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**SECOND RESTATED  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF  
AMERICANA GARDENS HOMEOWNERS ASSOCIATION  
  
CITY OF PALM SPRINGS, COUNTY OF RIVERSIDE  
STATE OF CALIFORNIA**

**If this document contains any restriction based on age, race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, familial status, marital status, disability, veteran or military status, genetic information, national origin, source of income as defined in subdivision (p) of Section 12955, or ancestry, that restriction violates state and federal fair housing laws and is void, and may be removed pursuant to Section 12956.2 of the Government Code by submitting a "Restrictive Covenant Modification" form, together with a copy of the attached document with the unlawful provision redacted to the county recorder's office. The "Restrictive Covenant Modification" form can be obtained from the county recorder's office and may be available on its internet website. The form may also be available from the party that provided you with this document. 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**  
**AMERICANA GARDENS HOMEOWNERS ASSOCIATION**

The First Restated Declaration of Covenants, Conditions and Restrictions of **Americana Gardens Homeowners Association** recorded in the official records of Riverside County, California, on February 15, 2006, as Document No. 2006-0113691, and any other amendments not specifically set forth but recorded prior to the date of the recording of this instrument, are hereby superseded, amended and restated in its entirety to read as follows:

**RECITALS**

(A) The Original Declaration of Covenants, Conditions and Restrictions recorded in the Riverside County Recorder's Office on July 24, 1989, as Instrument No. 89-245769 ("Original Declaration") established AMERICANA GARDENS HOMEOWNERS ASSOCIATION ("Association") to oversee, manage, maintain and operate the real property ("Project") subject to the Original Declaration, plus all annexations to the Project. The Project subject to this Declaration is legally described in Exhibit "A" to this Second Restated Declaration.

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

(C) It was further intended that the Project consist of a "Condominium Project," as defined in *Civil Code* Section 4125 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 in this Second Restated Declaration which shall run with the Project and be binding on all parties having or acquiring any right, title or interest in any part of the Project, their heirs, successors and assigns, and shall inure to the benefit of each Owner.



## ARTICLE 1

### DEFINITIONS

**Section 1.1** “**Annual Budget Report**” means the report prepared by the Association and distributed to the Owners by Individual Delivery as set forth in Article 10, Section 10.3(A) of the Bylaws and *Civil Code* Section 5300.

**Section 1.2** “**Annual Policy Statement**” means the statement prepared by the Association and distributed to the Owners by Individual Delivery as set forth in Article 10, Section 10.3(D) of the Bylaws and *Civil Code* Section 5310.

**Section 1.3** “**Architectural Committee**” means the committee created in accordance with Article 7 of this Declaration.

**Section 1.4** “**Architectural Guidelines**” means the rules, regulations and/or guidelines pertaining to Improvements which have been or shall be adopted by the Board and amended from time to time.

**Section 1.5** “**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 1.6** “**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 1.7** “**Association**” or “**Corporation**” means **AMERICANA GARDENS HOMEOWNERS ASSOCIATION**, a California nonprofit mutual benefit corporation, its successors and assigns. The Association is an “association” as defined in *Civil Code* Section 4080.

**Section 1.8** “**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 1.9** “**Board of Directors**” or “**Board**” means the Board of Directors of the Association.

**Section 1.10** “**Bylaws**” means the current Bylaws of the Association, as such Bylaws may be amended from time to time.

**Section 1.11** “**City**” means the City of Palm Springs and its various departments, divisions, employees and representatives.

**Section 1.12** “**Common Area**” means the entire Project, except all Units, as defined in this Article and shown on the Condominium Plan. Unless the context clearly indicates a contrary

intention, any reference to the “Common Area” shall also include any Common Facilities located thereon. As more particularly described in Article 1, Section 1.23, portions of the Common Area are designated as Limited Common Area whose use and enjoyment are restricted to the Owners and occupants of the residence adjacent to such Limited Common Areas.

**Section 1.13** “**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;

(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.

**Section 1.14** “**Common Facilities**” means the swimming pools, spas, dry sauna, restrooms, clubhouse, barbeque, fitness room, laundry room, sun decks, planters, , mailboxes, walkways, parking spaces, trees, hedges, plantings, lawns, shrubs, landscaping, fences, utilities, beams, lighting fixtures, buildings, structures and other facilities constructed or installed, or to be constructed or installed, or currently located within the Common Area.

**Section 1.15** “**Condominium**” means an estate in real property as described in *Civil Code* 4125(b) consisting of an interest in a Unit, and an undivided fractional interest as a tenant in common in all or any portion of the Common Area.

**Section 1.16** “**Condominium Building**” shall mean and refer to a separate residential building containing one or more Condominium Units.

**Section 1.17** “**Condominium Plan**” means any condominium plan and amendments recorded for any phase of the Project, pursuant to *Civil Code* Section 4285, including the Condominium Plan recorded on July 7, 1989, as Document No. 226947, in the official records of Riverside County.

**Section 1.18** “**County**” means the County of Riverside, State of California, and its various departments, divisions, employees and representatives.

**Section 1.19** “**Declaration**” means this instrument, including all of the exhibits (all of which shall be deemed incorporated by reference), as the same may be amended from time to time. The “Original Declaration” means and refers to the document referenced in the recitals to this Declaration, together with all amendments and annexations, adopted prior to adoption and recordation of this Declaration.

**Section 1.20** “**Deed of Trust**” or “**Trust Deed**” means a Mortgage or a Deed of Trust, as the case may be.

**Section 1.21** “**Director**” means a natural person who serves on the Board.

**Section 1.22** “**Eligible Mortgage Holder**” means and refers to a holder of a first Mortgage on a Condominium who has requested notice from the Association of those matters to which such holder is entitled by reason of this Declaration.

**Section 1.23** “**Exclusive Use Common Area**” shall mean any portion of the Common Area designated by this Declaration and/or the Condominium Plan as “**Limited Common Area**” for the exclusive use of one or more, but fewer than all, of the Owners of the separate interests and which is appurtenant to the Unit and shall consist of one (1) Parking Space. As set forth in the Condominium Plan, this Exclusive Use Common Area element has 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.

Additionally, unless otherwise provided herein or on the Condominium Plan, any doorsteps, entryways, exterior doors, door frames and hardware incident thereto, screens and windows or other fixtures designed to serve a single separate interest, but located outside the boundaries of the separate interests, are Limited Common Areas. Internal and exterior wiring designed to serve a single separate interest, are exclusive use areas allocated exclusively to that separate interest. Subject to the consent of the Association, the Owner of a separate interest shall be entitled to reasonable access to the Common Areas for the purpose of maintaining the internal and external telephone lines. The Association’s approval shall not be unreasonably withheld, but may include conditions as the Association determines reasonable.

**Section 1.24** “**General Delivery**” or “**General Notice**” means the delivery of documents or notification of information by the Association to the Owners through one or more of the methods set forth in Article 17, Section 17.1 of this Declaration and *Civil Code* Section 4045.

**Section 1.25** “**Governing Documents**” is a collective term that means and refers to the Declaration, Articles, Bylaws, Rules and Regulations, Architectural Guidelines, Election Operating Rules and any policies and procedures adopted by the Board.

**Section 1.26** “**Improvement**” means, without limitation, the construction, installation, alteration, or remodeling of any buildings, walls, patios, balconies, solar heating equipment, video/surveillance cameras, antennas, utility lines, or any structure of any kind. The term “Improvement” does not include construction, installation, alteration, or remodeling projects which are restricted to the Unit interior so long as such projects do not involve the roof or load bearing walls or Association-maintained plumbing, electrical and other utility lines.

**Section 1.27** “**Individual Delivery**” or “**Individual Notice**” means the delivery of documents or notification of information by the Association to the Owners through one of the methods set forth in Article 17, Section 17.2 of this Declaration and *Civil Code* Section 4040.

**Section 1.28** “**Member**” means every person or entity who holds a membership in the Association).

**Section 1.29** “**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 1.30** “**Officer**” means the President, Vice President, Secretary or Treasurer of the Association, or any subordinate Officers, as set forth in the Bylaws.

**Section 1.31** “**Owner**” means any person, firm, corporation or other entity which owns a record fee simple interest in a Unit which is part of a Condominium, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

**Section 1.32** “**Project**” or “**Real Property**” means all parcels of real property (Common Area, Limited Common Area, and Condominium Units) described and identified in Recital “A,” together with all buildings, structures, utilities, Common Facilities, and all other improvements, either currently included or installed in the future.

**Section 1.33** “**Regular Assessment**” means an Assessment levied against an Owner and his or her Unit in accordance with Article 5, Section 5.3.

**Section 1.34** “**Reimbursement Assessment**” means an Assessment levied against an Owner and his or her Unit in accordance with Article 5, Section 5.6.

**Section 1.35** “**Residential Use**” means occupancy and use of a residence for dwelling purposes in conformity with this Declaration and the requirements imposed by applicable zoning or other applicable laws or governmental regulations limiting the number of persons who may occupy residential dwellings.

**Section 1.36** “**Rules and Regulations**” means the rules, regulations and policies adopted by the Board of the Association, pursuant to *Civil Code* Sections 4340 - 4370, and this Declaration, as the same may be in effect from time to time.

**Section 1.37** “**Special Assessment**” means an Assessment levied against an Owner and his or her Unit in accordance with Article 5, Section 5.4.

**Section 1.38** “**Unit**” or “**Living Unit**” the elements of a Condominium that are not owned in common with the Owners of Condominiums in the Project, such Units, including the Patios and Balconies, and their respective boundaries being shown and particularly described in the Condominium Plan, deeds conveying condominiums, and this Declaration. “Unit” does not include other interests in real property that are less than estates in real property, such as exclusive or non-exclusive easements. In interpreting deeds and plans, the existing physical boundaries of the Unit, or of a Unit reconstructed in substantial accordance with the original plan, shall be inclusively presumed to be its boundaries, rather than the description expressed in the deed or Condominium Plan or in the deed and those of the building and regardless of settling or lateral movement of the building. Whenever reference to a Unit is made in this Declaration, in the Condominium Plan, in any deed, or elsewhere, it shall be assumed that such reference is made to the Unit as a whole, including each of its component elements.

The following are not part of any Unit: parking space, bearing walls, columns, floors, roofs, area between the roof and any deck located above roof, foundations, slabs, pipes, chutes, ducts, flues, conduits, wires and other utilities, wherever located, except the outlets thereof when located in the Unit.

**Section 1.39** “**Voting Power**” means the number of Units within the Association.

## **ARTICLE 2**

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

**Section 2.1** **Membership.** All Owners, by virtue of their ownership of a Unit, shall be a Member of the Association and shall be entitled to vote on all matters upon which Members of the Association are entitled to vote pursuant to the Declaration and in accordance with the Articles and Bylaws. Membership shall be appurtenant to and may not be separated from ownership of any Unit. Each Member is obligated to promptly, fully and faithfully comply with and conform to the Governing Documents pertaining to the Association. Where title is held by a legal entity (other than a trust), the governing authority of the legal entity shall have the power to appoint a natural person to be a Member.

**Section 2.2.** **One Class of Membership.** The Association shall have one (1) class of membership and the rights, duties, obligations and privileges of the Members shall be as set forth in the Governing Documents.

**Section 2.3.** **Voting.** Subject to the provisions of the Governing Documents, each Owner shall be entitled to one (1) vote for each Unit in which he or she holds the interest required for membership and each Unit is allocated a vote equal to each other Units’ vote. Membership shall be appurtenant to and may not be separated from ownership of any Unit. Each Owner is obligated promptly, fully and faithfully to comply with and conform to the Governing Documents.

**Section 2.4. Transfer.** Membership in the Association shall not be transferred, pledged or alienated in any way, except upon the sale of the Unit to which it is appurtenant, and then only to the purchaser. The transfer of title to a Unit, or the sale of a Unit and transfer of possession to the purchaser, shall automatically transfer the membership appurtenant to such Unit 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 Unit, the Association shall have the right to record the transfer upon the books of the Association.

**Section 2.5 Joint Owner Votes.** The vote for each Unit shall be cast as a single vote, and fractional votes shall not be allowed. In the event that joint Owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. If any Owner casts a vote representing a certain Unit, it will be conclusively presumed for all purposes that he, she or they were acting with the authority and consent of all other Owners of the same Unit.

### **ARTICLE 3**

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

**Section 3.1 Elements of Condominium Ownership.** Ownership of an interest in each Unit within the Project shall include a Unit, including its air space component elements, 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 one hundred forty-four (144). The 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 13 of this Declaration, and any exclusive or non-exclusive easement or easements appurtenant to said Unit over the Common Area or Common Facilities as described in the Declaration, the Condominium Plan and the deed to the Unit.

**Section 3.2 Owners' Nonexclusive Easements of Use.** Every Owner shall have a nonexclusive 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. Such right shall be appurtenant to and shall pass with the ownership of a Unit, subject to all of the rights, easements, covenants, conditions, restrictions and other provisions contained in the Governing Documents, including, without limitation, the following provisions:

(A) The right of the Association to limit the number of guests of Owners using the recreational areas of the Common Facilities, subject to the provisions of California law;

(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 4.4(B) and California law;

(D) The right of the Association to temporarily suspend right to use the recreational portions of the Common Facilities by an Owner as more specifically set forth in Article 15.1(A) of this Declaration;

(E) Subject to the limitations set forth in this Declaration, 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 set forth in Article 4, Section 4.6(D), the right of the Board to grant licenses or easements to individual Owners over the Common Area;

(G) The right of the Board to charge deposit fees and other administrative costs for use of the Common Area subject to the provisions of California law; and

(H) Subject to the limitations set forth in this Declaration, the right of the Association to borrow money for the purpose of improving the Project or any other purpose reasonably related to fulfill the Association's obligations under the Governing Documents.

**Section 3.3 Exclusive Common Area.** Each Exclusive Use Common Area (e.g., Parking Space) shall be (i) appurtenant to the Condominium and (ii) used only for the purposes set forth in this Declaration. The right to use a Limited Common Area shall be exercisable only by the Owner(s) of the designated or appurtenant Condominium and/or said Owner's tenants and licensee(s). Conveyance of a Condominium shall effect conveyance of Limited Common Areas appurtenant thereto and transfer all rights thereto to the vested Owner of the Condominium. Any license(s) thereto shall be terminated upon such conveyance. No Limited Common 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 Limited Common Area shall be deemed to be Common Area for the purposes set forth in this Declaration which are not inconsistent with this Article.

The Association shall have the right to assign particular Exclusive Use Common Area parking spaces to each Unit. Each Unit and Owner shall have an exclusive easement, subject to the Association's Governing Documents, to use the parking space that has been assigned to the particular Unit. The assignment of Limited Common Area parking spaces is set forth in Exhibit "B" to this Declaration.

**Section 3.4 Persons Subject to Governing Documents.** All present and future Owners, lessees and occupants of Condominiums and their guests and invitees within the Project shall be subject to, and shall comply with, each and every provision of the Governing Documents, as the same or any of them shall be amended from time to time, unless a particular provision is specifically restricted in its application to one or more of such classes of persons (i.e., Owners, tenants, invitees, etc.). The acceptance of a deed to any Unit, the entering into a lease, sublease or contract of sale with respect to any Unit, or the occupancy of any Unit shall constitute the consent and agreement of such Owner, lessee or occupant that each and all of the provisions of the Governing Documents shall be binding upon such person and their guests and invitees and that

such persons will observe and comply with the Governing Documents. The Owners of the Units are at all time responsible for the actions of their tenants, occupants, guests, and invitees and their tenants' and occupants' guests and invitees.

**Section 3.5 Encroachment Easements.** The Owner of each Unit is hereby granted an easement over all adjoining Units and the Common Area for the purpose of accommodating any minor encroachments due to engineering errors, errors in original construction, settlement or shifting of any building, or any other cause. There shall be easements for the maintenance of such encroachments as long as they shall exist, and the rights and obligations of Owners shall not be altered in any way by such encroachments, settlement or shifting. However, in no event shall an easement for encroachment be created in favor of any Owner if such 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 such encroachments so long as they shall exist.

**Section 3.6 Easements for Maintenance and Repair.** Wherever connections, lines, drainage or other facilities are installed within the Project, the Owners of Units served by such connections, lines or facilities shall have an easement to the full extent necessary for the use and enjoyment of that portion of the connections which service his or her Unit, and to have utility companies enter upon portions of the Project owned by others (i.e., Common Area, Limited Common Areas or Units), in or upon which said connections, lines or facilities, or any portion thereof are located, to repair, replace and generally maintain said connections when it may be necessary.

**Section 3.7 Waiver of Use.** No Owner, by non-use of the Common Area or Common Facilities, abandonment of the Owner's Unit or otherwise may avoid the burdens and obligations imposed on such Owner by the Governing Documents, including, without limitation, the payment of Assessments levied against the Owner and his or her Unit pursuant to this Declaration.

**Section 3.8 Obligations of Owners.** Owners of Units within the Project shall be subject to the following:

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

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

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



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

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

**Section 3.9 Delegation of Use.** Any Owner may delegate his or her rights of enjoyment in the Project, including the Common Area and Common Facilities, to his or her family members, lessees, occupants, and their guests and invitees, and to such other persons, as may be permitted by the Association's Governing Documents. Neither an Owner of a Unit who has sold same to a contract purchaser or has leased or rented same, nor his or her family members, guests, or invitees shall be entitled to use and enjoy the Common Facilities while such Owner's Unit is occupied by such contract purchaser, lessee, or renter. 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 to this Section are subject to suspension to the same extent to which the rights of the Owners are subject.

**Section 3.10 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.

**Section 3.11. Owner's Obligation for Taxes.** Each Owner shall be obligated to pay any taxes or assessments assessed by the County Assessor against his or her Unit and against his or her personal property.

## **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, officers, and committee members act on behalf of and as representative of the Association, which acts on behalf of and as representative of the Owners. No Director, Officer, or Committee Member 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 Conflict of Interest.** A Director or committee member shall not vote on any of the following matters:

- (A) Discipline of such Director or committee member;
- (B) An Assessment against such Director or committee member for damage to the Common Area or Common Facilities;
- (C) A request, by such Director or committee member, for a payment plan for overdue Assessments;
- (D) A decision whether to foreclose on a lien on the Condominium of such Director or committee member;
- (E) Review of a proposed physical change to the Condominium of such Director or committee member; or
- (F) Granting a portion of the Common Area to such Director or committee member for his or her exclusive use.

**Section 4.3 Management and Control.** The Association shall have all those duties and powers set forth in the Governing Documents of the Association or permitted pursuant to the provisions of the *Corporations Code* for nonprofit mutual benefit corporations. All such duties and powers shall be subject to any specific limitations set forth in the Governing Documents. All such duties and powers shall be exercised by the Board unless specifically reserved to the Owners. 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 and the Governing Documents, 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 4.4 Powers of the Board.** In addition to the general powers and duties granted or imposed by the Governing Documents and applicable law, the Board shall have the following specific powers:

(A) **Management of Business.** To conduct, manage and control the affairs and business of the Association as it deems best, for the operation of the Project. The Board may appoint such agents and employ such other employees, including professional management, attorneys and accountants, as it sees fit to assist in the operation of the Association and to fix their duties and to establish their compensation.

(B) **Rule-Making.** 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, lessees, and occupants and their guests and invitees, and the conduct of such persons and other activities reasonably contemplated under the Association's Governing Documents. The Rules and Regulations may include the establishment of a system of fines and penalties.

So long as required by *Civil Code* Sections 4340 - 4370, at least twenty eight (28) 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 of the proposed Rule change by General Notice. 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 by a vote of the Board at a duly held meeting after consideration of any comments made by the Owners. The Board shall provide General Notice of the Rule change to every Owner within fifteen (15) days after making any Rule change.

The requirement that Owners be provided with General 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.

The Rules and Regulations shall be binding upon the Owners, lessees, and occupants of the Condominiums and their guests and invitees, and shall be enforceable to the same extent as if they were specifically set forth as provisions in the Declaration or Bylaws. 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) Made available to each Owner within a reasonable time after the Association has notice of his or her occupancy of a Unit.

(C) Enforcement. As more specifically set forth in Article 15 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, levy of Reimbursement Assessments, and suspension of Membership privileges such as use of the Common Facilities. These powers, however, shall not be construed as limiting any other legal means of enforcing the Governing Documents.

(D) Delegation of Powers; Professional Management. To delegate the management of the activities of the Association to any persons, management company or committees, 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.

(E) Selection of Officers/Committee Members. To select and remove all the Officers, committee members, agents, and employees of the Association and prescribe such powers and duties for them as may be consistent with law and the Governing Documents.

(F) Reconstruction. As more specifically set forth in Article 11, to contract for and pay for reconstruction of any portion of the Project damaged or destroyed.

(G) 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, the Governing Documents, or any action in which the Owners and/or the Association have an interest.

(H) Deposits/Administrative Fees. To impose and receive deposit or other administrative fees for the use or operation of the Common Area and Common Facilities as allowed by California law.

(I) Grant Permits, Licenses or Easements. The Board may 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.

(J) Borrowing Money. Subject to the limitations set forth in Section 4.6(A) of this Article, to borrow money for the purposes of improvement or restoration of the Common Area and Common Facilities.

(K) Enter into Contracts. Subject to the provisions of Section 4.7 of this Article, to enter into contracts or arrangements for services or materials for the benefit of, or improvement to, the Common Area.

(L) Acquire and Dispose of Property. 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 connection with the affairs of the Association. The Board's ability to sell property is subject to the limitations set forth in Section 4.6(C) of this Article.

(M) Capital Improvements. Subject to the provisions of Section 4.6(B) of this Article, to expend money for capital improvements to the Common Area. For purposes of the Governing Documents, the term "capital improvement" means those items or elements which are new to the Project.

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

(O) Vacancies. To fill vacancies on the Board or on any committee, except a vacancy created by the removal of a Director by a vote of the Owners.

**Section 4.5 Duties of the Association.** In addition to the powers delegated to it by the Governing Documents, the Board, 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 9 of this Declaration, to maintain, operate, and otherwise manage all of the Common Area and Common Facilities, including the improvements and landscaping thereon and all property subsequently acquired by the Association. In connection with this duty, the Board shall contract for and purchase tools, equipment, materials, supplies, and other personal property and services for the maintenance and repair of the Common Area and improvements to the Project. The Board shall also have the right to assign, rent, license or otherwise designate and control the use of the Common Area and/or the improvements thereon. 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. To pay all real and personal property taxes and assessments and all other taxes levied against the Association. The obligation to pay the taxes and assessments may be contested 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 or assessments.

(C) Utilities and Services. To acquire, provide and/or pay for water, sewer, garbage disposal, refuse and rubbish collection, electrical, telephone, gas, gardening service, and other necessary utility services for the Common Area and make these and such other utilities as the Board may determine, available to all Units. The Association shall pay all charges for utilities supplied to the Project except those metered or charged separately to the Units.

(D) Insurance. The Board shall secure and maintain policies of insurance, as more particularly provided in Article 10 of this Declaration.

(E) Assessments. To establish, fix, and levy Assessments against the Owners and to enforce payment of such Assessments, in accordance with the provisions of the Governing Documents and current California law.

(F) Annual Disclosures. To prepare Annual Budget Reports, financial statements and assessment and reserve funding disclosure summaries for the Association as required by the Governing Documents and *Civil Code* Sections 5300, 5305, and 5570.

(G) Distribute Documents and Perform Other Duties. To prepare and distribute to the Owners documents as provided in the Article 10 of the Bylaws and as required by *Civil Code* Sections 4530, 5300, 5305, 5310, and 5810, and to perform other duties as required by *Civil Code* Sections 5500 and 5550.

**Section 4.6 Limitations on Authority of the Board**. The Board shall not take any of the actions listed below except with the vote or written consent of a majority of a quorum, where quorum is a majority of the total Voting Power of the Association:

(A) Borrow Money. Borrow money and incur indebtedness for the purposes of the Association in excess of the aggregate sum of ten percent (10%) of the budgeted gross expenses of the Association for that fiscal year.

(B) Expenditures for Capital Improvements. Make expenditures for capital improvements to the Project in excess of the aggregate sum of ten percent (10%) of the budgeted gross expenses of the Association for that fiscal year.

(C) Sell Property. Sell during any fiscal year property of the Association having an aggregate fair market value greater than five percent (5%) of the budgeted gross expenses of the Association for that fiscal year.

(D) Convey or Grant Licenses/Easements. Sell, convey, or grant licenses or easements to Owners to exclusively use portions of the Common Area where the value of the license or easement is five percent (5%) or more of the budgeted gross expenses of the Association for that fiscal year. For purposes of *Civil Code* Section 4600, the affirmative vote of zero percent (0%) of the Owners is required for the Board to sell, convey or grant exclusive use of any portion of the Common Area to any Owner if the value such 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 *Civil Code* Section 4600(b) apply to any conveyance, sale or grant of easement, license and/or permit.

**Section 4.7 Third Person Contracts**. The Board shall not, without obtaining the consent of a majority of a quorum, where quorum is a majority of the Voting Power of the Association, enter into contracts with third persons for the furnishing of goods or services for the Common Area 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) Prepaid casualty and/or liability insurance policy not to exceed three (3) years duration; provided that such policy permits for short-rate cancellation by the insured;

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

(D) Agreements for cable television services and equipment, internet services and equipment, or satellite dish television services and equipment not to exceed five (5) years duration;

(E) Agreements for sale or lease of burglar alarm, fire alarm, and/or smoke detection equipment, installation, and services not to exceed a five (5) year duration;

(F) Agreements for repairs, renovations, improvements or maintenance services that cannot, due to the nature of the work required to be performed, be completed in one (1) year, e.g., ongoing maintenance service pursuant to warranty requirements; and

(G) Laundry Machines. Any agreement for the lease of laundry machines not to exceed a five (5) year duration.

(H) Gym Equipment. Any agreement for the lease of gym equipment for the fitness room not to exceed a five (5) year duration.

**Section 4.8 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 4.9 Limited Right of Entry.**

(A) For any purposes related to the performance by the Board of its duties or responsibilities under the Governing Documents, including, but not limited to, constructing, maintaining and repairing the Common Area and Condominium Building, enforcing the Governing Documents, or making necessary repairs that an Owner has failed to perform, the Association's Directors, Officers, Committee Members, agents or employees, managers, contractors, insurers, and vendors, shall have the right, after reasonable written notice to the Owner(s), to enter his or her Unit and/or Limited Common Area during reasonable hours. Owners

shall have no right to directly or indirectly impede, hinder, prevent, or delay access by the Association for such purposes. Work may be performed by the Association through its agents or employees, managers, contractors, insurers, vendors, or any other third party under such circumstances whether or not the Owner is present.

(B) In addition to, and not in limitation of, all other rights, the Association may enter into Units and Limited Common Area without prior notice to the Owner where the Board in its sole discretion determines entry is necessary or appropriate for emergency, security, or safety purposes. This right may be exercised by the Association's Board, Officers, agents, employees, managers, contractors, insurers and vendors, and all law enforcement, fire fighters, ambulance personnel, and similar emergency personnel in the performance of their respective duties. If practicable, prior to entering the Unit or Limited 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 Limited Common Area.

(C) When there is an entry into any Unit or Limited Common Area, such entry shall be made with as little inconvenience to the occupant as possible. The Association or its agents shall not be deemed guilty of trespass by reason of any entry into any Unit or Limited Common Area pursuant to the provisions of this Section.

(D) The Association is responsible for providing notices under this Section only to the Owner. The Owner is responsible for notifying the occupants, residents and/or tenants living in Owner's Unit of any notice received from the Association pursuant to this Section. The Owner shall be responsible for any locksmith fee(s) incurred to gain entry. Any locksmith fee(s) that are not reimbursed by the Owner may be levied as a Reimbursement Assessment against the Owner as set forth in Article 5.

## ARTICLE 5

### COVENANT FOR MAINTENANCE ASSESSMENTS TO ASSOCIATION

#### Section 5.1 Assessments Generally.

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

(B) No Avoidance of Assessment Obligations. No Owner may exempt himself or herself from personal liability for Assessments duly levied by the Association, nor release the Unit or other property owned by him or her from such liens and charges, 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 Unit or any other portion of the Project by any alleged failure by the Association to perform services or for any other reason.



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

(A) All such Assessments, together with late charges, interest, costs, and all attorneys' fees reasonably incurred as provided in this Declaration and in the maximum amount permitted by the laws of the State of California, whichever is greater, shall be a charge on the Unit and shall be a continuing lien upon the Unit against which each Assessment is made. Said continuing lien shall include Assessments, late charges, interest, costs, and all attorneys' fees accruing after the date of recordation. Such amounts shall also be the personal obligation of the person who was the Owner of such Unit at the time when the Assessment fell due or was levied. In the event more than one (1) person or entity was the Owner of a Lot, the personal obligation to pay such Assessment, or installment, shall be joint and several. 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 on a monthly basis on the first day of each month or in such manner and on such dates as may be fixed by the Board.

(C) The personal obligation for delinquent Assessments, or delinquent installments, and such other sums, shall not pass to an Owner's good faith 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 Assessments. The total annual expenses estimated in the Association's Annual Budget Report (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 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 shall provide Individual Notice 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 fails to make an estimate of the Common Expenses for any fiscal year, then the Regular Assessment made for the preceding fiscal year, together with any Special Assessment made pursuant to Article 5, Section 5.4 for that year, shall be assessed against each Owner and his or her Unit on account of the then current fiscal year and the Assessments shall be payable on the regular payment dates established by the Association.

(D) Ability to Change Regular Assessments. The Board may increase the amount of Regular Assessments at any time upon not less than thirty (30) nor more than sixty (60) days prior written Individual Notice to the Owners, subject to the limitations set forth in Section 5.3(A).

#### **Section 5.4 Special Assessments.**

(A) 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 Special Assessments shall not 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 any 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 Unit in the same proportion as Regular Assessments are levied.

Notwithstanding the foregoing, a Special Assessment to raise funds for the rebuilding or major repair of the structural Common Area of the Project shall be levied upon the basis of the ratio of the square footage of the Unit of the Condominium to be assessed to the total square footage of the floor area of all the Condominiums to be assessed.

(B) Ability to Change Special Assessments. The Board may increase the amount of Special Assessments at any time upon not less than thirty (30) nor more than sixty (60) days prior written Individual Notice to the Owners, subject to the limitations in Section 5.4(A).

**Section 5.5 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 or 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 section, an emergency situation is any of the following, or otherwise defined by California law:

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

(B) 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

(C) 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 the Annual Budget Report pursuant to Section 5.3(A) above, provided that, prior to the imposition or collection of an Assessment under this subsection, 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 5.6 Reimbursement Assessments.**

(A) Circumstances Giving Rise to Reimbursement Assessments. The Board may impose Reimbursement Assessments against an Owner in any of the circumstances described, without limitation, in Subparagraphs (1) through (4) 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 this Declaration and *Civil Code* Section 5855, 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, maintain, or replace is caused by the act or omission of any Owner, or his or her lessee, occupant, or their guests or invitees, or any Owner Improvements or Owner-maintained components, 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 Owner Compliance. In the event that the Association incurs any costs or expenses to accomplish (1) the payment of delinquent Assessments, (2) 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 (3) to otherwise bring the Owner and/or his or her Unit into compliance with any provision of the Governing Documents, the amount incurred by the Association (including reasonable costs imposed hereunder, title company fees, accounting fees, court costs, and reasonable attorney's fees) shall be assessed and charged solely to and against such Owner as a Reimbursement Assessment.

(3) Required Maintenance on Units. If an Owner fails to maintain his or her Unit, Exclusive Use Common Area, or Owner Improvements to the Common Area, the Association shall have the right to enter the Unit, correct the 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 or 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, fee, or charge 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 Unit for nonpayment of a Reimbursement Assessment levied pursuant to this subsection (4) shall not be enforceable by nonjudicial foreclosure of the Unit.

(B) Levy of Reimbursement Assessment and Payment. Once a Reimbursement Assessment has been levied against an Owner for any reason described in the Governing Documents, and subject to the conditions imposed, Individual Notice 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 Individual Notice of the Reimbursement Assessment. The Reimbursement Assessment may be collected in the same manner as Regular and Special Assessments including the imposition of a continuing lien as allowed by California law.

**Section 5.7 Notice/Certificate of Status.** Annual written notice of an Assessment shall be given to every Owner with the Annual Budget Report and Annual Policy Statement prepared pursuant to Article 10 of the Bylaws and *Civil Code* Sections 5300, et. seq. Assessments may be collected on a monthly basis or otherwise as determined by the Board. The Association shall, upon demand and for a reasonable charge, furnish a certificate signed by an Officer or other agent of the Association setting forth whether the Assessments of a specified Unit have been paid.

**Section 5.8 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 provided in this Article:

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

**Section 5.9 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 constitute a continuing lien against that Unit. The Association shall have the authority to initiate a lawsuit and/or create and enforce the lien with a power of sale on each separate Unit (including the Unit and Improvements) 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 the following:

(A) A late or delinquency charge in the amount of the greater of ten dollars (\$10.00) or ten percent (10%), or such higher amount as may be authorized by California law, of the amount of each Regular Assessment or lump sum or installment payment of any Special Assessment or Reimbursement Assessment not paid when due;

(B) Interest on each Assessment or installment not paid when due and on any delinquency fee or late charge from 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 California law; and

(C) Costs of collection, including court costs, the expenses of sale, any expense required for the protection and preservation of the Unit, and reasonable attorneys' fees actually incurred and the fair rental value of the Unit from the time of institution of suit until the sale at foreclosure or other satisfaction of any judgment.

**Section 5.10 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 *Civil Code* Sections 5660, 5670, and 5673, 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 County Recorder a continuing lien upon the Unit, pursuant to *Civil Code* Section 5675, which lien shall also secure all other payments and/or Assessments which shall become due and payable with respect to the Unit following such recording, and all costs (including attorneys' fees), penalties and interest accruing thereon. The lien shall continue until all amounts secured thereby are fully paid or otherwise satisfied.

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

**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 California law, or may be enforced by sale pursuant to *Civil Code* Sections 2924, et. seq., and Sections 5705 et seq., and to that end a power of sale is hereby conferred upon the Association. Suit to recover a money judgment for unpaid Assessments, late fees, interest, attorney's fees and rent shall be preserved without foreclosing or waiving the lien securing the same.

**Section 5.12 Subordination of Lien.** The lien of the Assessments provided for in this Article shall be subordinate to the lien of a Mortgage, given and made in good faith and for value that is of record as an encumbrance against such Condominium prior to the recordation of a notice of delinquency. The sale or transfer of any Condominium shall not affect the Assessment lien

described in this Article, nor shall such sale or transfer diminish or defeat the personal obligation of any Owner for delinquent Assessments. However, the sale or transfer of any Condominium pursuant to a judicial foreclosure or foreclosure by power of sale of a prior encumbrance shall extinguish any Assessment lien recorded prior to the time of such sale or transfer. Following a foreclosure, the interest of any purchaser at such foreclosure sale shall be subject to all Assessments becoming due after the date of such sale or transfer, and in the event of nonpayment of such Assessments, shall be subject to all of the remedies described in this Declaration. For the purpose of this Section, a sale or transfer of a Condominium shall occur on the date of recordation of a deed or land sale contract evidencing the conveyance of record ownership of the Condominium.

No foreclosure of an extinguished Assessment lien will prevent the Association from pursuing the former Owner personally for the debt.

**Section 5.13 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 to the Association pursuant to this Declaration which are in default. The Board 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 Board at its sole discretion, may revoke such authority at any time, upon written Individual Notice to the Owner of a default in the payment of any Assessment due hereunder. Upon revocation of such authority the Board 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 prior Mortgagee. Any attempt to collect rents under this Section shall be done after the Owner of the Condominium has been given Individual Notice and an opportunity to be heard by the Board in accordance with the Governing Documents and current California law.

**Section 5.14 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, becomes delinquent or any lien is imposed pursuant to the terms of the Governing Documents.

**Section 5.15 Uniform Rate of Assessments.** Other than Reimbursement Assessments and except as may otherwise be provided in this Declaration, all Assessments, shall be based upon square footage of the Units.

## **ARTICLE 6**

### **USE RESTRICTIONS**

#### **Section 6.1 Single Family Residential Use.**

(A) **Single Family.** 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 law and local codes and ordinances. Occupancy and use of a Unit for dwelling purposes shall be in conformity with the Governing Documents and the requirements imposed by applicable zoning or other applicable laws or governmental regulations limiting the number of persons who may occupy residential dwellings.

(B) Residential Use. Each Unit shall be used for residential purposes only. Legal trade or business may be conducted in or from a Unit so long as there is no external evidence of such business and the business use is incidental to the primary purpose of the Units as single-family private residences and there is no material impact of the Common Area due to the operation or conduction of such trade or business. The Board may establish guidelines in the Rules and Regulations pertaining to defining and regulating home occupations which: (a) are consistent and compatible with the typical residential use of the Project; and (b) do not have any detrimental effect on neighboring Units or the Project.

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

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

## **Section 6.2   Pets**

(A) No more than a reasonable number of conventional, domesticated pets, as determined by the Board in the Rules and Regulations may be kept in any Unit. No other animals, livestock, or poultry of any kind shall be raised, bred, or kept on any part of the Project. Pets may be kept provided that they do not endanger or unreasonably threaten the physical or emotional well being of the Owner of any Unit or any resident. Pets shall not be left unattended on Patios or Balconies.

(B) 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 unreasonable annoyance or danger to other residents or damages property.

(C) 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.

(D) Each pet owner must immediately clean up after their pet. All dogs must be kept on a leash and under the control of a person capable of controlling the dog when in the Common Area.

(E) The Board has the right, but not the obligation, to require the permanent removal of any pet that unreasonably threatens the physical or emotional well being of any Owner or resident of a Unit, or creates a nuisance or disturbance, or causes damage to property. The Board has the sole discretion to determine whether any of the foregoing conditions exist which requires the permanent removal of a pet. Except in an emergency situation warranting an application for the issuance of a temporary restraining order or preliminary injunction, prior to requiring the permanent removal of a pet, the Owner of the Unit shall be provided with Individual Notice and an opportunity to be heard by the Board.

(F) No dog houses may be placed on Patios or Balconies.

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

(A) Commercial Signs. Except as may be required by legal proceedings or authorized by the Association's Rules and Regulations, 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 (1) "For Sale" or "For Rent" sign per Unit, not larger than 18-inches by 24-inches.

(B) Non-Commercial Signs, Flags, and Banners. Non-commercial signs, flags and banners may only be displayed in accordance with the provisions of 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 shall have the right to erect reasonable and appropriate signs on the Common Area. Flagpoles are not permitted to be installed by Owners in the Common Area.

**Section 6.4 Antennas and Similar Devices.** No Owner may install a video or television antenna or satellite dish which has a diameter or diagonal measurement of greater than one (1) meter, or otherwise defined under OTARD. Owners may install a video or television antenna, including a satellite dish, that has a diameter or diagonal measurement of one (1) meter or less in diameter in accordance with the procedures adopted by the Board. These procedures may require reasonable screening, establish preferred locations, and impose other restrictions as permitted by applicable federal and state law, provided they do not preclude an acceptable signal or unreasonably increase the cost or cause unreasonable delay in the installation of same. These restrictions are subject to change based on federal and state law.

**Section 6.5 Vehicles, Parking and Carports.** Automobiles must be parked properly within the Project to ensure the following objectives: (1) access to Units by emergency vehicles; (2) adequate parking for visitors; (3) pedestrian and vehicle safety; and (4) preserving the aesthetic



quality of Project. The Board may establish Rules and administrative bodies in order to serve those objectives. The following specific restrictions shall apply:

(A) Owners, their guests, tenants, lessees, and invitees shall have the exclusive right to park vehicles (excluding “Recreational/Commercial Vehicles” as defined below) in the parking space assigned to the Unit in Exhibit “B.” Owners/ residents shall only park in the parking space assigned to the Unit in Exhibit “B.”

(B) Trailers, campers, mobile homes, commercial vehicles, boats, and trucks (collectively referred to herein as “Recreational/Commercial Vehicles”) may not be parked in the parking spaces or driveways at any time. 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) Vehicles which have rust or other severe deterioration on the exterior or are in disrepair, inoperable, unlicensed, or vehicles leaking fluids shall not be permitted to park in the Project.

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

(E) Those parking spaces in the Common Area which are subject to assignment shall be assigned as shown on the Condominium Plan. No one other than the Owner to which a particular parking space has been assigned (except for persons authorized by such Owner) shall use such parking space. Parking spaces that have been assigned shall be subject to such terms and conditions as established by the Board, including, without limitation, the right to revoke and/or suspend parking privileges as set forth in this Declaration.

(F) Guests shall be permitted to park in the Common Area parking spaces that are designated for guest use on a first come, first served basis. Under no circumstances shall residents park in the guest parking spaces.

(G) The Association shall not be responsible for any theft of or vandalism or damage to vehicles parked in the assigned and guest spaces.

(H) The Board may adopt further Rules and Regulations governing vehicles and parking, including but not limited to, the condition and appearance of vehicles.

**Section 6.6 Impairment of Units and Easements; Structural Alterations.**

(A) No Owner, lessee, or occupant shall perform or commence any work that will impair the structural soundness, integrity, or the mechanical systems of another Unit or the Common Area, or that will impair any easement. No Owner, lessee, or occupant shall do any act or 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 wall shall be made by any Owner without the prior written consent of the Association.

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

**Section 6.7 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 shall only be deposited in the dumpsters designated for such use. No Owners of a Unit shall permit or cause any trash or refuse to be kept on any portion of the Project subject to this Declaration other than in the dumpsters. Only customary household waste may be deposited in the Association's dumpsters. No dumping of large items, including, but not limited to furniture and appliances, is allowed.

**Section 6.8 Nuisance.** No Owner, lessee, occupant, or their guests or invitees 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. No noxious, illegal, or materially offensive activities shall be carried out or conducted within any Unit, Limited 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. Occupants shall not produce or permit any unreasonably loud noise, loud or unruly behavior, vibration, music or similar sounds in their Units or the Common Area. The Board shall have the power to establish quiet hours in the Rules and Regulations. Nothing in this Section, 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.

**Section 6.9 Unsightly or Unkempt Conditions.** Unsightly or unkempt conditions are prohibited within the Project. The pursuit of activities or hobbies, which may include, without limitation, 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 that is visible from 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 6.10 Dangerous Use/Indemnification.** Nothing shall be done or kept within any portion of any Unit or within the Common Area which will increase the rate of insurance on any policy maintained by the Association without the prior written consent of the Board and no Owner shall permit anything to be done or kept on his or her Unit or within the Common Area which would cause any improvements to be uninsurable against loss by fire or casualty or result in the cancellation of insurance on any Unit or any part of the Common Area.

Each Owner agrees for himself, herself and for his or her lessees, and occupants and their guests and invitees, to indemnify each and every other Owner, the Association, its Directors, Officers, committee members, agents and employees, and to hold him or her harmless from, and to defend him or her against, any claim of any person or persons for personal injury or property damage occurring within the Unit of the indemnifying Owner.

**Section 6.11 Responsibility for Damage to the Project.** Each Owner shall be liable to the Association for all damages to the Common Area or any area for which the Association has a maintenance, repair, or replacement obligation, including, but not limited to, the Condominium Buildings, Common Facilities, and landscaping, caused by any acts of the Owner or his or her lessees, occupants or invitees or their guests. The Board, by majority vote, may impose a Reimbursement Assessment against such Owner as set forth in Article 5.

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

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

(B) Recreational use by the Owners, lessees, occupants, or their guests or invitees subject to Rules and Regulations established by the Board;

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

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

(F) No part of the Common Area shall be obstructed so as to interfere with the use for the permitted purposes, 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 and any improvements, including, but not limited to, buildings, Common Facilities and landscaping, caused by such Owner, his or her lessee(s), or occupant(s) or their guests or invitees;

(H) Except as otherwise specifically provided in the Governing Documents, no Owner shall have the right to paint, decorate, remodel, landscape, or adorn any part of the Common Area without the written consent of the Board.

(I) No Owner, lessee, occupant, or their guests or invitees 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 to be canceled or suspended or the company issuing the same to refuse renewal.

**Section 6.13 Windows.** Neutral-colored curtains, drapes, shutters or blinds may be installed as window covers. No window shall be covered with aluminum foil, sheets, or similar material. The Board shall have the power to make reasonable Rules and Regulations regarding window coverings that are visible from the exterior of the Unit. Each Owner shall promptly repair any broken windows, screens and sliding glass doors of their Unit. No swamp coolers, window air conditioner units, or window-vented air conditioner units are permitted.

**Section 6.14 No Timeshare Use.**

(A) 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 *Business and Professions Code* Section 11212 is prohibited.

(B) 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 or Improvement, 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.

(C) 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.

(D) Ownership of a Unit 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.

**Section 6.15 Exterior Clotheslines.** No exterior clotheslines or drying racks shall be erected or maintained on the Patios or Balconies and there shall be no outside drying or laundering of clothes on any Patio or Balcony in a manner which is visible from any neighboring Unit or the Common Area. The Board may adopt further provisions pertaining to exterior clotheslines and drying racks in the Rules and Regulations.

**Section 6.16. Diseases and Pests.** No Owner shall permit any thing or condition to exist on his or her Condominium which shall induce, breed, or harbor infectious plant diseases, rodents or noxious insects.

**Section 6.17 Code of Conduct.** All Owners, lessees, and occupants and their guests and invitees 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 and/or harassing behavior will not be tolerated. Violations of this Section shall also constitute violations of the Governing Documents.

**Section 6.18. Flooring Modifications in Second Floor Units.** Hard surface flooring (e.g., tile, wood, marble, etc.) when utilized in the second floor Units must provide adequate soundproofing of the hard surface floor material. There must be padding under all carpeting. Any alteration of flooring in the second floor Units shall require prior submittal to the Architectural Committee and approval from the Board in accordance with Article 7 of this Declaration and/or the Architectural Guidelines.

Notwithstanding the foregoing, this Section shall only apply to the modification of flooring in the second floor Units made after the date this Declaration is recorded.

**Section 6.19. Patios and Balconies.** No furniture shall be placed in or on Patios or Balconies except for furniture that is designed and intended for use as outdoor furniture, in the discretion of the Association. Patios and Balconies shall be maintained in a neat, clean and orderly manner. Patios and Balconies must not be enclosed in any permanent or temporary manner, whether by screens, curtains, bamboo fencing, lattices, shades, or similar improvement. .

## **ARTICLE 7**

### **ARCHITECTURAL CONTROL**

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

With Board approval, the Architectural Committee may, from time to time, delegate any of its rights or responsibilities hereunder to one or more duly licensed architects or other qualified professionals who shall have full authority to act on behalf of the Architectural Committee in all matters so delegated.

**Section 7.2 Duties of the Architectural Committee.** It shall be the duty of the Architectural Committee to consider and make recommendations to the Board upon any and all proposals or plans submitted to it pursuant to the terms of the Governing Documents, to ensure that any

Improvements constructed on the property conform to approved plans, to recommend the Board adopt or amend the 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 the Governing Documents expressly or impliedly to the contrary, no building, fence, wall, screen, cover, awning, other structure, or other Improvement shall be constructed or maintained upon the Project, nor shall any change, addition or alteration be made to the Common Area or exterior of the Unit until the plans and specifications showing the nature, shape, dimensions, materials, color and location of the same shall be submitted to the Architectural Committee and approved by the Board in writing. Specifically, any video/surveillance cameras and similar equipment must be submitted to the Architectural Committee and approved by the Board in writing pursuant to any regulations in the Architectural Guidelines.

(B) Approval shall be based, among other things, on conformity and harmony of design and location in relation to surrounding Improvements, effect on location and use of Improvements and landscaping on surrounding property, aesthetic beauty, and conformity with Rules and Regulations and/or Architectural Guidelines. With respect to strictly non-structural and decorative improvements, additions to or alterations of the exterior of a Unit, 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. The Board shall have the right to establish a fee for the review of plans and specifications. Owners shall be responsible for the Association's costs incurred for review of their plans.

(C) The Board shall approve or disapprove plans submitted to it, in writing, within forty-five (45) days. 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. Approval will be automatically withdrawn if any conditions are not satisfied or cease to exist. If a plan is disapproved, the disapproval must include a description of why the plan was disapproved. In the event the Board fails to respond to the submitted plans within forty-five (45) days, the applicant may send written notice, advising the Board that the plans will be deemed approved if not disapproved forty-five (45) days from the receipt of such notice if such Improvements conform and are in harmony with the overall design and style of the Association. Notwithstanding the provisions of Article 17, Section 17.3 of this Declaration, such notice to the Board must be made by personal delivery or certified mail, return receipt requested.

(D) Once a work of Improvement has been duly approved by the Board, no material modifications shall be made in the approved plans and specifications and no subsequent alteration, relocation, addition or modification shall be made to the Improvement, as approved, without a separate submittal to the Architectural Committee, and review and approval by, the Board. If the proposed modification will have, or is likely to have, a material effect 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.

(E) An Owner will obtain the approval of the Board with respect to such Owner's plans, specifications, plats and schemes pursuant to this Section before submitting the same to the appropriate governmental entity 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 Architectural Committee pursuant to this Article, Owner is responsible for researching and determining all governmental 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 any governmental entity and the Association, the more restrictive of such conditions shall be controlling. Further, nothing in the Governing Documents 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 governmental entity.

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

**Section 7.5 Architectural Guidelines.** The Architectural Committee may, from time to time, recommend that the Board, in its sole and absolute discretion, adopt, amend and repeal guidelines, to be known as "Architectural Guidelines." The Board's approval, amendment or repeal of Architectural Guidelines shall be made subject to *Civil Code* Sections 4340 - 4370. The Architectural Guidelines shall interpret and implement the Governing Documents by setting forth the procedures for Architectural Committee review, standards of Improvements and/or alterations, fees and deposits that may be required and the purposes for same, and any other guidelines relevant to architectural decisions.

**Section 7.6 Variances.** The Board shall be entitled to allow reasonable variances with respect to this Article in order to overcome practical difficulties, avoid unnecessary hardships, provided the Board makes a good faith determination that:

(A) The requested variance does not constitute a material deviation from the overall plan and scheme of development within the Project or from any restriction contained in the

Governing Documents or that the proposal allows the objectives of the violated requirements to be substantially achieved despite noncompliance; or

(B) The variance relates to a requirement hereunder, that it is unnecessary or burdensome under the circumstances; and

(C) The variance, if granted, will not result in a material detriment, or create an unreasonable nuisance, with respect to any other Condominium, Common Area, or Owner within the Project.

(D) If such variances are granted, no violation of the covenants, conditions and restrictions contained in this Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such a variance shall not operate to waive any of the terms and provisions of this Declaration for any purpose except as to the particular property and particular provision hereof covered by the variance, nor shall it affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting the use of the Residence

**Section 7.7 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 7.8 Liability.** Neither the Association, the Board, Architectural Committee, or any member of any such entity 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 7.9 No Approval by Individual Director.** There shall be no approval of plans and specifications by any individual Director. In the event an individual Director approves architectural plans and specifications, such approval should not be relied upon and shall not be deemed approval by the Board.

**Section 7.10 Commencement and Completion of Improvements.** Unless expressly extended in writing by the Board, all Improvements must be commenced within sixty (60) days of approval for any Improvement and completed within one hundred and eighty (180) days from the commencement of construction. Failure to commence or complete construction within the applicable time period shall constitute an immediate withdrawal of approval unless such time period is expressly extended by the Board in writing. Notwithstanding the foregoing, the Architectural Committee or Board can specify a shorter time period in which any Improvement needs to be completed, depending on the scope of the construction.



**Section 7.11 Inspection.** Any member or agent of the Architectural Committee or Board may, from time to time, at any reasonable hour or hours and upon Individual Notice, enter and inspect any Unit for the purpose of carrying out its duties, in accordance with the Governing Documents.

## **ARTICLE 8**

### **LEASING OF UNITS**

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

**Section 8.2 Leasing Provisions.** All Leasing within the Project 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 the Governing Documents 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 AMERICANA GARDENS HOMEOWNERS 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 lessee copies of the Governing Documents, including but not limited to, the Rules and Regulations. However, the failure of the Owner to provide his or her lessee with current copies of the Governing Documents or to include a provision in the lease advising lessee(s) that they are bound by the Governing Documents shall not be a defense to any violation of the Governing Documents by the lessee or occupant or their guest or invitee.

(C) **No Severability.** No Owner shall lease his or her leasehold 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 leasehold interest in the Common Area. All leases must be for the entire Unit, and not merely parts of such Unit, unless the Owner remains in occupancy.

(D) **Lessee/Owner Contact Information.** Within seven (7) days after entering into the lease of a Unit, the Owner shall provide the Board with a copy of the lease, the name, telephone number, address and email address of the lessee, the name, telephone number, e-mail address and address of the Owner, and such other information as the Board may reasonably require. .

(E) No Subleasing. There shall be no subleasing of Units or assignment of leases unless approved in writing by the Board.

(F) Minimum Lease Term. All leases, including those where the Owner remains in occupancy, must be for a term of no less than thirty (30) consecutive days. The thirty (30) day minimum lease term is declaratory of the Association's Governing Documents that were in effect prior to January 1, 2012. No lease including where the Owner remains in occupancy, shall be for transient or hotel purposes. Any lease which is either for a period of less than thirty (30) days or pursuant to which the lessor provides any services normally associated with a hotel shall be deemed to be for transient or hotel purposes.

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

(H) Compliance with Governing Documents. Lessee and their 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 the lessee's default under their lease. Each Unit Owner shall be liable to the Association for damages arising from all actions, including without limitation, tortious acts, of his or her lessees, residents, or their guests and invitees. The residency limitations governing all leases shall be set forth by the policy of the Board. If a lessee or an occupant violates the Governing Documents for which a Reimbursement Assessment is imposed, such Reimbursement Assessment shall be the joint and several responsibility of the Owner and/or lessee. Unpaid Reimbursement Assessments may result in a lien against the Unit, as allowed by law.

(I) Enforcement Against Lessee by Association. Notwithstanding any language in this paragraph to the contrary, the Owner is responsible for any acts or omissions of their lessee or occupant or their guests or invitees that violate California law and/or the Governing Documents. The Owner hereby provides the Association with the right, but not the obligation, to proceed directly against the lessee(s) and the Owner for any violation of the Governing Documents. This authority includes, but is not limited to, the right to evict the lessee or occupant on behalf of and for the benefit of the Owner. In the event the Association proceeds to take legal action against and/or to evict the lessee or occupant, any costs, including attorneys' fees and court costs, associated with the action/eviction shall be assessed against the Condominium and the Owner(s) as a Reimbursement Assessment, such being an expense required to bring the Owner(s) into compliance and an expense which benefits the leased Condominium.

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

(K) Existing Leases. Leases existing on the effective date of this Declaration shall be permitted to continue in accordance with the leasing provisions of the Governing Documents as they 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.

## **ARTICLE 9**

### **MAINTENANCE RESPONSIBILITIES**

**Section 9.1 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 Sections 9.2, 9.3 and 9.4 below will be used to determine maintenance, repair and replacement responsibility. Notwithstanding the foregoing, Owners shall be responsible for maintaining, repairing and replacing any alterations or additions to the Limited Common Area or Common Area made by any Owner of the Unit, as well as any repairs or replacements arising out of, or caused by, the act or omission of the Owner, his/her family, guests, invitees, tenants, subtenants, or other occupants of said Owner’s Units.

**Section 9.2 Common Area and Common Facilities.** Except for the Exclusive Use Common Area, the Association shall be solely responsible for all maintenance, repair, upkeep and replacement of the Common Area, including the Common Facilities, lighting, mailbox structures, driveways, vehicular parking areas, landscaping, private water and sewer systems, pools, spas and related equipment, dry sauna, clubhouse, barbeques, laundry rooms, fitness room, and monument signs. The Association shall pay all charges for utilities supplied to the Project except those metered or charged separately to the Units.

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

**Section 9.3 Association Maintenance Responsibility With Respect to Condominium Buildings.**

(A) Maintenance of Condominium Buildings. The Association shall provide maintenance of the Condominium Buildings as follows: paint, maintain, repair and replace the roof, exterior building surfaces (other than glass surfaces and screens on Units), Patios and Balconies, including railings.

The Association's maintenance shall not include: any alterations or additions to the Limited Common Area or Common Area made by any Owner of the Unit, nor repair or replacements arising out of, or caused by, the act or omission 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 the Unit Owner or any successor 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, etc.) as provided above, then, the Association shall have the right (but not the obligation) to enter the Unit or Limited Common Area and provide such maintenance or make such repairs or replacements, and the cost shall be assessed as a Reimbursement Assessment to such Unit and shall be payable to the Association by the Owner of such Unit.

(B) Temporary Removal. 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 in the Common Area. 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 upon either personal delivery or Individual Delivery of a copy of the notice to the occupants, and if an occupant is not the Owner, by Individual Delivery of a copy of the notice to the Owner. 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 9.4 Owner Maintenance Responsibilities.**

(A) Unit Interior. Each Owner shall be responsible for the maintenance, repair, and replacement (including painting) of his or her Unit including, without limitation, the ceilings, doors, door frames, and interior floor surfaces in a clean, sanitary, workable and attractive condition. Each Owner shall also be responsible for the maintenance, repair and replacement of the equipment and fixtures in the Unit, including, without limitation, the showers, baths, plumbing within the Unit, sinks, toilets, electrical sockets, switches, wiring, air conditioners, heating units, outlets, fans, lighting installations, and electrical appliances.

(B) Exclusive Use Common Area. Owners shall be responsible for the maintenance, repair and replacement (except for painting) of the Exclusive Use Common Area.

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

(D) Appliances. Each Owner shall also be responsible to maintain, repair and replace all appliances (e.g., water heaters, HVAC, washer/ dryer) that exclusively serve his or her Condominium and all equipment and components of such appliances, including, but not limited to, pipes, wires, conduits, drains, and vents wherever the appliances and related equipment and components are located, even if in the Exclusive Use Common Area and/or Common Area.

(E) Metered Services. Owners shall pay for their own electricity and telephone/cable/satellite service where individually metered.

(F) Water Damage. Each Owner shall be responsible for the maintenance, repair and/or replacement of items within the interior of his or her Unit and Limited Common Area, including, but not limited to interior non-load bearing walls, drywall, cabinets, fixtures, ceilings, appliances, flooring, and personal property, that may be damaged from water that may leak or flow into the Unit or Limited Common Area from within the Unit, the Common Area, Limited 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 Limited 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 Limited 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.

(G) Decorate. 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 9.5 Failure of Owner to Carry Out Maintenance Responsibilities**. In the event the Owner of a Unit fails to perform his or her maintenance responsibilities, the Board shall have the right, but not the obligation, through itself or its agents, to exercise the right of entry pursuant to Article 4, Section 4.8, and perform appropriate maintenance and/or repairs at the expense of the Owner. In such event, in addition to other penalties and disciplinary measures imposed, 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 pursuant to this Declaration.

**Section 9.6 Liability for Damage.**

(A) Should any damage to the Common Area or any Unit result from the act or omission of any Owner, lessee, occupant, or their guests or 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, regardless of whether the Owner has insurance coverage for the loss.

(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 and items over which the Owner has control. 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 costs incurred by the Association, the Association, after providing the Owner with Individual Notice of 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.

(E) 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 9.7 Cooperative Maintenance Obligations.**

(A) To the extent necessary or desirable to accomplish the Association's maintenance obligations hereunder, individual Owners shall cooperate, and shall not hinder, impede or interfere with the Association and its agents and maintenance personnel in the performance of its work. Cooperation shall include promptly and voluntarily providing entry and access into the Owner's Unit and/or Limited Common Area, if necessary, to perform such work. While the Association shall make reasonable attempts to communicate with the Owner and to obtain the Owner's voluntarily access, permission of the Owner shall not be required in order for the Association to gain access to perform its maintenance or repair obligations.

(B) Each Owner hereby grants to other Owners and the Association (or their designated agents), 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 provisions of Article 4, Section 4.8.

**Section 9.8 No Liability.** The Association shall not be liable to any Owner, lessee, or occupant or their guests or invitees, 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 Unit unless such damage is caused by the gross negligence of the Association, its Board, Officers, agents or employees.

**Section 9.9 Owner Notification to Association.** Each Owner has the obligation to routinely and diligently inspect the elements and components of the Unit, Limited Common Area and Common Area for which the Owners are obligated to maintain, to ensure they are in good condition and operating properly. An Owner's long or short term absence from the Project, due to any reason including rental of a Unit, shall not excuse this obligation. If, at any time, an Owner discovers, or otherwise becomes aware of, any condition within his or her Unit, Limited Common Area or the Common Area that may constitute a risk to the health, safety or welfare of the Owners, lessees, or occupants or their guests or invitees or any other persons entering the Project, the Owner shall notify the Association of the condition as soon as possible.

## **ARTICLE 10**

### **INSURANCE**

**Section 10.1 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) Loss or damage caused by sprinkler leakage, windstorm, water damage and covering the cost of demolition and debris removal; and
- (4) Such other risks, perils or coverage as the Board may determine.

Such policy or endorsement, 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 11 of this Declaration as to whether or not to repair, reconstruct or restore all or any damaged or destroyed portion of the Common Area.

The Board shall have the right to limit the scope of coverage under the Association's property damage insurance policy to what is commonly referred to as "bare walls" so that such insurance policy excludes all personal property within the Unit and Exclusive Use Common Area and floor, wall, and ceiling coverings, electrical fixtures, appliances, water heaters, water filters, built-in cabinets and countertops, and window treatments, including curtains, drapes, blinds, hardware, and similar window treatment components, betterments and improvements made by the Owners or replacements of any of the foregoing.

(B) General Liability Insurance. A general liability policy for full extended coverage, including but not limited to, vandalism, malicious mischief, public liability with a cross-liability endorsement. The limits of such insurance shall not be less than \$3,000,000.00 or any amount greater as determined by the Board from time to time.

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

(D) Fidelity Bond/Insurance. Crime insurance, employee dishonesty coverage, fidelity bond coverage, or their equivalent, for its Directors, managers, officers, and employees, and employees of any manager or managing agent, naming the Association as obligee, in an amount that is equal to or more than the combined amount of the reserves of the Association and total assessments for three months. The bond shall contain waivers of any defense of any exclusion of persons who serve without compensation from any definition of "employee" or similar expression. The Association shall also include protection in an equal amount against computer fraud and funds transfer fraud. 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. Self-insurance does not meet the requirements of this subsection (D).

(E) Workers Compensation Insurance. 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. Any other insurance, such as earthquake and flood, as the Board deems appropriate.

Insurance premiums for the master policy shall be a Common Expense to be included in the monthly Assessments levied by the Association.

All insurance obtained by the Association shall be in the name of the Association and shall be maintained at least for the benefit of the Association, the Owners and the Mortgagees as their



interests may appear. 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.

As to each of the policies provided for in this Article, which will not be voided or impaired by the requirements of this Section, the Owners hereby waive and release all claims against the Association, the Board and their agents and employees, with respect to any loss covered by such insurance, whether or not caused by negligence of or breach of any agreement by such persons, but only to the extent of insurance proceeds received in compensation for such loss.

Unless at least two-thirds of the First Mortgagees (based upon one vote for each first Mortgage owned) or Owners have given their prior written approval, the Association shall not be entitled to fail to maintain the extended coverage fire and casualty insurance required by this Article on less than a one hundred percent (100%) current replacement cost basis.

**Section 10.2 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 Unit, Unit interior, personal property and upon all other property and improvements within the Unit for which the Association has not purchased insurance including, without limitation, built-in cabinets, decorations, floor and wall coverings, appliances, fixtures and any betterments and Improvements made by the Owner, or any exterior items for which said Owner is responsible, which 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, guests or others for damage to or loss of any such property, or the cost of repair or replacement of any damaged property or portions of such Owner's Unit or Limited Common Area, 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 such insurance. The damages may include, but are not limited to, cancellation of Association's insurance policy, increase in premiums, out of pocket payments, etc.

The Board shall have the right, but not the duty, to require an Owner to provide the Board, within fifteen (15) days of the Board's request, reasonable evidence that the Owner has complied with the requirements of this Section. Failure to comply with the Board's request may result in fines and other disciplinary action.

**Section 10.3 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 10.4 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 10.5 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, lessee or occupant or their guest or invitee, the responsible Owner shall be liable for all costs not covered due to the deductible.

(B) If the damage or loss originates from an item or element for which an Owner is responsible to maintain, the Owner shall be responsible for all costs not covered due to the deductible.

(C) If the damage or loss originates from an item or element that is within the Association's responsibility to maintain, the Association shall be responsible for any costs not covered due to the deductible.

(D) If the damage or loss originates from an item or element that is within another Owner's Condominium, any affected parties shall be responsible for the portion of costs not covered due to the deductible on the basis of the ratio of each parties' cost of repair to the total costs of repair.

(E) If the damage or loss is caused by an act of God and is not due to any negligence or misconduct of any Owner, or resident, guest, tenant or invitee of an Owner, any affected parties shall be responsible for the portion of costs not covered due to the deductible on the basis of the ratio of each parties' cost of repair to the total costs of repair.

**Section 10.6 Board's Authority to Revise Insurance Coverage.** Subject to the provisions of Section 10.1, 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.

**Section 10.7 Notification of Lapse, Cancellation or Change.** Notwithstanding the provisions of Section 10.6, the Association shall, as soon as reasonably practicable, provide Individual Notice to all Owners if any of the Association's insurance policies described in Section 10.1 or the Annual Budget Report have lapsed, been canceled, and are not immediately renewed, restored, or replaced, or if there is a significant change, such as a reduction in coverage or limits or an increase in the deductible, as to any of those policies. If the Association receives any notice of non-renewal of a policy described in the Annual Budget Report, the Association shall immediately notify the Owners if replacement coverage will not be in effect by the date the existing coverage will lapse.

**Section 10.8 Trustee for Policies.** The Association, acting through its Board, 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 10.1 of this Article shall be paid to the Board as trustees. The Board shall have full power to receive the proceeds and to deal therewith as provided in this Section. 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 11 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.

## **ARTICLE 11**

### **DESTRUCTION OF IMPROVEMENTS**

**Section 11.1 Insurance Proceeds Sufficient.** In the event of damage to or the partial destruction of the improvements in the Project, if the available proceeds of the insurance are sufficient to cover at least ninety percent (90%) of the cost of repair or reconstruction, the damaged or destroyed improvements shall be promptly repaired and rebuilt; unless, within sixty (60) 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 11.2 Insurance Proceeds Insufficient.** If the available proceeds of such insurance are less than ninety percent (90%) 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 to allow it to rebuild without approval of a majority of the Owners.

**Section 11.3 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 11.4 Failure to Rebuild.** If 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 of this Article, 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 11.5 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, they shall be deemed to have been approved.

**Section 11.6. Contract For Rebuilding.** The Board or its authorized representative shall obtain bids from at least two (2) reputable contractors for rebuilding of the Common Area. The Board shall have the authority to enter into a written contract with the contractor for such repair and reconstruction, and the insurance proceeds held by the trustee or the Association shall be disbursed to the contractor according to the terms of the agreement. It shall be the obligation of the Board to take all steps necessary to assure the commencement and completion of such repair and reconstruction at the earliest possible date if the same is authorized.

## ARTICLE 12

### CONDEMNATION

**Section 12.1 Condemnation.** If any portion of the Project is taken by condemnation, eminent domain or any other proceeding, then:

(A) In the event of any taking of a Unit, the Owner (and his or her Mortgagees as their interest may appear) of the Unit shall be entitled to receive the award for such taking and after acceptance, such Owner and his or her Mortgagee shall be divested of all further interests in the Unit property if such Owner shall vacate his or her Unit as a result of such taking. In such event the 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 11 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 11 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 the Unit, or all holders of first Mortgages in the case of the Common Area.

## ARTICLE 13

### PARTITION PROHIBITED

**Section 13.1 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 in this Article shall be deemed to prevent a judicial partition by sale as between such co-tenants.

**Section 13.2 Power of Attorney.** The Association is hereby granted an irrevocable power of attorney to sell the Project for the benefit of all the Owners when partition of the Owners' interest in the Project may be had pursuant to this Article. The power of attorney 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 a majority of the current sitting Board who are hereby authorized to record a certificate of exercise in the Office of the County Recorder, which certificate shall be conclusive evidence in favor of any person relying in good faith.

## **ARTICLE 14**

### **PROTECTION OF MORTGAGEES**

Notwithstanding any provisions to the contrary as may be provided elsewhere in this Declaration, Institutional Holders of Mortgagee shall have the following rights:

**Section 14.1 Notice to Institutional Holders of Default.** Any Institutional Holder of any Mortgage on a Condominium shall be entitled to receive upon delivery of written request to the Association written notification from the Association of any default by the Owner of such Condominium in the performance of such Owner's obligations under the Declaration or the Association's Bylaws which are not cured within sixty (60) days from the date of such default.

**Section 14.2 Assessments on Foreclosure.** Any Institutional Holder of any first Mortgage which comes into possession of any Condominium pursuant to the remedies provided in the Mortgage, or through foreclosure of the Mortgage, shall take title to such Condominium free of any claims for unpaid Assessments or charges against such Condominium which accrued prior to the time the Institutional Holder of such Mortgage acquired title to the Condominium. Notwithstanding, the Association may still recover debt from former Owner.

**Section 14.3 Required Consent of Owners.** Unless at least two-thirds (2/3) of the Owners (other than the Declarant) have given their prior written approval, the Association and the Owners shall not be entitled to:

(A) Change the pro rata interest or obligations of any Condominium for the purposes of levying Assessments and charges or allocations distributions of hazard insurance proceeds or condemnation awards, or determining the pro rata share of ownership of each Unit in the Common Area;

(B) Partition or subdivide any Condominium or the Common Area of the Project;

(C) By act or omission seek to abandon or terminate the Condominium status of the Project, except for abandonment or termination provided by law in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain;

(D) By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Areas of the Project. The granting of easements to individual Owners or public utilities or for other public purposes consistent with the intended use of the Common Areas of the Project shall not be deemed a transfer within the meaning of this provision;

(E) Use hazard insurance proceeds for losses to any portion of the Project (whether to Units or to Common Areas) for other than the repair, replacement or reconstruction of such improvements, except as provided by statute in case of substantial loss to the Units and/or Common Areas of the Project;

(F) By act or omission change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design of the exterior appearance of the Units, the exterior maintenance of the Units, the maintenance of the Common Area property, including walks, fences, driveways and landscaping;

(G) Fail to maintain fire and extended coverage on insurable Common Area property, on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based on current replacement cost).

**Section 14.4 Additional Rights of Institutional Holders.** Any Institutional Holder of a Mortgage on a Unit in the Project will, upon request, be entitled to (a) inspect the books and records of the Association during normal business hours; and (b) receive an annual audited financial assessment of the Association within ninety (90) days following the end of any fiscal year of the Association provided, however, that such audited statements shall be made available only if they have been prepared by the Association in the regular course of business; and (c) written notice of all meetings of Owners of the Association and be permitted to designate a representative to attend all such meetings.

**Section 14.5 Right of First Refusal.** Any Institutional Holder of a Mortgage which comes into possession of a Unit pursuant to the remedies provided in such Mortgage, or foreclosure of the Mortgage, or deed (assignment) in lieu of foreclosure, shall be exempt from any right of first refusal, and any right of first refusal shall not impair the rights of an Institutional Holder to:

(A) Foreclose or take title to a Unit pursuant to the remedies provided in the Mortgage; or

(B) Accept a deed (or assignment) in lieu of foreclosure in the event of default by the trustor of the Mortgage; or

(C) Sell or lease a Unit acquired by the Institutional Holder.

**Section 14.6 Priority on Distribution of Proceeds.** No Owner or any other party shall have priority over any right of Institutional Holders of Mortgages on individual Condominiums pursuant to their Mortgages in the case of a distribution to Condominium Owners of insurance proceeds or condemnation awards for losses to or taking of the Units and/or Common Areas.

**Section 14.7 Insurance.** The Owners and the Association shall procure and maintain fire and liability insurance and such other insurance as may from time to time be required by Institutional Holders of first Mortgages on Condominiums within the Project. All such insurance shall contain loss payable clauses naming the Institutional Holders which encumber a Condominium by a first Mortgage, as their interests may appear.

**Section 14.8 Notice of Condemnation and Destruction.** The Association shall provide to all Institutional Holders of Mortgages who have requested it, written notice of any condemnation proceedings affecting the Project. The Association shall also provide to all Institutional Holders of Mortgages who have requested it, written notice of substantial damage to or destruction of any Unit or any portion of the Common Area of the Project.

**Section 14.9 Notice of Loss or Condemnation of FHLMC.** The Association agrees to give written notice to the Federal Home Loan Mortgage Corporation (“FHLMC”) or its designated representative of any loss to, or taking of the Common Area of the Project if such loss or taking exceeds \$10,000.00 or damage to a Unit covered by a first Mortgage purchased in whole or in part by the FHLMC exceeds \$1,000.00.

**Section 14.10 No Obligation to Cure Default.** Any Institutional Holder of a Mortgage who acquires title by foreclosure or deed in lieu of foreclosure shall not be obligated to cure any breach of this Declaration which is noncurable or of a type which is not practical or feasible to cure.

**Section 14.11 Information.** Any Institutional Holder of a Mortgage is authorized to furnish information to the Board of Directors concerning the status of any loan encumbering a Condominium.

**Section 14.12 Priority of Mortgage Lien.** No breach of the covenants, conditions or restrictions contained in this Declaration, nor the enforcement of any lien provisions created herein, shall affect, impair, defeat or render invalid the lien of any first Mortgage or first deed of trust made in good faith and for value, but all of said covenants, conditions and restrictions shall be binding upon and effective against any Owner whose title is derived through foreclosure or trustee’s sale, or otherwise, with respect to a Condominium.

**Section 14.13 FHLMC Insurance Requirements.** If any Loan secured by a Mortgage encumbering a Condominium is owned by the Federal Home Loan Mortgage Corporation (“FHLMC”) or its successors or assigns or is tendered to FHLMC or its successors or assigns for purchase, the Association and the Owners shall obtain and maintain in full force and effect all insurance coverages which may at any time and from time to time be required by FHLMC or its



successors or assigns and shall otherwise comply in all respects with all insurance requirements of FHLMC which may be in effect at any time and from time to time.

**Section 14.14 Payment of Taxes or Premium by Institutional Holders of Mortgages.**

Institutional Holders of Mortgages may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Area, unless such taxes or charges are separately assessed against the Owners, in which case the rights of Institutional Holders of Mortgages shall be governed by the provisions of their Mortgages. Institutional Holders of Mortgages may, jointly or singly also pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy for the Common Area and the Institutional Holder of a Mortgage making such payments shall be owed immediate reimbursement therefor from the Association.

**Section 14.15 Priority of this Article.** If there is any conflict between any provision of this Article and any other provision in this Declaration, the provisions contained in this Article shall control.

**ARTICLE 15**

**ENFORCEMENT**

**Section 15.1 Enforcement.** Each Owner, lessee, and occupant and their guests and invitees shall comply with the provisions of the Association's Governing Documents and decisions and resolutions of the Association or its duly authorized representative. Owners are responsible for the actions of their lessees and occupants and their guests and invitees. 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 remedies set forth in this Article, 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 suspend the Membership rights including the right to use the Common Facilities by an Owner and his or her lessees and occupants and their guests and invitees for any period during which any Assessments or other charges (e.g., fines, late fees, etc.) remain unpaid. Additionally, the Association may suspend the Membership rights including the right to use the Common Facilities due to a violation of the Governing Documents by any Owner, or his or her family members, guests, tenants, invitees and occupants. 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 violation of the Governing Documents by Owner, lessee, or occupant or their guest or invitee, 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 Individual Notice in the Annual Policy Statement prepared pursuant to *Civil Code* Section 5310, a schedule of the penalties that may be imposed. New or revised schedules of monetary penalties adopted after distribution of the Annual Policy Statement will be provided to the Members by Individual Notice. A monetary

penalty for a violation of the Governing Documents shall not exceed the monetary penalty stated in the schedule in effect at the time of the violation.

(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, lessee, or occupant or their guests or invitees into compliance with the Governing Documents, as set forth in Article 5, Section 5.6.

(D) Due Process. If the Board decides to impose a fine, penalty, Reimbursement Assessment, suspension, or any other disciplinary action, such action shall only be valid after notice has been provided to the Owner by personal delivery or Individual Delivery at least ten (10) days prior to the date of the Board meeting where such action will be considered, in accordance with the provisions of the Governing Documents and *Civil Code* Section 5855. The notice shall contain, at a minimum, the following: the date, time, and place of the meeting, the nature of the alleged violation for which the Owner may be disciplined or the nature of the damage to the Common Area and Common Facilities for which a monetary charge may be imposed, and a statement that the Owner has a right to attend and may address the Board at the meeting. The Association shall have no obligation to reschedule a hearing to accommodate an Owner.

If the Board decides to impose a penalty or suspension, written notice of the penalty or suspension shall be provided to the Owner by personal delivery or Individual Delivery within fifteen (15) days after the date of the hearing in accordance with *Civil Code* Section 5855.

(E) Internal Dispute Resolution (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 *Civil Code* Sections 5900-5920.

(F) Alternative Dispute Resolution (ADR). Where required by *Civil Code* Sections 5925 - 5965, 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 the jurisdictional limits stated in *Code of Civil Procedure* Sections 116.220 and 116.221, related to the enforcement of the Governing Documents, such party shall offer alternative dispute resolution to the other party, as set forth in *Civil Code* Sections 5925 - 5965.

(G) Towing of Vehicles. The Association shall have the power to tow vehicles from the Common Area, including the parking lot, 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 and Regulations.

(H) Right of Entry. The Board shall have the right of entry into a Unit and Limited 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, 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 Governing Documents.

**Section 15.2 Nuisance.** The results of every act or omission that is a breach as set forth in Section 15.1 above 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 15.3 Violation of Law.** Any violation of any state or local law, ordinance, or regulation, pertaining to the ownership, occupation or use of any part of the Project is hereby declared to be a violation of the Governing Documents and subject to any or all of the enforcement procedures set forth in the Governing Documents.

**Section 15.4 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 15.5 Attorneys' Fees.** In the event the Association, or any Owner, shall commence any action to enforce any of the covenants, conditions or restrictions of the Governing Documents, the prevailing party in the action shall be entitled to actual attorneys' fees and costs reasonably incurred.

**Section 15.6 Cumulative Remedies.** Each and all legal or equitable remedies provided for in the Governing Documents shall be deemed to be cumulative.

## **ARTICLE 16**

### **AMENDMENTS**

**Section 16.1 General.** This Declaration may be amended at any time and from time to time by the affirmative vote 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 (1) the approval of the required percentage of Owners has been given, (2) 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 (3) the document has been recorded in the Office of the County Recorder.

**Section 16.2. Amendment of Declaration without Membership Approval.** A majority of the Board of Directors shall have the authority but not the obligation to amend this Declaration without membership approval for the limited purposes stated below:

- (A) To correct any spelling or grammatical omission or error in the Declaration.
- (B) To revise the Declaration to comply with applicable law where the Board exercises no discretion as to the substantive effect of the change.

If the Board approves an amendment without membership approval, it shall not be effective until (1) a written document is 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, memorializing that the amendment falls within one of the above categories; (2) the amendment and document have been recorded in the Office of the County Recorder; and (3) the amendment and document have been delivered by individual notice to all Members of the Association.

This Section shall not be used to undermine the right of the Owners to vote on amendments to this Declaration. Rather, this is intended to provide a simple procedure for correcting minor errors in the Declaration and/or bringing the Declaration into compliance with applicable law where the Board has no discretion as to the substantive effect of the change

## **ARTICLE 17**

### **GENERAL PROVISIONS**

**Section 17.1 General Delivery/General Notice.** Documents or information required to be provided by General Delivery or General Notice from the Association to the Owners shall be provided by one or more of the following methods:

- (A) Any method provided for delivery of an Individual Notice pursuant to Section 17.2;
- (B) Inclusion in a billing statement, newsletter, or other document that is delivered by one of the methods provided in this Section 17.1;
- (C) Posting the printed document in a prominent location that is accessible to all Owners, if the location has been designated for the posting of General Notices by the Association in the Annual Policy Statement, prepared pursuant to Article 10 of the Bylaws and *Civil Code* Section 5310; or
- (D) If the Association broadcasts television programming for the purpose of distributing information on Association business to the Owners, by inclusion in the programming.

Notwithstanding the foregoing, if an Owner requests to receive General Notices by Individual Delivery, all General Notices to that Owner, given under this Section 17.1, shall be delivered pursuant to Section 17.2. The option provided in this Section 17.1 shall be described in the Annual Policy Statement, prepared pursuant to Article 10 of the Bylaws and *Civil Code* Section 5310.

**Section 17.2 Individual Delivery/Individual Notice.** Documents required to be provided by Individual Delivery or Individual Notice from the Association to the Owners shall be delivered by one of the following methods:

(A) First-class mail, postage prepaid, registered or certified mail, express mail, or overnight delivery by an express service carrier. The document shall be addressed to the recipient at the address last shown on the books of the Association; or

(B) Email, facsimile, or other electronic means, if the recipient has consented, in writing or by email, to that method of delivery. The consent may be revoked, in writing, by the recipient.

**Section 17.3 Delivery of Documents to Association.**

(A) Any documents that are required by the Governing Documents or California law to be delivered by Owners to the Association shall be delivered to the person designated in the Annual Policy Statement, to receive documents on behalf of the Association. If no person has been designated, the documents shall be delivered to the president or secretary of the Association. A document delivered pursuant to this subsection (A) may be delivered by any of the following methods:

(1) By email, facsimile, or other electronic means, if the Association has assented to that method of delivery;

(2) By personal delivery, if the Association has assented to that method of delivery. If the Association accepts a document by personal delivery it shall provide a written receipt acknowledging delivery of the document; or

(3) By first class mail, postage prepaid, registered or certified mail, express mail, or overnight delivery by an express service center.

(B) Any of the following requests shall be delivered in writing to the Association, in the manner set forth in this Section 17.3:

(1) A request to change the Owner's information in the Association's membership list;

(2) A request to add or remove a second address for delivery of Individual Notices to the Owner, pursuant to *Civil Code* Section 4040(b);

- (3) A request for Individual Delivery of General Notices to the Owner, or a request to cancel a prior request for Individual Delivery of General Notices;
- (4) A request to opt out of the membership list pursuant to *Civil Code* Section 5220, or a request to cancel a prior request to opt out of the membership list;
- (5) A request to receive a full copy of a specified Annual Budget Report or Annual Policy Statement pursuant to *Civil Code* Section 5320; or
- (6) A request to receive all reports in full, pursuant to *Civil Code* Section 5320(b), or a request to cancel a prior request to receive all reports in full.

**Section 17.4 Completion of Delivery of Documents.** If a document is delivered by mail, delivery is deemed to be complete on deposit into the United States mail. If a document is delivered by electronic means, delivery is complete at the time of transmission.

**Section 17.5 Extension of Declaration.** This Declaration shall terminate on December 31, 2071, 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 17.6 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 17.7 Limitation of Liability.** In discharging its duties and responsibilities, the Board acts on behalf of and as representative of the Association which acts on behalf of and as representative of the Owners of Units. No member of the Board shall be individually or personally liable or obligated for performance or failure of performance of such duties or responsibilities unless he or she fails to act in good faith.

**Section 17.8 Indemnification.** 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 Director or officer may become involved, by reason of his or her being, or having been, a Director or an Officer of the Association, or any settlement of such proceedings, except if the Director or Officer is adjudged guilty of gross negligence or malfeasance in the performance of his or her duties. Indemnification shall be in addition to and not exclusive of all other rights to which such Director or Officer may be entitled.

**Section 17.9 Severability.** Invalidation or reformation of any one of these covenants, conditions, 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 17.10 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 17.11 Successors and Assigns.** This Declaration shall be binding upon and shall inure to the benefit of all heirs, personal representatives, successors, assigns, grantees, lessees, licensees, and of Owners.

**Section 17.12 Joint and Several Liability.** In the case of joint ownership of a Condominium, the liability of each Owner in connection with the liabilities and obligations of the Governing Documents, shall be joint and several.

**Section 17.13 Conflicts.**

(A) To the extent of any conflict between the Governing Documents and the law, the law shall prevail.

(B) To the extent of any conflict between the Articles and the Declaration, the Declaration shall prevail.

(C) To the extent of any conflict between the Bylaws and the Articles or Declaration, the Articles or Declaration shall prevail.

(D) To the extent of any conflict between the Rules and Regulations and the Bylaws, Articles, or Declaration, the Bylaws, Articles, or Declaration shall prevail.

**Section 17.14 References to Code Sections.** In the event any of the statutes or laws referenced in the Governing Documents are amended, modified, re-numbered or otherwise changed, the references in such document 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 or deleted, any reference 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 President of AMERICANA GARDENS HOMEOWNERS ASSOCIATION, a California Nonprofit Mutual Benefit Corporation;
2. That the foregoing SECOND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR AMERICANA GARDENS HOMEOWNERS ASSOCIATION comprising 56 pages and all Exhibits, was duly approved by a majority of the total voting power of the Association.

IN WITNESS WHEREOF, I hereunto subscribe my name this 27<sup>th</sup> day of FEBRUARY, 2023.

AMERICANA GARDENS HOMEOWNERS ASSOCIATION

By:   
Kevin Todd, President

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

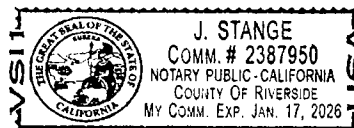
State of California )  
County of Riverside )

On February 27, 2023, before me, J. Stange, a Notary Public, personally appeared, Kevin Todd, 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.







**EXHIBIT "A"****LEGAL DESCRIPTION**

## AMERICANA GARDENS HOMEOWNERS ASSOCIATION

PARCEL 1: LOTS 1, 17, AND 18 OF ROYAL PALMS TRACT, AS SHOWN BY MAP ON FILE IN BOOK 30, PAGE 21 OF MAPS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA. TOGETHER WITH PARCELS A, B AND C OF PARCEL MAP RECORDED MAY 16, 1972 IN BOOK 5, PAGE 35 OF PARCEL MAPS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA. PARCEL 2: THOSE PORTIONS OF LOTS 2, 3, 4, 14, 15 AND 16 OF ROYAL PALMS TRACT, SHOWN AS PARCELS 1, 2, AND 3 ON THE PARCEL MAP RECORDED N BOOK 3, PAGE 16 OF PARCEL MAPS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA (THE "PROPERTY").

*The above legal description is intended to include all properties encumbered by the First Restated Declaration of Covenants, Conditions and Restrictions of Americana Gardens Homeowners Association recorded on February 2, 2006, as Document No. 2006-0113691 in the Official Records of Riverside County, including, without limitation, any duly recorded amendments and supplements thereto, as well as all properties subject to the governing documents of Americana Gardens Homeowners Association. The legal description was obtained from multiple previously recorded documents. The recording party and creator make no representation as to the sufficiency or accuracy of the legal description transcribed above.*

EXHIBIT "B"  
ASSIGNMENT OF LIMITED COMMON AREA PARKING SPACES  
SORTED BY UNIT NUMBER (DOWNSTAIRS UNITS)

Unit	Parking
101	41
102	104
103	78
104	85
105	57
106	119
107	55
108	118
109	37
110	110
111	33
112	148
113	21
114	145
115	18
116	112
117	15
118	143
119	13
120	113
121	11
122	127
123	26
124	147
125	24
126	146
127	42
128	86
129	59
130	82

Unit	Parking
131	74
132	83
133	91
134	93
135	49
136	101
137	48
138	121
139	45
140	128
141	50
142	100
143	51
144	151
145	36
146	123
147	35
148	124
149	70
150	99
151	65
152	133
153	67
154	154
155	47
156	132
157	76
158	75
159	72
160	125

Unit	Parking
161	89
162	103
163	34
164	153
165	84
166	68
167	69
168	114
169	44
170	116
171	30
172	129

ASSIGNMENT OF LIMITED COMMON AREA PARKING SPACES  
SORTED BY UNIT NUMBER (UPSTAIRS UNITS)

Unit	Parking
201	39
202	105
203	77
204	120
205	58
206	126
207	54
208	134
209	38
210	139
211	32
212	108
213	20
214	142
215	19
216	111
217	16
218	109
219	14
220	138
221	12
222	140
223	27
224	137
225	25
226	95
227	17
228	135
229	53

Unit	Parking
230	97
231	61
232	96
233	90
234	94
235	71
236	106
237	63
238	107
239	46
240	130
241	60
242	149
243	52
244	152
245	22
246	141
247	23
248	136
249	62
250	144
251	64
252	98
253	66
254	150
255	28
256	131
257	80
258	81

Unit	Parking
259	40
260	122
261	88
262	73
263	29
264	87
265	79
266	92
267	56
268	102
269	43
270	117
271	31
272	115

ASSIGNMENT OF LIMITED COMMON AREA PARKING SPACES  
SORTED BY PARKING SPACE NUMBER (NORTH SPACES)

Unit	Parking
121	11
221	12
119	13
219	14
117	15
217	16
227	17
115	18
215	19
213	20
113	21
245	22
247	23
125	24
225	25
123	26
223	27
255	28
263	29
171	30
271	31
211	32
111	33
163	34
147	35
145	36
109	37
209	38

Unit	Parking
201	39
259	40
101	41
127	42
269	43
169	44
139	45
239	46
155	47
137	48
135	49
141	50
143	51
243	52
229	53
207	54
107	55
267	56
105	57
205	58
129	59
241	60
231	61
249	62
237	63
251	64
151	65
253	66

Unit	Parking
153	67
166	68
167	69
149	70
235	71
159	72
262	73
131	74
158	75
157	76
203	77
103	78
265	79

ASSIGNMENT OF LIMITED COMMON AREA PARKING SPACES  
SORTED BY PARKING SPACE NUMBER (SOUTHSIDE SPACES)

Unit	Parking
257	80
258	81
130	82
132	83
165	84
104	85
128	86
264	87
261	88
161	89
233	90
133	91
266	92
134	93
234	94
226	95
232	96
230	97
252	98
150	99
142	100
136	101
268	102
162	103
102	104
202	105
236	106
238	107
212	108

Unit	Parking
218	109
110	110
216	111
116	112
120	113
168	114
272	115
170	116
270	117
108	118
106	119
204	120
138	121
260	122
146	123
148	124
160	125
206	126
122	127
140	128
172	129
240	130
256	131
156	132
152	133
208	134
228	135
248	136
224	137

Unit	Parking
220	138
210	139
222	140
246	141
214	142
118	143
250	144
114	145
126	146
124	147
112	148
242	149
254	150
144	151
244	152
164	153
154	154

**EXHIBIT “C”****MAINTENANCE MATRIX**

The following is a listing of the major components within the Project and the party (Owners or Association) that is responsible for routinely maintaining, repairing and replacing said components. This allocation may not apply in situations where damage is caused by the negligence or willful misconduct of any party. Unless otherwise specifically indicated below, the assignment of responsibility includes maintenance, repair, replacement and painting (if painting is applicable).

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.

<b>COMPONENT(S)</b>	<b>OWNER</b>	<b>ASSN.</b>
Air Conditioning/ Furnace Units and Related Ducting – Servicing Unit (Replacement of air conditioning/ furnace units is subject to Board approval as set forth in Article 7 of the Declaration)	X	
Appliances – Unit - Built In	X	
Appliances – Unit - Freestanding	X	
Carpeting - Unit	X	
Caulking - Exterior		X
Caulking – Interior of Unit	X	
Ceilings – of Unit	X	
Common Area Improvements		X
Doors – Front/ Kitchen - of Unit - Frame and Door (except exterior painting/staining)	X	
Doors – Front/ Kitchen - of Unit - Locks, Hardware, and Replacement of Glass Insert	X	
Doors – Front/ Kitchen - of Unit - Painting/Staining - Exterior Surface		X
Doors – Front/ Kitchen - of Unit - Painting - Interior Surface	X	
Doors – Front/ Kitchen - of Unit - Weatherstripping/Waterproofing	X	

<b>COMPONENT(S)</b>	<b>OWNER</b>	<b>ASSN.</b>
Doors – Interior of Unit	X	
Drainage Systems (e.g., ditches, catch basins)		X
Drains - Bathtubs, Showers, Sinks, Appliances (solely servicing Unit)	X	
Drains – Common Area		X
Driveway/Parking Space - concrete and asphalt surfaces		X
Dryer Vents and Related Ducting (except in Common Area Laundry Room) – Cleaning, Repair and Replacement	X	
Drywall of Unit - Damage Repairs (e.g., cracks, inside minor localized water damage, dents, holes, etc.)	X	
Drywall - of Unit - Replace	X	
Electrical Panel/Circuit Breakers/Interior – Servicing Unit	X	
Electrical Switches, Sockets, Wall Plates – Interior of Unit	X	
Electrical Wiring – Wherever located that solely services one Unit	X	
Electrical Wiring - Serving more than one Unit and in Common Area		X
Exhaust Fans – of Unit	X	
Exterior Condominium Building Surface		X
Exterior Faucets, Handles, Washers		X
Fences - Common Area		X
Floor Covering e.g., carpet, tile, vinyl, wood, etc.) - Unit	X	
Foundation/ Slab – of Unit		X
Front Entry Landings – of Unit		X
Garbage Disposal - Unit	X	
Gas Lines – Outlets in Unit	X	
Gas Lines – All Others		X
Gas – Shut off valves servicing Unit	X	
Glass - Common Area		X

<b>COMPONENT(S)</b>	<b>OWNER</b>	<b>ASSN.</b>
Glass - Windows/Doors – of Unit	X	
Gutters and Downspouts		X
Hose Bibs		X
Insulation – of Unit	X	
Landscaping - Common Area		X
Lighting Fixtures - Inside Dwelling Units	X	
Lighting Fixtures - Outside (Including on Patios and Balconies)		X
Painting – Interior of Unit	X	
Parking Space/ Lot - Asphalt Surfaces		X
Parking Space/ Lot - Covers		X
Patio/Balcony Deck Railings		X
Patio/Balcony – Structural Elements & Stucco		X
Patio/ Balcony - Slab/ Deck (Including Waterproofing Surfaces)		X
Patio/Balcony Cleaning and Maintenance	X	
Plumbing Fixtures - Inside Unit (toilets, tubs, sinks, faucets, etc.)	X	
Plumbing Lines Wherever located that solely service one Unit	X	
Plumbing Lines - Serving more than one Unit and in Common Area		X
Pools, Spas, Equipment		X
Pressure Regulators		X
Roof Flashing and other Roofing Components (including sheathing)		X
Roof Shingles/Tiles		X
Roof Vents (excluding dryer vents)		X
Sewer Backups		X
Sewer Lines - Serving more than one Unit and in Common Area		X
Sewer Lines – Wherever located that solely service one Unit	X	



<b>COMPONENT(S)</b>	<b>OWNER</b>	<b>ASSN.</b>
Sidewalks - Common Areas		X
Slab/ Foundation – of Unit		X
Sliding Patio/ Balcony Door Flashing/Waterproofing	X	
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.) inside the Dwelling Unit	X	
Spraying for Landscaping Pests (ants, fleas, etc.) on the exterior of the Dwelling Unit		X
Stairs		X
Stucco – Repair, Replacement, Painting/Coloring		X
Termites/ Wood-Destroying Pests – Common Area and Exclusive Use Common Area - Eradication		X
Termites/ Wood-Destroying Pests – Unit - Eradication	X	
Termites/ Wood-Destroying Pests – Repair/Replacement of Damage to Unit, Exclusive Use Common Area & Any Improvement Owner is Required to Repair	X	
Termites – Repair/ Replacement of Damage to Common Area (except Exclusive Use Common Area)		X
Toilet – Unit - Wax Ring	X	
Trim - Wood - Exterior - Maintenance and Replacement		X
Trim - Wood - Exterior - Painting		X
Walls - Bearing, Studs, Frames, Tiedowns, Other Structural Elements – of Unit		X
Walls - Non-bearing inside Unit	X	
Walls/ Gates – Perimeter		X
Wallpaper/Paneling - Unit	X	
Water Heater/ Boiler - Common Area		X

COMPONENT(S)	OWNER	ASSN.
Water Heater – Servicing Unit	X	
Water Softener - Servicing Unit	X	
Windows and Screens- Servicing Unit	X	
Window Flashing, Frames, and Hardware- Servicing Unit	X	
Wiring - Cable TV/ Telephone- Servicing Unit	X	
Wiring - Electrical - Wherever located that solely services one Unit	X	
Wiring - Electrical - Serving more than one Unit and in Common Area		X