLE X

DESTRUCTION OF IMPROVEMENTS

10.01 DAMAGE AND DESTRUCTION AFFECTING THE COMMON AREA. If any portion of the common area is damaged or destroyed by fire or other casualty, then,

(a) if

(1) the available insurance proceeds initially offered or paid by the insurer do not exceed the sum of Five Thousand Dollars (\$5,000.00) such insurance proceeds shall be paid to the Board; and,

(2) the cost of repairing or rebuilding does not exceed the amount of available insurance proceeds by more than Five Thousand Dollars (\$5,000.00)

then the Board shall thereupon contract to repair or rebuild the damaged portions of the common area substantially in accordance with the original plans and specifications therefor. If the insurance proceeds are insufficient to pay all of the costs of repairing or rebuilding, the Board shall levy a special assessment on all owners to make up any deficiency.

(b) if the foregoing is inapplicable, then,

(1) all insurance proceeds shall be paid to a bank or trust company to be held for the benefit of the owners and their mortgagees and the holders of, or under their sales contract,

Order: XG3W93Y7X
Address: 2419 La Costa Ave Unit A

Order Date: 09-13-2022

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as their interests shall appear. The Board is authorized on behalf of the owners, to enter into an agreement, consistent with this Declaration, with such insurance trustee, relating to its powers, duties and compensation, as the Board may approve;

(2) the Board shall proceed under 10.2 below.

10.02 PARTIAL DESTRUCTION. In the event of partial destruction of the hereinabove described improvements on said property, it shall be the duty of the Association to restore and repair the same to its former conditions as promptly as practicable and in a lawful and workmanlike manner. The proceeds of any insurance shall be made available for such purpose and the Association or the Insurance Trustee, as the case may be, shall distribute the proceeds of all insurance policies to the contractors engaged in such repair and restoration in appropriate progress payments, subject to the prior rights of beneficiaries of deeds of trust, whose interest may be protected by said proceeds of such insurance policies.

In the event the amount available from the proceeds of such insurance policies for such partial reconstruction shall be inadequate, the owners of individual units, by an affirmative vote of over fifty percent (50%) of the members entitled to vote, in person or by proxy at a duly constituted meeting, shall determine whether the Board shall be authorized to proceed with such partial reconstruction or not, and in the event of an affirmative vote, a special assessment, of the unit owners, with each unit ownership contributing a proportionate share may be

levied to provide the necessary funds for such reconstruction, over and above the amount of any insurance proceeds available for such purpose. In the event of a determination by the owners that the costs of such reconstruction would be so substantial that it would not be in their best interests to proceed with same, the owners shall proceed as provided in Section 10.3 hereof.

10.3 TOTAL DESTRUCTION. In the event of total destruction of the improvement on said real property, the owners, by said vote as set out in Section 10.02 above, shall have the authority to determine whether said improvements shall be rebuilt, or whether said real property shall be sold. In the event of a determination to rebuild, the necessary funds shall be raised as provided in Section 10.02 hereof and the Board shall be authorized to have prepared the necessary plans, specifications and maps, and to execute the necessary documents to effect such reconstruction as promptly as practicable, under the guidelines set out in Section 10.02, and in a lawful and workmanlike manner.

A certificate of the resolution authorizing such reconstruction where required shall be filed with the County Recorder within six (6) months from the date of such destructions, and in the event of a failure to record such certificate within said period, it shall be conclusively presumed that the owners have determined not to rebuild said improvements. In the event of a determination not to rebuild, the Board shall be authorized to have prepared and to file, as promptly as practicable, a corrected map converting said real property into an unimproved parcel of land, which shall be offered for sale at the highest and best price obtainable, either in its damaged

condition or after damaged structures have been razed. The net proceeds of such sale and the proceeds, if any, of insurance carried by the Association on said premises shall be divided among the units as the square footage within each unit bears to the total square footage of all units then within project and each unit's share shall be divided among the owners of each individual unit. The balance then due on any individual unit's contract of sale or encumbrance executed in good faith and for value shall be first paid before the distribution of any proceeds to the owner whose unit is so encumbered.

For the purposes of this agreement, "total destruction" means any destruction requiring more than ninety (90) days to repair or any destruction that renders all of the units totally unusable for their intended use.

10.4 INDIVIDUAL UNITS. Restoration and repair of the damage to the interior of any individual unit shall be made by and at the individual expense of the owner or owners thereof, and in the event of repairs under Section 10.1 or a determination to rebuild under Section 10.02 and 10.03, said restoration and repairs shall be completed as promptly as practicable and in a lawful and workmanlike manner. Each Owner may maintain fire and other casualty insurance on the interior of his dwelling unit as desired.

10.5 PARTITION. Six (6) months from the date of any partial or total destruction, if a certificate of a resolution to rebuild where required has not been filed of record as hereinabove provided, or if reconstruction has not been actually commenced within said period, the covenant against partition

hereinabove provided shall terminate and be of no further force or effect.

10.6 AIR SPACE. In the event of total or partial destruction of said improvements, and in the event of a determination not to rebuild the same, fee title to the air space contained or formerly contained within the units as hereinabove described shall be deemed to merge in the interest of each owner in the common area as tenants in common with the remaining owners.

ARTICLE XI

GENERAL PROVISIONS

11.1 ENFORCEMENT. The Association, or any member, or the successor in interest of any member shall have the right to enforce by proceedings at law or in equity, all restrictions, conditions, covenants, Association Bylaws and rules and regulations, reservations, liens and charges now or hereafter imposed by the provisions of this Restated Declaration or any amendment thereto, including the right to prevent the violation of any such restrictions, conditions, covenants or reservations, the right to recover damages or other dues for such violation; provided, however, that with respect to assessment liens, the Association shall have the exclusive right to the enforcement thereof. Failure to enforce any covenant, condition or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. Should the Association incur attorneys' fees in order to enforce the covenants, conditions and restrictions or the Association Bylaws or rules and regulations, it shall be entitled to recover such expenses from the responsible members.

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

11.3 TERM. The covenants, conditions and restrictions of this Declaration shall run with and bind the units, and shall inure to the benefit of and be enforceable by the Association or the owner of any apartment subject to this

Restated Declaration, their respective legal representatives, heirs, successors, and assigns.

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

11.5 AMENDMENTS. This Restated Declaration of Covenants, Conditions and Restrictions may be amended by the affirmative assent or vote of a majority of the owners of units in the Property. However, the percentage of voting power necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. Any amendment must be certified in a writing executed and acknowledged by an authorized officer of the Association and recorded in the County Recorder's Office of the County of San Diego.

11.6 SINGULAR INCLUDES PLURAL. Whenever the context of this Restated Declaration requires same, the singular shall include the plural and the masculine shall include the feminine.

RECORDING REQUESTED BY:

THE ORIGINAL OF THIS DOCUMENT
WAS RECORDED ON SEP 09, 2005
DOCUMENT NUMBER 2005-0784055
GREGORY J. SMITH COUNTY RECORDER
SAN DIEGO COUNTY RECORDER'S OFFICE
TIME: 4:59 PM

WHEN RECORDED, MAIL TO:

Mary M. Howell, Esq.
EPSTEN GRINNELL & HOWELL
9980 Carroll Canyon Road, 2nd Floor
San Diego CA 92131

(Space Above for Recorder's Use)

**2005 AMENDMENT TO
RESTATEMENT OF AMENDED DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS OF
LA COSTA DE MARBELLA HOMEOWNERS ASSOCIATION**

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2

**2005 AMENDMENT TO
RESTATEMENT OF AMENDED DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS OF
LA COSTA DE MARBELLA HOMEOWNERS ASSOCIATION**

This 2005 Amendment to Declaration (the "*2005 Amendment*") is made by La Costa de Marbella Homeowners Association, a California nonprofit mutual benefit corporation (the "*Association*").

RECITALS

- A. Whereas a Restatement of Amended Declaration of Covenants, Conditions and Restrictions of La Costa De Marbella Homeowners Association, was executed by the La Costa De Marbella Homeowners Association, by and through its Board of Directors and recorded April 1, 1991 at File/Page No. 1991-0144245 of Official Records of San Diego County, California, and any other recorded covenants or amendments that may appear of record, referred to herein as "the Declaration"; and
- B. Whereas the real property currently subject to the Declaration is legally described in Exhibit "A" attached hereto and incorporated by reference; and
- C. Whereas the owners of property subject to the Declaration now desire to amend said Declaration to extend to three years from date of destruction the period for recordation of an intent to rebuild, and
- D. Whereas the Declaration provides, at Article XI, Section 11.5, that the Declaration may be amended by the vote of the holders of a majority of the Units (or not less than 30 of the 58 Owners), and
- E. Whereas, as more fully set forth in Exhibit "B" the president of the Association certifies that to the best of said officer's knowledge and belief, the requisite vote of the voting power has been obtained as to each proposed amendment, and thus this document is being recorded to give effect to said amendments,

NOW, THEREFORE, the "Restatement of Amended Declaration of Covenants, Conditions and Restrictions of La Costa De Marbella Homeowners Association" is hereby amended as follows:

Article X, Sections 10.3 and 10.5 are amended to permit the recordation of a certificate evidencing intent to rebuild in three years from the date of destruction extending the date from six months, as more fully set forth below:

10.3 TOTAL DESTRUCTION. In the event of total destruction of the improvement on said real property, the owners, by said vote as set out in Section 10.02 above, shall have the authority to determine whether said improvements shall be rebuilt, or whether said real property shall be sold. In the event of a determination to rebuild, the necessary funds shall be raised as provided in Section 10.02 hereof and the Board shall be authorized to have prepared the necessary plans, specifications and maps, and to execute the necessary documents to effect such reconstruction as promptly as practicable, under the guidelines set out in Section 10.02, and in a lawful and workmanlike manner.

The Association, upon a vote of the members as set forth hereinabove, shall make its determination whether to rebuild or not within three (3) years of the date of destruction, and shall thereafter record a certificate evidencing its decision. In the event of a determination not to rebuild, the Board shall be authorized to have prepared and to file, as promptly as practicable, a corrected map converting said real property into an unimproved parcel of land, which shall be offered for sale at the highest and best price obtainable, either in its damaged condition or after damaged structures have been razed. The net proceeds of such sale and the proceeds, if any, of insurance carried by the Association on said premises shall be divided among the units as the square footage within each unit bears to the total square footage of all units then within the project, and each unit's share shall be divided among the owners of each individual unit. The balance then due on any an individual unit's contract of sale or encumbrance executed in good faith and for value shall be first paid before the distribution of any proceeds to the owner whose unit is so encumbered.

For the purposes of this agreement, "total destruction" means any destruction requiring more than ninety (90) days to repair or any destruction that renders all of the units totally unusable for their intended use.

10.5 PARTITION. Three (3) years from the date of any partial or total destruction, if a certificate of a resolution to rebuild where required has not been filed of record as hereinabove provided, or if reconstruction has not been actually commenced within said period, the covenant against partition hereinabove provided shall terminate and be of no further force or effect.

This completes the text of the amendment. It is intended that the terms of this amendment shall control to the extent that any other provisions of the Declaration may conflict with it. If there is any error or omission in this amendment that is discovered after the date it is recorded, the Association, through the Board, reserves the right to record a document to correct any such error. Except as expressly modified by this amendment, all remaining provisions of the Declaration not shown above, shall remain in full force and effect. This amendment shall take effect immediately upon recording.

Exhibit A:

Legal Description of Property Currently Subject to the "Restatement of Amended Declaration of Covenants, Conditions and Restrictions of La Costa De Marbella Homeowners Association"

Lot 1 of Carlsbad Tract No. 73-7 according to Map thereof No. 7921, filed in the Office of the County Recorder of San Diego County, April 15, 1974.

Exhibit B: Certificate of President

I, Jeffrey Todd Foudy, Jeffrey Todd Foudy, declare:
(Handwritten Name)

1. I am the president of La Costa de Marbella Homeowners Association, a California nonprofit mutual benefit corporation (hereafter "Association").
2. This document is executed for the purpose of certifying that the foregoing "2005 Amendment to the Restatement of Amended Declaration of Covenants, Conditions and Restrictions of La Costa De Marbella Homeowners Association" ("2005 Amendment") has been approved by the requisite percentage of Owners.
3. I certify that there were 58 Members of the Association on the date of the voting on this Amendment, and that each Member had one vote. According to the requirements of Article XI, Section 11.5 of the Declaration, it may be amended by the vote of the majority of the Owners (Members) of the Association. Thus the affirmative vote of at least 30 Owners was required to approve the amendment.
4. Votes cast in favor of the amendment were 34, and votes cast against the amendment were 8.
5. Since the total reflects approval of at least a majority of the Owners, I certify that the foregoing 2005 Amendment has been approved.

On behalf of the Association, I declare under penalty of perjury under the laws of the State of California that the foregoing facts are true and correct. Executed at Carlsbad, California on the date set forth next to the name below.

Date: Sept. 2, 2005

Jeffrey Todd Foudy
Jeffrey Todd Foudy, President