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AMENDED AND RESTATED

DECLARATION OF RESTRICTIONS

FOR

BELLEFONTAINE CONDOMINIUM OWNERS ASSOCIATION
A Residential Condominium Project

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**AMENDED AND RESTATED
DECLARATION OF RESTRICTIONS
FOR
BELLEFONTAINE CONDOMINIUM OWNERS ASSOCIATION**

THIS AMENDED AND RESTATED DECLARATION OF RESTRICTIONS is made on the day and year hereafter written, by BELLEFONTAINE CONDOMINIUM OWNERS ASSOCIATION, a California nonprofit mutual benefit corporation ("Association"), with reference to the following Recitals.

RECITALS

A. Association is a corporation whose Members are the Owners of all the Condominium Units within that certain real property in the City of San Diego, County of San Diego, State of California, more particularly described below (hereafter "Property"):

Lots G, H, & I in Block 282 of Horton's Addition in the City of San Diego, County of San Diego, State of California, according to map thereof filed July 21, 1871, in Deed Book 13, Page 522, in the Office of the Recorder of said San Diego County.

B. The Property was developed as a Condominium Project, as defined in California Civil Code Section 1351(f), and consists of thirty (30) Condominium Units and related Common Areas.

C. Ownership of the Property has previously been subject to those certain covenants, conditions, restrictions, rights, reservations, easements, equitable servitudes, liens and charges set forth in the following documents:

1. The Declaration of Covenants, Conditions and Restrictions Recorded June 20, 1972 as File/Page No. 72-157682 (hereafter "1972 Declaration");
2. The Declaration of Covenants, Conditions and Restrictions of the Bellefontaine Condominium Owners Association, 1990 Restatement and Amendment, Recorded February 2, 1990 as File/Page No. 90-061819 (hereafter "1990 Declaration");

and any other amendments or documents that may appear of Record, all in the Official Records of the County Recorder of San Diego County, hereafter referred to together as "Original Declaration," unless the context clearly indicates otherwise.

D. Association now desires to amend and restate the Original Declaration and replace it in its entirety with this Restated Declaration ("Declaration"). Association further desires that, upon Recording this Declaration, the Property shall be subject to the covenants,

conditions, restrictions, rights, reservations, easements, equitable servitudes, liens and charges contained herein, and this Declaration take the place of and relate back in time to the Recording of the Original Declaration.

E. The 1990 Declaration, in Article IX, Section 2, provides that it may be amended with the written consent of two-thirds (2/3) of the Owners after which it shall become effective by a proper instrument in writing that has been executed, acknowledged and Recorded in the Office of the Recorder of San Diego County, California.

F. Under California Civil Code Section 1355 an amendment is effective after (1) approval of the percentage of Owners required by the governing documents has been given, (2) that fact has been certified in a writing executed and acknowledged by the Association President if no Officer has been designated in the Declaration for such purpose, and (3) the writing has been Recorded in the County in which the Property is located.

G. Since no such Officer is designated in the Declaration, the President's certification is attached hereto as Exhibit C.

H. As more fully set forth in Exhibit C, the President certifies that, to the best of said President's knowledge and belief, the affirmative vote or written consent of at least the required percentage of Owners has been obtained, and thus this Declaration is being Recorded to give effect to this Amendment.

NOW, THEREFORE, the Association hereby declares that all of the Property previously has been and hereafter shall continue to be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied, and improved subject to the declarations, limitations, covenants, conditions, restrictions, reservations, rights, and easements set forth in this Declaration, as the same may be amended from time to time, all of which are declared and agreed to be in furtherance of a plan established for the purpose of enhancing and perfecting the value, desirability, and attractiveness of the Property. All provisions of this Declaration shall constitute covenants running with the land and enforceable equitable servitudes upon the Property, and shall be binding on and for the benefit of all of the Property and all parties having or acquiring any right, title, or interest in all or any part of the Property, including the heirs, executors, administrators, and assigns of these parties and all subsequent Owners and lessees of all or any part of a Condominium.

ARTICLE 1 - DEFINITIONS

Unless otherwise defined in this Declaration, capitalized terms or words used in this Declaration shall have the definitions found in Exhibit A, attached hereto and incorporated herein by this reference, or in the Davis-Stirling Common Interest Development Act (California Civil Code Section 1350 *et seq.*, hereafter "Act"). Words not defined in the Declaration or in the Act shall be understood in their ordinary and popular sense, as determined by the context in which they are used, unless the context indicates that the term or word is a defined term which was inadvertently not capitalized.

Statutes or administrative regulations that are shown in brackets at the beginning of a section or paragraph in this Declaration are intended to show that the respective section or paragraph is based on the particular statute or administrative regulation referred to in the brackets. Unless otherwise noted, all references are to statutes and administrative regulations of the State of California. Any issues not addressed expressly by the Governing Documents of the Association shall be controlled by relevant provisions of the Act and the California Corporations Code and by judicial interpretations of them, whether the Association is incorporated or not.

ARTICLE 2 - USE RESTRICTIONS AND COVENANTS

2.1 *General.* The use and enjoyment of the Project by Owners and their tenants, guests, invitees or any other person deriving rights from such Owner, shall be subject to the covenants and restrictions and other terms contained in the Governing Documents. Each such person shall comply with the provisions hereof and be subject to any enforcement actions attributable to violations. As more fully set forth in Section 7.1, both the Association, through the Board of Directors, and each Owner shall be entitled to enforce the Governing Documents.

2.2 *Common Area.* The following provisions govern the use and enjoyment of the Common Area:

- 2.2.1 The Common Area shall be improved and used only for vehicular and pedestrian movement within the Property, including access to the Living Units, recreational use by the Owners and occupants of Living Units and their guests, subject to the Rules and Regulations established by the Board, and beautification of the Property and providing privacy to the Residents through landscaping and such other means as the Association shall deem appropriate.
- 2.2.2 The Association shall have an easement in, to, and throughout the Common Area and the Improvements thereon to perform its duties and exercise its powers;
- 2.2.3 Except as provided in this Declaration, there shall be no judicial partition of the Common Area, nor shall any person acquiring an interest in all or any part of the Project seek any judicial partition;
- 2.2.4 Subject to the provisions of this Declaration, each Owner has nonexclusive rights of ingress, egress, and support through the Common Area. These rights shall be appurtenant to any deed of conveyance. However, these rights shall not interfere with, and shall be subordinate to, any exclusive right to use an area;
- 2.2.5 The Owners' rights of use and enjoyment of the Common Area shall be subject to the restrictions set forth in the Governing Documents. Subject

to the limitations of any Laws or the Governing Documents, the Owners' rights of use and enjoyment of the Common Area shall also be subject to the Board's right to:

- (a) Adopt and enforce reasonable Rules and Regulations for the use of the Common Area and the Project;
- (b) Assign or otherwise control the use of any unassigned parking spaces within the Common Area;
- (c) Remove any vehicle within the Project parked in violation of this Declaration or the Rules and Regulations in accordance with the provisions of California Vehicle Code Section 22658.2 and any amendments thereto;
- (d) Suspend the voting rights of any Owner, and suspend or impose conditions on the rights of any Owner, and the Persons deriving rights from any Owner, to use and enjoy the Common Area for any period during which the Owner is delinquent in the payment of any Assessment, fine or monetary penalty, or as otherwise provided in the Governing Documents;
- (e) Cause the construction of additional Improvements in the Common Area, or to cause the enhancement, alteration or removal of existing Improvements on the Common Area;
- (f) Place reasonable restrictions on access to roofs, maintenance facilities or areas, landscaped areas, and similar areas of the Project; and
- (g) Approve any proposed alteration of or modification to the Common Area.

2.2.6 The Association may grant to third parties easements, licenses or rights-of-way in, on, and over the Common Area for the purpose of constructing, installing, or maintaining necessary utilities and services, or other purposes reasonably related to the operation of the Project, and each Owner, in accepting his or her deed to the Condominium, expressly consents to the granting of such rights. However, no such right may be granted if it would unreasonably interfere with any exclusive easement, or with any Owner's use, occupancy, or enjoyment of his or her Condominium;

2.2.7 Notwithstanding the easement rights or other rights contained herein, an Owner who has sold his or her Condominium to a contract purchaser or who has leased or rented the Condominium shall be deemed to have

delegated his or her rights to use and enjoy the Common Area to the contract purchaser or tenant who resides in the Owner's Condominium, subject to reasonable regulation by the Board. Where the Owner is deemed to have delegated such rights to a contract purchaser or tenant, the Owner and the Owner's family, guests, employees, and invitees shall not be entitled to use and enjoy the Common Area for as long as the delegation remains effective;

- 2.2.8 All internal and external telephone wiring designed to serve a single Unit, but located outside the boundaries of the Unit, is allocated exclusively to that Unit. The Owner of the Unit shall be entitled to reasonable access to the Common Area for the purpose of maintaining this wiring, subject to the consent of the Association and to any other conditions reasonably imposed by the Association. The Association's consent shall not be unreasonably withheld.

2.3 *General Restrictions on Use.* In exercising the right to occupy or use a Condominium or the Common Area and its Improvements, the Owner and the Owner's family, guests, employees, tenants, and invitees are subject to the following restrictions on use:

- 2.3.1 *Single Family Use.* Each Living Unit shall be used solely as a single family residence and for no other purpose. No portion thereof nor the Common Area shall be used for any commercial purpose. However, a Condominium may be used for an in-home business that is compatible with and in accordance with the existing zoning Laws of the City of San Diego relating to the Property, subject to the prior written approval of the Board, and the Board shall not unreasonably withhold their consent for any such commercial use. No one may partition or subdivide a Condominium without the prior written approval of the Association and the Lenders as provided in Section 11.5.

- 2.3.2 *Interior Decoration.* Each Owner shall have the exclusive right to paint, repair, tile, wax, paper or otherwise refinish and redecorate the inner surfaces of the walls, ceilings, floor, windows and doors bounding his or her own Living Unit, so long as such alteration does not affect the Common Area and other Living Units or the structural portions of the building.

- 2.3.3 *Exterior Appearance.* No Owner shall permit laundry or other unsightly items to hang in the windows or balcony of his or her Living Unit. All draped or shuttered windows facing the Sixth Avenue exterior (east) shall have either draperies, drapery lining or casements of a neutral color in order to maintain a unified exterior appearance.

- 2.3.4 *Impairment of Insurance.* No Living Unit shall be occupied or used for any purpose or in any manner that shall cause such Improvements to be

uninsurable against loss by fire or the perils of the extended coverage endorsement to the California Standard Fire Policy Form or cause any policy or policies representing such insurance to be cancelled or suspended or the company issuing the same to refuse renewal thereof or to increase the premium thereon.

2.3.5 *Nuisance.* No Living Unit or the Common Area shall be used in such a manner that interferes with the enjoyment of any other Residents or annoys them by unreasonable noise or otherwise, nor shall anything be committed or permitted to occur anywhere on the Property that would be or become a nuisance or that would violate any law. No noxious or offensive activity shall be carried on anywhere on the Property nor shall anything be done therein that may be or become an annoyance or nuisance to the Owners or Residents.

2.3.6 *Pets.* No pet or other animals shall be kept, maintained or permitted anywhere on the Property; provided, however, that two (2) domesticated dogs, cats or other commonly accepted household pets (plus fish in a household aquarium or caged birds) may be kept and maintained in a Living Unit so long as the same shall not, in the opinion of the Board, create an unreasonable annoyance or nuisance to the other Owners or residents. Pets and other animals shall not be permitted in the Common Area except as specifically permitted by the Rules and Regulations adopted by the Board. No one may raise or keep animals for commercial purposes anywhere on the Property.

From and after the date this Declaration is recorded, no Owner (or any occupant of the Owner's Unit) shall be permitted to keep or maintain any pet in any Unit or within the Property, unless the Owner has registered each of those pets with the Board as to name, type and breed of animal, color and description, approximate size and weight, and license no. (where required by law).

Any Owner or resident who keeps or maintains more than two pets on the date this Declaration is recorded and who has registered those pets with the Association or its duly authorized agents no later than thirty (30) days after the Declaration is recorded shall be permitted to keep the excess number of pets within the Property for the remainder of the pet's life or until the pet is sold or given away or is otherwise permanently removed from the Project; provided that no new pet may replace a pet that dies, is sold, or is given away, if the replacement pet would result in more than two pets being kept or maintained in any Unit.

The Association, its Board, Officers, employees and agents shall have no liability to any Owner, their family members, guests, invitees, tenants and contract purchasers, or any other person on the Project, for any damage

or injury to persons or property caused by any pet, absent any willful or wanton negligence on the part of the Association, or its Board, Officers, employees and agents.

- 2.3.7 *Structural Changes; Trash Removal.* Nothing shall be done in any Living Unit or in, on or to the Common Area that will impair the structural integrity of the building or that would structurally change the building except as is otherwise provided herein. All equipment, rubbish, trash or garbage shall be regularly removed from each Living Unit and shall not be allowed to accumulate therein or in the adjacent Common Area.
- 2.3.8 *Common Area Storage.* No Owner shall store or construct anything on or obstruct the Common Area except with the prior written consent of the Association. Storage is permitted only in the storage lockers provided for each unit, either adjacent to the laundry room or as provided for some units in the parking areas. Any such storage must be in conformance with the San Diego Fire Code.
- 2.3.9 *Parking Areas and Vehicle Maintenance.* No one may park any automobile or other motor vehicle in the Common Area, except in a space designated for the Owner by the Board or the Governing Documents. The parking appurtenant to each Living Unit shall be utilized for vehicular parking purposes in accordance with the Rules and Regulations, and nothing other than a motor vehicle may be stored in it. No automotive overhaul or maintenance work, in the absence of an emergency, shall be performed on the Property. The interior of the parking area shall be kept clean. No work involving the use of motor power equipment or other work causing excessive noise shall be performed or undertaken. No washing of cars is permitted in the Common Area.
- 2.3.10 *Signs.* [Civil Code §§ 712 & 713]. No one may erect or display any sign on or from any Unit or Exclusive Use Common Area except as allowed by Civil Code Sections 712 and 713 and the Rules and Regulations. All signs must conform with applicable governmental ordinances. No signs shall be erected or displayed on the Common Area except signs placed by authority of the Board.
- 2.3.11 *Leases.* Any agreement for the leasing or rental of a Condominium (hereafter "Lease") shall provide that the terms of such Lease shall be subject in all respects to the provisions of this Declaration and other Governing Documents of the Association. Said Lease shall further provide that any failure by the lessee thereunder to comply with the terms of the foregoing documents shall be a material default under the Lease. All Leases shall be in writing.

Any Owner who shall lease his Condominium shall be responsible for assuring compliance by such Owner's lessee with this Declaration and other Governing Documents of the Association. Failure by an Owner to take legal action, including the commencement of proceedings in unlawful detainer against such Owner's lessee who is in violation of this Declaration or other Governing Documents of the Association within ten (10) days after receipt of written demand so to do from the Board, shall entitle the Association, through the Board, to take any and all such action, including the commencement of proceedings in unlawful detainer on behalf of such Owner or the Association against such Owner's lessee.

Any expenses incurred by the Association, including attorneys' fees and costs of suit, shall be repaid to it by such Owner. Failure by such Owner to make such repayment within ten (10) days after receipt of a written demand therefor shall entitle the Board to levy an assessment against such Owner and the Owner's Condominium for all such expenses incurred by the Association. If such an assessment is not paid within thirty (30) days after the due date, the Board may resort to all remedies of the Association for the collection thereof including those set forth in Article 6 hereof.

No Owner may lease less than the entire Condominium. In addition, no Condominium shall be leased for transient or hotel purposes, which shall be defined as rental for any period of less than thirty (30) days or any rental whatsoever, if the occupants thereof are provided with customary hotel services such as room service for food and beverages, maid services, the furnishing of laundry and linen or bellboy service.

2.3.12 *Domestic Help.* No domestic help or their families, whether hired by Owners, Residents or employed by the Association, shall have permission to use the Common Area or any common facilities situated thereon, including, without limitation, clothes washers, dryers, and recreational areas, for their personal use. Each Owner shall be responsible for ensuring that the Owner's employees or other hired help do not use the Common Area or common facilities situated thereon for such personal use.

2.4 *Restrictions on Antennae, Masts, Etc.* There shall be no outside television or radio antennae, masts, poles or flag poles constructed, installed or maintained in the Project for any purpose whatsoever without the prior written consent of the Board.

The Board may grant licenses, concessions, easements or other rights to use portions of the Common Area to third parties for commercial antenna installations or other income-producing purposes of a similar nature. The Board shall have the power to enter such agreements on such terms as the Board deems appropriate and beneficial for the Association

and so long as the agreement does not impose an unreasonable interference with the residential character of the property.

2.5 *Exclusive Use Common Areas.* Each Exclusive Use Common Area shall be (i) appurtenant to the Unit, the Unit of which bears the same number as the Exclusive Use Area as set forth on the Condominium Plan, and (ii) used only for the purposes set forth in this Declaration. The right to use an Exclusive Use Common Area shall be exercisable only by the Owner of the Unit appurtenant thereto and/or said Owner's tenants and licensees. Conveyance of a Unit shall effect conveyance of Exclusive Use Common Areas appurtenant thereto and shall transfer of all rights thereto to the vested Owner of the Unit. Any licenses thereto shall be terminated upon such conveyance. No Exclusive Use Common Area or any rights thereto (other than said revocable licenses) shall be transferred or conveyed apart from conveyance of the Unit to which they are appurtenant. Each Exclusive Use Common Area shall be deemed to be Common Area for all those purposes set forth in this Declaration which are not inconsistent with this Declaration.

Subject to Rules and Regulations, each Owner shall have the right to place furniture and potted plants on any Exclusive Use Common Area which the Owner has the exclusive right to use, and should any Exclusive Use Common Area have appropriate areas therefor, to landscape and plant flowers and shrubs which do not unreasonably interfere with the enjoyment of adjacent Units or other portions of the Common Area.

Each Owner shall have the right to park and store one (1) vehicle in the parking space which he has the exclusive right to use, so long as the vehicle fits under the garage gate and into the parking space without unreasonably interfering with vehicles in adjacent spaces.

Except as provided in this Section, nothing contained herein shall give any Owner the right to paint, decorate, remodel or alter said Exclusive Use Areas or any other part of the Common Area without the prior written consent of the Board.

2.6 *Unit Modification.* Subject to other applicable restrictions contained in the Governing Documents, Owners may modify their Units subject to the following:

2.6.1 Modifications or alterations of the exterior of any Unit must have the prior written consent of the Board or a duly appointed Architectural Committee, including any modifications to facilitate access for persons who are physically impaired as provided by California Civil Code Section 1360. Any approval of such a modification may be conditioned on such modification's removal, by the Owner at his or her sole expense, once the access is no longer necessary for the Unit.

2.6.2 Installation of any carpet, tile or other floor covering must have prior approval of the Board or Architectural Committee. In deciding upon floor coverings, Owners shall take all reasonable measures to choose floor coverings that mitigate sound transfer between Units. The Board shall have the power to order an Owner who has not complied with this

Section to remove and replace any floor covering which does not adequately mitigate sound transfer.

2.6.3 No Owner may install any shutter, screen, blind, curtain, drape or other appurtenance in or on any window or door except those items which conform with standards established by the Board.

2.6.4 Except as provided by the Governing Documents, Owners shall not have the right to paint, decorate, remodel or alter any Exclusive Use Common Area or the Common Area without the prior written consent of the Board.

ARTICLE 3 - REPAIR AND MAINTENANCE

3.1 *General.* The Association and all Owners are required to fulfill the maintenance requirements imposed by the Governing Documents. For purposes of this Article "maintenance" shall include, without limitation, all maintenance, repair, replacement, restoration, upkeep, weatherproofing, cleaning or application of paint, stain, paper, plaster, tile, and other finishes as needed to keep Improvements in a clean, safe, sanitary and attractive condition and to preserve the attractive appearance of each Unit, Exclusive Use Common Area, and the Project and to protect the values thereof, and to ensure that there is no threat to the health, safety or welfare of any Resident.

The Board shall have the power to determine the standards of such maintenance, including the standards of landscaping, the selection and replacement of plant materials and the standards for exterior and structural maintenance by the Association. The replacement of structural and exterior items by Owners shall be subject to the architectural approval requirements of Article 4.

3.2 *Owner Duty to Cooperate.* To the extent necessary or desirable to accomplish the Association's maintenance obligations hereunder, individual Owners and Residents shall cooperate with the Association and its agents and maintenance personnel in the prosecution of its work.

3.3 *Specific and General Maintenance Duties.* Subject to Article 9 pertaining to the destruction of improvements and Article 10 pertaining to eminent domain, Exhibit B, attached hereto and incorporated herein by reference, sets forth the respective maintenance duties of the Association and the Owners for a list of specific components within the Project. If there is a conflict between the provisions of Exhibit B and the general maintenance duties set forth in this Article, it is intended that the provisions of Exhibit B shall control.

If Exhibit B contains an ambiguity or provides no guidance, then the general maintenance duties which follow shall be used to determine whether the Association or the Owner has the maintenance responsibility for the component or components involved. The Association, in general, shall be responsible for all maintenance within the Common Area, and

each Owner shall be responsible for the maintenance of all portions of the Owner's Unit and any appurtenant Exclusive Use Common Area.

All Improvements shall be maintained in a clean, sanitary and attractive condition and in accordance with the Condominium Plan and the original construction design of the Improvements in the Project. 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. In addition, no person shall remove any tree, shrub or other vegetation from, or plant any tree, shrub, or other vegetation upon the Common Area without express written approval from the Board.

3.4 *Damage Caused by Owner or Item Under Control of Owner.* [Civil Code §1367] Should any damage to the Common Area or any Unit result from the act or omission of any Owner, or such Owner's family members, tenants, guests, invitees, pets or other person or entity deriving any interest through such Owner, or from any item, the maintenance, repair or replacement of which is an Owner responsibility, the cost of all repairs shall be borne solely by the culpable Owner. In the case of joint ownership of a Condominium, the liability of the co-Owners shall be joint and several, unless the co-Owners and the Association have agreed in writing to an alternative allocation of liability.

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 culpable Owner's expense. The culpable Owner shall be responsible for performing the repair of any damage to his or her Unit or Exclusive Use Common Area over which such Owner has control. The Owner of any other Unit or Exclusive Use Common Area which sustained damage shall be responsible for performing the repair of any such damage, and may charge the cost thereof to the culpable Owner.

If the culpable Owner disputes or refuses to pay the repair costs incurred by the Association, the Association, after Notice and Hearing procedures as provided for the imposition of monetary fines or suspensions, may charge the cost of those repairs to such Owner as an Individual or Special Assessment, with the full authority to lien on such amount following non-payment. 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 culpable Owner shall be responsible for the cost of any deductible applicable to the covered claim. If the submitted claim is not covered by the Association's insurance, the Owner shall be responsible for the total cost of repair.

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.

3.5 *Water Intrusion Damage.* Notwithstanding any other provision in the Governing Documents, each Owner shall be solely responsible for the repair or replacement

of any damage to any and all interior items of his or her Unit, and the cost thereof, including, but not limited to, any personal property, decorations, interior surfaces, floor and wall coverings, appliances, fixtures or other items therein, caused by water intrusion from whatever source. An Owner may obtain and maintain such insurance, at his or her sole expense, to protect against any damage or loss of property due to water intrusion, or the cost of repair or replacement of damaged items for which such Owner is responsible. The Association shall not be liable for damage to property in the Project resulting from water which may leak or flow from outside of any Unit or from any part of the Building, or from any pipes, drains, conduits, appliances or equipment or from any other place or cause, unless caused by the negligence of the Association, its Board, Officers, agents or employees.

3.6 *Damage During Repairs.* In the course of carrying out the maintenance and repair responsibilities of the Association, it may be necessary for agents or representatives of the Association to remove floor or wall coverings, appliances, fixtures or other similar items within a Unit or Exclusive Use Common Area. In this event, the Association's agents or representatives shall use care to cause as little damage as possible. As provided in Section 5.7.4, the Owner of the area shall be responsible, at his or her sole expense, to repair or replace any such floor or wall coverings, appliances, fixtures or other similar items which might be damaged as an inevitable consequence of performing such repair or replacement.

3.7 *Failure to Maintain.* If an Owner fails to maintain the areas described herein pursuant to the standards set by the Board, the Board may notify the Owner of the corrective janitorial, maintenance or repair work required and request that the same be done within a reasonable time from the giving of such Notice. If the Owner fails to carry out such work in said time period, the Board may, following notice and an opportunity for a hearing, cause such work to be done, and the cost thereof shall immediately be paid by such Owner to the Association and until paid shall bear interest at the rate of twelve percent (12%) per annum (but no greater than the maximum rate authorized by Law).

3.8 *Vacating Dwelling; Costs.* [Civil Code §1364] The Association shall have the power to temporarily remove any Resident for such periods and at such times as may be necessary in connection with any maintenance or repair work performed by the Association, including, but not limited to, treatment for wood destroying pests or organisms. The costs of any temporary relocation during such maintenance or repair work shall be paid by the Owner affected. The Association shall give notice of the need to temporarily vacate a Separate Interest to the Record Owners and occupants not less than fifteen (15) days nor more than thirty (30) days prior to the date of the temporary relocation. The notice shall state the reason for the relocation, the date and time of the beginning of work, the anticipated date and time of termination of work and that the occupants will be responsible for all necessary accommodations during the relocation.

ARTICLE 4 - ARCHITECTURAL AND DESIGN CONTROL

4.1 *General.* Any change or Improvement to the exterior of a Unit or Exclusive Use Common Area shall be governed by this Article. Changes or Improvements to the Common

Area by the Association do not need to comply with the requirements of this Article. The powers and duties set forth in this Article shall be vested in, and exercised by, the Board. The Board may establish an Architectural Committee as provided herein to assist the Board in reviewing architectural submittals, and to provide recommendations to the Board with regard to approval or disapproval of any submittal. The foregoing notwithstanding, the Board shall be solely responsible for approving or rejecting any architectural submittal.

4.2 *Restricted Activity.* No building, fence, wall, pool, spa, obstruction, outside or exterior wiring, balcony, screen, patio, patio cover, tent, awning, carport, carport cover, trellis, landscaping, Improvement or structure of any kind, or exterior alteration, or any interior alteration which would affect the structural integrity of the building shall be removed, commenced, erected, placed, painted or maintained upon the Project, nor shall any alteration or Improvement of any kind be made thereto, until the same has been approved in writing by the Board.

4.3 *Liability.* Neither the Board, nor any member thereof shall be liable to the Association or to any Owner for any damage, loss or prejudice suffered or claimed on account of: (a) the approval or disapproval of any plans, drawings and specifications, whether or not defective; (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings, and specifications; (c) the development of any property within the neighborhood; or (d) the execution and filing of an estoppel certificate whether or not the facts therein are correct; provided, however, that such member has acted in good faith on the basis of such information as may be possessed by him or her.

4.4 *Non-Compliance with Laws.* Neither the Association, the Board nor the Architectural Committee shall be responsible for any non-compliance with any governmental Law, rule or regulation of any building or other structure erected, constructed, installed, placed, altered or maintained in accordance with or pursuant to any plans and specifications approved by the Board or Committee or any defect in any conditions or requirements they may have imposed with respect thereto.

4.5 *Approval by City.* Prior to commencing any alteration or Improvements approved by the Board, the Owner shall comply with all appropriate governmental Laws and regulations. Approval by the Board shall not be considered to satisfy the appropriate approvals that may be required by any governmental entity with appropriate jurisdiction. The Association shall not be obligated to enforce the provisions of this Section. An Owner's failure to obtain such governmental approval may subject such Owner to certain penalties imposed by the governmental entity, notwithstanding the approval of the Board, which penalties shall be the responsibility of such Owner.

ARTICLE 5 - ASSOCIATION

5.1 *Organization of the Association.* The Association is incorporated as a nonprofit corporation organized under the California Nonprofit Mutual Benefit Corporation Law. The

Association is created for the purpose of managing the Project and is charged with the duties and granted the powers prescribed by Law and as set forth in the Governing Documents.

5.2 *Board of Directors.* The affairs of the Association shall be managed and its duties and obligations performed by an elected Board of Directors, as provided in the Bylaws.

5.3 *Membership.* Every Owner, upon becoming an Owner, shall automatically become a Member of the Association. Ownership of a Condominium is the sole qualification for Membership. Each Member shall have the rights, duties, privileges, and obligations as set forth in the Governing Documents. Membership shall automatically cease when the Owner no longer holds an ownership interest in a Condominium. All Memberships shall be appurtenant to the Condominium conveyed, and cannot be transferred, assigned, conveyed, hypothecated, pledged, or alienated except as part of a transfer of the Owner's entire ownership interest, and then only to the transferee. Any transfer of the Owner's title to his or her Condominium shall automatically transfer the appurtenant Membership to the transferee.

5.4 *Membership Class; Voting Rights.* The Association shall have one class of Membership, and the rights, duties, obligations and privileges of the Members shall be as set forth in the Governing Documents. Each Member shall be entitled to cast one (1) vote for each Condominium owned, subject to the provisions set forth in the Bylaws and in the Corporations Code.

5.5 *Membership Meetings.* Meeting of Members shall be held in accordance with the Bylaws.

5.6 *Rules and Regulations.* The Board shall have the power to adopt reasonable Rules and Regulations governing the use of the Units, Exclusive Use Common Areas, the Common Area, and any common facilities and Association owned property, and the conduct at Board and Members' meetings, in accordance with the following:

5.6.1 The Rules and Regulations may include, but are not limited to:

- (a) Reasonable restrictions on the conduct of Owners and their families, guests, employees, tenants, invitees and pets as to activities on the Common Area, Units, and Exclusive Use Common Areas.
- (b) The setting of reasonable fees, deposits and use fees for any Common Area facilities.
- (c) The establishment of reasonable Notice and Hearing procedures, as provided in the Bylaws, and a schedule of monetary penalties and fines which may be imposed for violations of any provisions of the Governing Documents.

- 5.6.2 A copy of the current Rules and Regulations, if any, and all modifications, revisions and updates shall be given to each Owner within thirty (30) days after adoption by the Board.

5.7 *General Powers and Authority.* [Civil Code §1363(c)] The Association shall have all the powers of a nonprofit mutual benefit corporation organized under the California Nonprofit Mutual Benefit Corporation Law, subject to any limitations set forth in the Governing Documents. It may perform all acts that may be necessary for or incidental to the performance of the obligations and duties imposed upon it. Its powers shall include, but are not limited to:

- 5.7.1 The power to establish, fix, levy, collect, and enforce the payment of Assessments against the Owners in accordance with the procedures set forth in Article 6 herein;
- 5.7.2 The right to institute, defend, settle, or intervene in litigation, arbitration, mediation, or administrative proceedings in its own name as the real party in interest and without joining with it the Owners, as provided in the California Civil Code and Code of Civil Procedure.
- 5.7.3 The right to discipline Owners for violation of any of the provisions of the Governing Documents (i) by suspending the Member's Membership rights, including the Member's voting rights and the rights and privileges to use the Common Area and facilities appurtenant to the Member's Condominium, (ii) by imposing monetary fines, subject to the requirements for Notice and Hearing as more fully set forth in the Bylaws, and (iii) Recording a notice of noncompliance against the Owner's Condominium to the extent allowed by Law;
- 5.7.4 The right for its agents and employees to enter any Condominium when necessary in connection with any maintenance, landscaping, or construction work for which the Association is responsible. This entry shall be made only upon reasonable notice to the Owner (except in the case of an emergency) and with as little inconvenience to the Owner as is practicable. However, the Association shall not be responsible for any damage or destruction of Owner-installed Improvements that are damaged or destroyed if they interfere with the Association's easement for access to any Association-maintained Improvements;
- 5.7.5 The Board shall have the power to remove any vehicle within the Project parked in violation of this Declaration or the Rules and Regulations in accordance with the provisions of California Vehicle Code Section 22658.2 and any amendments thereto; and
- 5.7.6 The power, without the approval of the Membership, to bid and acquire any Condominium at a foreclosure sale.

5.8 *Other Powers and Duties of the Association.* Subject to the limitations set forth in the Governing Documents, the Association, acting through the Board, shall have other powers and duties as more fully described in the Bylaws.

ARTICLE 6 - ASSESSMENTS AND COLLECTION PROCEDURES

6.1 *Covenant to Pay.* Each Owner, by acceptance of the deed to the Owner's Condominium, is deemed to covenant and agree to pay to the Association Regular, Special and Individual Assessments, and all other charges duly levied by the Association pursuant to the provisions of this Declaration or by Law. This covenant is independent of any covenants contained herein which obligate the Association to perform any actions or provide any services. Any assessment, late charges, reasonable costs of collection, and interest, as assessed in accordance with the provisions of this Article, shall also be the personal obligation of the Owner of the Condominium at the time the assessment or other sums are levied. Co-Owners of a Condominium shall be jointly and severally liable for all charges levied by the Association on that Condominium. No Owner may waive or otherwise escape liability for these assessments by nonuse of the Common Area or abandonment of the Owner's Condominium.

6.2 *Purpose of Assessments.* Except as provided herein, the Association shall levy assessments sufficient to perform its obligations. The assessments levied by the Association shall be used to promote the recreation and welfare of the Owners; for the operation, replacement, Improvement, and maintenance of the Project; and to discharge any other obligations of the Association under this Declaration. All assessment payments shall be put into general operating and reserve funds to be used for the foregoing purposes.

6.3 *Regular and Special Assessments.* The Board shall determine and levy such Regular and Special Assessments as necessary to perform its duties under the Governing Documents, to meet its obligations, and to comply with applicable Laws. Regular and Special Assessments shall be divided equally among all Condominiums and allocated among, assessed against and charged to each Owner according to the ratio of the number of Condominiums owned by the assessed Owner to the total number of Condominiums subject to assessment. Each Condominium shall bear an equal share of the total assessment. Regular Assessments for fractions of any month shall be prorated. Each Owner is obligated to pay assessments to the Association in equal monthly installments on or before the first day of each month unless the Board adopts an alternative method for payment. Regular Assessments may be increased, or Special Assessments may be imposed, as the Board in its sole discretion determines necessary, subject however, to the increases permitted under Section 6.6 below.

6.4 *Other Assessment Categories.* The Board may levy such other assessments ("Individual Assessments") against Owners and their respective Condominiums, including but not limited to, the following:

6.4.1 Monetary penalties or fines levied against an Owner and his or her Condominium as a disciplinary measure for failure of such Owner, or his

or her tenants, guests, invitees, agents, or others claiming under such Owner, to comply with the Governing Documents.

- 6.4.2 Reimbursement Assessments against Owners and Condominiums whenever the Association (i) performs any service or accomplishes any item of repair or maintenance which is the duty of any Owner to accomplish, but which has not been accomplished by such Owner, or (ii) incurs any costs which by Law, or as required by the Governing Documents, must be reimbursed by an Owner.

Prior to levying an assessment provided for in this Section, the Board shall provide an Owner with Notice and Hearing procedures in accordance with the Bylaws.

6.5 *Collection of Monetary Penalty.* [Civil Code §1367] If the Board of Directors imposes a monetary penalty or fine against an Owner, that fine shall be subject to costs, late charges and interest as described in Section 6.8 for delinquent payment. Furthermore, such fine or monetary penalty may become a lien on the Condominium, collectable by the Association as allowed by Section 6.9 herein, so long as such monetary penalty is for damage to the Common Area or other areas the Association is responsible for maintaining.

6.6 *Limitation on Assessment Increases.* [Civil Code §1366] Except for an emergency, the Board may not, without the approval of a majority of the Owners casting a majority of the votes at a meeting or election of the Association at which a quorum is present, conducted in accordance with Corporations Code Sections 7510 - 7527 and 7613, impose a Regular Assessment per Condominium that is more than twenty percent (20%) greater than the Regular Assessment for the preceding fiscal year, or levy Special Assessments that, in the aggregate, exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year. For purposes of this Section, a "quorum" means more than fifty percent (50%) of the Owners of the Association. These limitations shall not apply to assessment increases that are necessary for an emergency. An "emergency" is an extraordinary expense that is:

- 6.6.1 Required by a court order;
- 6.6.2 Necessary to repair or maintain the Project or any part of it for which the Association is responsible when a threat to personal safety in the Project is discovered; or
- 6.6.3 Necessary to repair or maintain the Project or any part of it for which the Association is responsible that could not have been reasonably foreseen by the Board in preparing and distributing the pro forma operating budget. Before the Board may impose or collect an assessment in such an emergency, it shall pass a resolution containing written findings as to the necessity of the extraordinary expense and why the expense was not or could not have been reasonably foreseen in the budgeting process, and shall distribute the resolution to the Owners with the notice of assessment.

6.7 *Owner Notice of Assessments.* [Civil Code §1366] The Association shall provide notice by first-class mail to the Owners of any increase in the Regular Assessments or the imposition of a Special Assessment not less than thirty (30) days nor more than sixty (60) days prior to the date the increase in the Regular Assessment or Special Assessment becomes due.

6.8 *Costs, Late Charges and Interest.* [Civil Code §1366] Late charges may be levied by the Association against an Owner for the delinquent payment of assessments. An assessment, including any installment payment, is delinquent fifteen (15) days after its due date. If an assessment is delinquent, the Association may recover all of the following from the Owner:

- 6.8.1 Reasonable costs incurred in collecting the delinquent assessment, including actual attorneys' fees.
- 6.8.2 A late charge not exceeding ten percent (10%) of the delinquent assessment or ten dollars (\$10.00), whichever is greater, or the maximum amount allowed by Law.
- 6.8.3 Interest on the foregoing sums, at an annual percentage rate of twelve percent (12%) commencing thirty (30) days after the assessment becomes due.

No late charge may be imposed more than once for the delinquency of the same payment. The amounts delinquent, including the entire unpaid balance and any related costs described herein, may be collected by the Association as provided by Law and in Section 6.9 below.

6.9 *Collection of Delinquent Assessments and Late Charges.* [Civil Code §1367] Delinquent assessments and any related late charges, reasonable costs of collection (including actual attorneys' fees), and interest, shall become a lien upon the Condominium in accordance with the Bylaws and California Civil Code Section 1367 or other applicable statute. The Association may collect assessments or foreclose on liens in the manner set forth in the applicable provisions of the Civil Code, and in any other manner authorized or permitted by Law. Unless otherwise required by Law, any Officer of the Association, any employee or agent of the Association authorized to do so by the Board, or the Association's attorney is authorized to sign any notices, liens or other documents, as needed for the collection of delinquent assessments and other costs of collection. Any lien filed to secure collection of delinquent assessments shall continue until all amounts secured thereby are fully paid or otherwise satisfied.

6.10 *Priority of Assessment Lien.* The assessment lien referred to in Section 6.9 shall be superior to all other liens, except (i) all taxes, bonds and governmental assessments which, by Law, would be superior thereto, and (ii) the lien or charge of any First Mortgage of Record. Notwithstanding any other provision to the contrary, the following provisions shall govern the priority and obligation for payment of the assessment lien:

- 6.10.1 Only the judicial or non-judicial foreclosure of the First Mortgage shall operate to transfer title free of the assessment lien or obligation for any assessment lien, and then only as to payments which became due prior to the date of sale.
- 6.10.2 Neither the transfer of a Condominium pursuant to a foreclosure of any Mortgage, nor an election by the Association to proceed against any new Owner for payment, shall serve to cancel the personal obligation of the prior Owner for payment of the delinquent assessments and charges which accrued during such Owner's period of ownership. The personal obligation of any Owner for payment of delinquent assessments and charges may be satisfied, and therefore discharged, only by payment of the entire amount of the delinquent assessments and charges, whether or not such Owner remains in possession of his or her Condominium.
- 6.10.3 No sale or transfer of any Condominium shall relieve such Condominium or its new Owner from liability for any future assessments which accrue during such Owner's period of ownership.
- 6.10.4 To the extent permitted by Law, each Owner hereby waives the benefit of any homestead or exemption Laws of the State of California now in effect, or in effect from time to time hereafter, to the extent of any liens created pursuant to this Declaration or the Governing Documents, whether such liens are now in existence or are created at any time in the future.
- 6.10.5 All Assessments shall be payable in the amount specified by the Association. No offsets against such amount shall be permitted for any reason, including, without limitation, a claim that the Association is not properly exercising its duties and powers as provided for in this Declaration.

6.11 *Statement of Delinquent Assessment.* [Civil Code §1368] The Association shall provide any Owner, upon written request and upon payment of a reasonable fee, with a statement specifying the amounts of any delinquent assessments and related late charges, interest, and costs levied against the Owner's Condominium. Any purchaser or encumbrancer who has acted in good faith and extended value may rely upon such certificate as conclusive evidence of whether the assessments on the specified Unit have been paid.

ARTICLE 7 - ENFORCEMENT

7.1 *Right to Enforce; Remedies.* The Association or any Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the Governing Documents. The

remedies provided for herein are to be considered cumulative and the use of one remedy shall not preclude the use of any other.

7.2 *Nuisance.* The result of every act or omission, whereby any provision, condition, restriction, covenants, easement, or reservation contained in the Governing Documents is violated in whole or in part, is declared to be and to constitute a nuisance, and every remedy allowed by law or equity against a nuisance, either public or private, shall be applicable against every such result and may be exercised by any Owner or the Association.

7.3 *Compliance by Owners, Tenants, Etc.* Each Owner, tenant, occupant, licensee, invitee or guest within the Project shall comply with the provisions of this Declaration, the Bylaws, other Governing Documents of the Association and decisions and resolutions of the Association or its duly authorized representative. Each Owner shall be responsible for insuring that his or her tenant, occupant, licensee, invitee or guest within the Project complies with the terms hereof. Failure to comply with any such provisions, decisions or resolutions shall be grounds for an action to recover sums due for damages, for injunctive relief, for declaratory relief or such other relief as is just and proper.

7.4 *Failure to Enforce.* Failure by the Association or any Owner to enforce any provisions of the Governing Documents shall in no event be deemed a waiver of the right to do so thereafter.

7.5 *Violation of Law.* Any violation of any state, municipal or local Law, ordinance or regulation pertaining to the ownership, occupation or use of any Condominium within the Project is declared to be a violation of the Governing Documents and subject to any or all of the enforcement procedures herein set forth.

7.6 *Compliance with Statute.* [Civil Code §1354] All activities to enforce the provisions of the governing documents shall be conducted in accordance with all applicable Laws, statutes and ordinances, including any obligation to attempt to use alternative dispute resolution, whether pursuant to Civil Code Section 1354 or any similar statute. This Section shall apply to both the Association and to all Owners.

ARTICLE 8 - INSURANCE

8.1 *Fire and Casualty Insurance.* The Association shall obtain and maintain a policy or policies of fire and casualty insurance with special form all risk coverage endorsement for the full insurable replacement value of the Improvements in the Common Area. Such policy or policies may provide for separate protection for each Separate Interest to the full insurable replacement cost thereof, and a separate loss payable endorsement in favor of any Mortgagee of each Separate Interest, if any, and shall contain provisions, to the extent possible, protecting against any reduction in the amount of the proceeds payable as a result of any fire or similar insurance independently carried by any Owner or in respect to any individual Separate Interest. The amount of any deductible shall be determined by the Board. This insurance shall be maintained for the benefit of the Association, the Owners, and their

Mortgagees, as their interests may appear as named insureds, subject, however, to any loss payment requirements set forth in this Declaration. If required by any First Lender who notifies the Association of its requirement, and if economically feasible and available, such policies shall contain an agreed amount endorsement, an inflation guard endorsement, and a construction code endorsement.

Any insurance maintained by the Association shall contain a waiver of subrogation as to the Association and its Officers, Directors, and Members, the Owners and occupants of the Separate Interests and Mortgagees, and a cross-liability or severability of interest endorsement insuring each insured against liability to each other insured.

8.2 *General Liability Insurance.* [Civil Code §§1365.7 & 1365.9] The Association shall obtain and maintain a policy or policies insuring the Association, its Officers, Directors, agents and employees, the Owners, and the Owners' relatives, invitees, guests, employees, and their agents against any liability for bodily injury, death, and property damage arising from the activities of the Association and its Members, with respect to the Common Area and any Condominiums owned by the Association. Limits of liability under the insurance shall not be less than two million dollars covering all claims for death, personal injury, and property damage arising out of a single occurrence. If the minimum amount necessary to comply with Civil Code Section 1365.7 or any successor statute specifies a different amount, the statute shall control.

8.3 *Directors and Officers Liability Insurance.* [Civil Code §§1365.7] The Association shall also obtain and maintain one or more policies of insurance which shall include coverage for the individual liability of Officers and Directors of the Association for negligent acts or omissions of those persons acting in their capacity as Officers and Directors. Limits of liability under this insurance shall be in the minimum amount of one million dollars (\$1,000,000). If the minimum amount necessary to comply with Civil Code Section 1365.7 or any successor statute specifies a greater amount, the statute shall control.

8.4 *Fidelity Coverage.* The Association shall purchase and maintain fidelity coverage, naming the Association as an obligee, for any person or entity handling funds of the Association, whether or not such persons or entities are compensated for their services. If an agent handles Association funds, such agent shall be covered by the Association's coverage, if reasonably available, unless such agent provides similar coverage. The Association's coverage may be in the form of a separate bond, a separate policy (e.g. crime policy), or may be added by endorsement to the general policies carried by the Association. The Board shall have the discretion to determine the amount of coverage. However, in no event may the aggregate amount of this coverage be less than a sum equal to three (3) months' aggregate assessments on all units plus reserve funds. The bond or policy must contain a provision that it may not be cancelled or substantially modified without at least ten (10) days' prior written notice to the Association.

8.5 *Other Association Insurance.* The Association shall purchase and maintain workers' compensation insurance to the extent necessary to comply with any applicable Laws. The Association also may purchase and maintain a blanket policy of flood insurance, and

demolition insurance in an amount that is sufficient to cover any demolition that occurs following the total or partial destruction of the Project and a decision not to rebuild. The Association may purchase such other insurance as the Board in its discretion considers necessary or advisable, including earthquake insurance coverage.

8.6 *Review of Insurance; Notice of Cancellation or Modification.* The limits and coverage of insurance carried by the Association shall be reviewed at least annually by the Board and increased or decreased in its discretion. Such policies shall include a provision for at least ten (10) days' prior written notice to the Association, and, if available, to each First Lender which is listed as a scheduled holder of a First Mortgage in the insurance policy, of any cancellation or substantial modification by any party.

8.7 *Qualifications of Insurance Carriers.* The Association shall use generally acceptable insurance carriers from which to purchase and maintain the coverage required herein.

8.8 *Failure to Acquire Insurance.* The Association, and its Directors and Officers, shall have no liability to any Owner or Mortgagee if, after a good faith effort, it is unable to obtain any insurance required hereunder, because the insurance is no longer available or, if available, can be obtained only at a cost that the Board in its sole discretion determines is unreasonable under the circumstances, or the Members fail to approve any assessment increase needed to fund the insurance premiums. In such event, the Board promptly shall notify each Member and any Mortgagee entitled to notice that the specific insurance will not be obtained or renewed.

8.9 *Trustee for Policies.* The Association, acting through its Board, is appointed and shall be deemed trustee of the interests of all named insureds under all insurance policies purchased and maintained by the Association. The Board may also appoint an insurance trustee. All insurance proceeds under any of those policies shall be paid to the Board as trustee. The Board shall use the proceeds for the repair or replacement of the property for which the insurance was carried or for the purposes described in Article 9 herein. The Board also is authorized to negotiate loss settlements with the appropriate insurance carriers, to compromise and settle any claim or enforce any claim by any lawful action, and to execute loss claim forms and release forms in connection with such settlements.

8.10 *Insurance Premiums.* Insurance premiums for any insurance coverage obtained by the Association shall be included in the Regular or Special Assessments.

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

8.11.1 If the damage or loss occurs to an item of personal property or other item an Owner is responsible for maintaining, the Owner shall be responsible for the cost of any deductible.

- 8.11.2 If the damage or loss occurs to an item owned by the Association or the Association is responsible for maintaining, the Association shall be responsible for the cost of any deductible.
- 8.11.3 If the damage or loss occurs to any Unit and the Common Area, or to more than one Unit, the responsibility for the payment of any deductible shall be apportioned among the affected parties on the basis of the ratio of each parties' cost of repair to the total costs of repair.
- 8.11.4 The foregoing notwithstanding, if the damage or loss is caused by the negligence or misconduct of any Owner, or of a Resident, guest, tenant or invitee of an Owner, such Owner shall be liable for the cost of the deductible.

8.12 *Insurance Disclosures.* [Civil Code §1365] The Association shall disclose such information regarding insurance coverage as and when required by any applicable statute or Law. Failure to disclose such information shall not impose any liability upon the Association or Board other than that provided for in such statute or Law.

8.13 *Individual Property Insurance.* An Owner is responsible for obtaining and maintaining such insurance, at his or her sole expense, to protect against any damage to, or loss of property, and the cost of repair or replacement of damaged items, including, but not limited to, any personal property, decorations, floor and wall coverings, appliances, fixtures or other items therein, or any exterior items for which such Owner is responsible, which is caused by any Common Area component or any component maintained by the Association or any failure thereof. 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 Owners' Unit or Exclusive Use Common Area, unless such damage is caused by the gross negligence of the Association, its Board, Officers, agents or employees.

All such insurance that is individually carried must contain a waiver of subrogation rights by the carrier as to other Owners, the Association, and any institutional First Lender of such Unit.

If there is any diminution in insurance proceeds that otherwise would be payable under the Association's insurance coverage obtained under the terms of Section 8.1, and such diminution results from the terms of any insurance carried by an Owner, the Owner will be liable to the Association to the extent of any such diminution.

8.14 *Individual Liability Insurance.* An Owner may carry whatever personal liability and property damage liability insurance with respect to his or her Unit that he or she desires. However, any such policy shall include a waiver of subrogation clause acceptable by the Board and to any First Lender.

ARTICLE 9 - DAMAGE OR DESTRUCTION

9.1 *Duty to Restore.* [Civil Code §1359] Subject to the provisions of Civil Code Section 1359, a portion of the Project that is damaged or destroyed, must be repaired or replaced promptly by the Association unless:

- 9.1.1 The Project is terminated;
- 9.1.2 Repair or replacement would be illegal under a state statute or municipal ordinance; or
- 9.1.3 Eighty percent (80%) of Owners, including each Owner of a Unit or Exclusive Use Common Area that will not be rebuilt, vote not to rebuild.

9.2 *Cost of Repair.* Any cost of repair or replacement in excess of insurance proceeds and reserves shall be a common expense, levied against Condominiums in the same proportion as Regular Assessments are levied.

9.3 *Repair Plans.* The Project must be repaired and restored in accordance with either (a) the original plans and specifications, updated as required to reflect applicable building codes, or (b) other plans and specifications which have been approved in writing by the Board, a majority of Owners, and at least fifty-one percent (51%) Eligible Lenders holding Mortgages on Units subject to the repair.

9.4 *Replacement of Less Than Entire Project.*

- 9.4.1 Any insurance proceeds attributable to the damaged Common Area shall be used to restore the damaged area to a condition compatible with the remainder of the Project.
- 9.4.2 Except to the extent that other persons or entities will be distributees:
 - (a) Any insurance proceeds attributable to a Unit and Exclusive Use Common Area that are not rebuilt must be distributed to the Owner of that Unit and the Owner of the Unit to which the Exclusive Use Common Area is appurtenant, or to lien holders, as their interests may appear; and
 - (b) The remainder of the proceeds must be distributed to each Owner or lien holder, as their interests may appear, in proportion to the interests of all the Units.
 - (c) If the Owners vote not to rebuild a Unit, the common interest portions of the Unit shall be reallocated among all other Units, and the Board is hereby appointed as attorney-in-fact on behalf of the Owners, Lenders and other lienholders to prepare, execute and

Record an amendment to the Declaration and/or Condominium Plan reflecting the reallocations.

9.5 *Insurance Proceeds.* An insurance trustee appointed by the Board or insurance company, or if there is no trustee, then the Board, acting by a majority vote, shall hold any insurance proceeds in trust for the Association, Owners and lien holders as their interests may appear. Subject to the provisions of this Declaration, the proceeds shall be disbursed first for the repair or restoration of the damaged property. The Association, Owners and lien holders are not entitled to receive payment of any portion of the proceeds unless there is a surplus after the Project has been completely repaired or restored, or unless the Project is terminated.

9.6 *Disbursements to Owners and Mortgagees.* Any insurance proceeds distributed to Owners and Mortgagees shall be distributed proportionately according to the fair market values of the Condominiums at the time of the destruction as determined by an independent appraisal. That appraisal shall be performed by an independent appraiser who shall be selected by the Board and who shall be a member of, and apply the standards of, a nationally recognized appraiser organization.

9.7 *Certificates By Board.* The trustee, if any, may rely on the following certifications in writing made by the Board:

9.7.1 Whether or not damaged or destroyed property is to be repaired or restored; and

9.7.2 The amount or amounts to be paid for repairs or restoration and the names and addresses of the parties to whom such amounts are to be paid.

9.8 *Certificates by Attorneys or Title Insurance Companies.* If payments are to be made to Owners or Mortgagees, then the Board and the trustee, if any, shall obtain and may rely on a title insurance company's or attorney's title certificate or a title insurance policy based on a search of the Official Records of the County Recorder, stating the names of the Owners and the Mortgagees.

ARTICLE 10 - EMINENT DOMAIN

10.1 *Representation by Association.* The Association shall represent the Owners in any threatened condemnation, condemnation proceedings or in negotiations, settlements and agreements with the condemning authority for acquisition of the Common Area, or any part thereof. In furtherance of this purpose, each Owner, by acceptance of a deed to his or her Condominium, irrevocably appoints the Association as such Owner's attorney-in-fact to represent the Owners in any such condemnation proceeding.

10.2 *Common Area Taking.* In a taking or acquisition of part or all of the Common Area by a condemning authority, the award or proceeds of settlement, less any fees or costs incurred in collection thereof, shall be payable to the Association, or any trustee appointed by

the Association, for the use and benefit of the Owners and their Lenders as their interests may appear according to the relative values of the Condominiums affected by the condemnation where Condominiums are not valued separately by the condemning authority or by the court.

10.3 *Condominium Unit Taking.* If there is an award for the taking of any Condominium in the Project by eminent domain, the respective Owners and Lenders of such Condominium shall be entitled to receive the award for such taking, less any fees and costs incurred in collecting such amount and only up to the fair market value of the Condominium, and after acceptance thereof the Owner and the Lender shall be divested of all interest in the Project if such Owner shall vacate his Condominium as a result of such taking. The remaining portion of the Project shall be resurveyed, if necessary, and the Declaration and/or Condominium Plan shall be amended to reflect such taking and to readjust proportionately the percentages of undivided interest of the remaining Owners in the Project based on the number of Units remaining in the Project. The Board is hereby appointed as attorney-in-fact on behalf of the Owners, Lenders and other lienholders to prepare, execute and Record an amendment to the Declaration and/or Condominium Plan reflecting such reallocations.

10.4 *Substantial Taking.* If there is a substantial taking of the Project (*i.e.* more than fifty percent), the Owners may terminate the legal status of the Project and, if necessary, bring a partition action under California Civil Code Section 1359 or any successor statute, on the election to terminate by fifty-one percent (51%) of the total Voting Power of the Association. The proceeds from the partition sale, less any costs or fees incurred in collection thereof, shall be distributed to the Owners and their respective Lenders in proportion to the fair market values of the Condominiums.

ARTICLE 11 - RIGHTS OF LENDERS

11.1 *Lender Rights.* Mortgagees of Separate Interests in the Project shall be entitled to the rights and guaranties set forth in this Article.

11.2 *Protection of First Mortgagees.* No breach of any of the covenants, conditions and restrictions herein contained, nor the enforcement of any lien provisions herein, shall render invalid the lien of any First Mortgage on any Condominium 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 judicial or non-judicial foreclosure, or otherwise.

11.3 *No Right of First Refusal.* This Declaration neither contains nor shall be amended to contain any provision creating a "right of first refusal" to the Association or Owners before a Unit can be sold. Should any such rights nevertheless be created in the future, such rights shall not impair the rights of any First Lender to: (a) foreclose or take title to a Unit pursuant to the remedies provided in the mortgage, (b) accept a deed (or assignment) in lieu of foreclosure following a default by a mortgagor, or (c) sell or lease a Unit acquired by the Lender.

11.4 *Unpaid Assessments or Charges.* Where the Lender of a first Mortgage of Record or other purchaser of a Unit obtains title to or possession of the same pursuant to the remedies in the Mortgage or as a result of foreclosure, such acquirer of title, his successors and assigns, shall not be liable for the share of the common expenses or assessments made by the Association chargeable to such Unit which became due prior to the acquisition of title to or possession such Unit by such acquirer, whichever occurs first. Such unpaid share of common expenses or assessments shall be deemed to be common expenses collectible from all of the Units including such acquirer, his successors and assigns.

11.5 *Action Requiring Lender Approval.* Except as provided by statute in case of condemnation or substantial loss to the Condominiums and Common Area, unless at least two-thirds (2/3) of the First Lenders (based upon one (1) vote for each Mortgage owned), or two-thirds (2/3) of the voting power of the Association have given their prior written approval, neither the Association nor the Owners shall be entitled to:

- 11.5.1 Seek, by act or omission, to abandon, or terminate the Project as a condominium 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);
- 11.5.2 Change the pro rata interest or obligations of any individual Condominium for the purpose of (i) levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards, or (ii) determining the pro rata share of ownership of each Condominium in the Common Area, provided that no Owner's undivided interest in the Common Area may be changed without the consent of that Owner;
- 11.5.3 Partition or subdivide any Condominium;
- 11.5.4 By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Area, or any property owned, directly or indirectly, by the Association (the granting of easements for public utilities or other public purposes consistent with the intended use of the Common Area by the Association is not a transfer in the meaning of this clause); or
- 11.5.5 Use hazard insurance proceeds for losses to any of the Project (whether to Condominiums or to Common Area) for other than the repair, replacement or reconstruction of such property.

11.6 *Payment of Taxes and Insurance.* First Lenders 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 property and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for such Common Area

property. First Lenders making such payments shall be owed immediate reimbursement from the Association.

11.7 *Priority of Proceed or Award Distribution.* Any other provision herein contained to the contrary notwithstanding, no provision of the Governing Documents shall give an Owner, or any other party, priority over any rights of the First Lender pursuant to its Mortgage in the case of a distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

11.8 *Notification of Lender.* Upon written request to the Association, identifying the name and address of the holder, insurer or institutional guarantor and the Unit number or address, any Eligible Lender will be entitled to timely written notice of:

11.8.1 Any condemnation loss or any casualty loss which affects a material portion of the Project or the Unit insured or guaranteed by such Eligible Lender;

11.8.2 Any default in the performance by an Owner of any obligation under the Governing Documents not cured within sixty (60) days;

11.8.3 Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and

11.8.4 Any proposed action which would require the consent of a specified percentage of Eligible Lenders as required by the Governing Documents.

11.9 *Termination of Professional Management.* If professional management has previously been required by any Eligible Lender, any decision to establish self-management by the Association shall require the consent of at least sixty-seven percent (67%) of the voting power of the Association and at least fifty-one percent (51%) of Eligible Lenders; provided that, so long as any Mortgage which is a lien on a Unit is insured or guaranteed by the Federal Housing Administration, any termination and failure to replace professional management shall require the prior written approval of the Federal Housing Administration.

11.10 *Inspection of Documents, Books and Records.* The Association shall make available, to Eligible Mortgage Holders, current copies of the Governing Documents and the accounting books, records and financial statements of the Association. "Available" means available for inspection, upon request, during normal business hours or under other reasonable circumstances.

11.11 *Non-Curable Breach.* Any Lender who acquires title to a Unit by foreclosure or by deed in lieu of foreclosure or assignment-in-lieu of foreclosure shall not be obligated to cure any breach of this Declaration that is non-curable or of a type that is not practical or feasible to cure.

11.12 *Loan to Facilitate.* Any First Mortgage given to secure a loan to facilitate the resale of a Unit after acquisition by foreclosure or by a deed-in-lieu of foreclosure or by an assignment-in-lieu of foreclosure shall be deemed to be a loan made in good faith and for value and entitled to all of the rights and protections of this Article.

11.13 *Right to Furnish Mortgage Information.* Each Owner authorizes the First Mortgagee of a First Mortgage on the Owner's Condominium to furnish information to the Board concerning the status of the First Mortgage and the loan that it secures.

11.14 *Financial Statement.* Any First Lender shall be entitled, on written request therefor, to have the Association provide an audited financial statement for the immediately preceding fiscal year, which statement shall be furnished within a reasonable time following such request.

11.15 *Termination without Substantial Destruction.* Except as provided by statute or by other provision of the Governing Documents in case of substantial destruction or condemnation of the Project, the consent of at least sixty-seven percent (67%) of the voting power of the Association and the approval of fifty-one percent (51%) of Eligible Lenders shall be required to terminate the Project; provided that if termination is for reasons other than substantial destruction or condemnation, the agreement of sixty-seven percent (67%) Eligible Lenders is required.

ARTICLE 12 - AMENDMENTS

12.1 *Owner Approval of Amendments.* [Civil Code §1355] This Declaration may be amended by the vote or written consent of at least fifty-one percent (51%) of the Voting Power of the Association. Notwithstanding any contrary provision in this Section, the percentage of the Voting Power necessary to amend a specific clause or provision of this Declaration shall not be less than the percentage of affirmative votes prescribed for action to be taken under that clause or provision.

An amendment becomes effective after (a) the approval of the required percentage of the Voting Power of Members has been given, (b) that fact has been certified in the form of a written document executed and acknowledged by an Officer designated by the Board for that purpose or, if no such designation is made, by the President of the Association and (c) the document has been properly Recorded.

12.2 *Approval of Specified Amendments.* Notwithstanding Section 12.1 above, the consent of sixty-seven percent (67%) of the voting power of the Association and the approval of fifty-one percent (51%) of Eligible Lenders shall be required to add or amend (i) any provision of this Declaration which is for the express benefit of holders or insurers of First Mortgages, or (ii) any material provisions of this Declaration which establish, provide for, govern or regulate:

12.2.1 Voting rights.

- 12.2.2 Increases in assessments that raise the previously assessed amount by more than twenty-five percent (25%), assessment liens or the priority of assessment liens.
- 12.2.3 Reductions in reserves for maintenance, repair and replacement of the Common Area.
- 12.2.4 Responsibility for maintenance and repairs.
- 12.2.5 Reallocation of interests in the Common Area or Exclusive Use Common Area, or rights to their use.
- 12.2.6 Redefinition of any Unit boundaries.
- 12.2.7 Converting Units into Common Area or vice versa.
- 12.2.8 Expansion or contraction of the Project, or the addition, annexation, or withdrawal of property to or from the Project.
- 12.2.9 Hazard or fidelity insurance requirements.
- 12.2.10 Imposition of any restrictions on the leasing of Units.
- 12.2.11 Imposition of any restrictions on an Owner's right to sell or transfer his or her Unit.

Notwithstanding the foregoing, this section may be amended to reflect changes in Lender requirements established by the VA, FHA, FNMA, FHLMC or GNMA.

12.3 *Eligible Lender Approval Response.* An Eligible Lender who receives a written request to approve additions or amendments by certified or registered mail, return receipt requested, addressed to the address provided by such Eligible Lender, who does not deliver or post to the requesting party a negative response within thirty (30) days after the notice of the proposed addition or amendment, shall be deemed to have approved such request. No Lender may charge a fee in connection with reviewing a request for a response. Any response from a Lender which only requests a fee for review shall not be deemed a "negative response" for the purposes of determining Lender consent within the meaning of this Section.

12.4 *Amendment of Declaration or Bylaws by Board Vote.* The Board of Directors shall have the power to amend this Declaration or the Bylaws, as the case may be, but only as this section permits. By a Majority vote of the Board, the Board shall have the power to prepare and, if necessary, to Record an amendment for either or both of the following purposes:

- (a) To correct any printing or grammatical error or omission in the Declaration or Bylaws without any vote of the Members.

(b) To make any change in the Declaration or Bylaws required by a change in any applicable Law, which obligates the Association, the Board or the Owners to conform their conduct with the terms of the Law. If the Board approves an amendment using the procedure in this subparagraph (b), the amendment shall not be Recorded or Filed until the following procedure is implemented. The Board shall first send notice of such action to the Owners, which notice shall include the text of the proposed amendment. An amendment shall be considered ratified, unless within thirty (30) days after the date such notice is sent to the Owners, the Owners entitled to cast twenty percent (20%) of the votes in the Association, sign a written petition to reconsider the Board's action and file it with the Board. If such a petition is filed, the Board shall call a Special Meeting of the Members to reconsider the Board's action. At the meeting, unless a majority of the Voting Power of the Association rejects the proposed amendment, the amendment shall be considered ratified, whether or not a quorum is present at the Special Meeting.

This section shall not restrict the powers of the Owners to amend this Declaration or the Bylaws by any other method, but is intended to authorize a simple process for amendment where the property rights of Owners are not materially or adversely affected.

ARTICLE 13 - THE PROPERTY

13.1 *Project Subject to Declaration.* The entire Project shall be subject to this Restated Declaration.

13.2 *Description of Land and Improvements; Ownership of Common Area.* The Project consists of the real property described in Recital "A" above, and is divided between the Common Area and the Units. Each of the Units is owned by the individual Owners as separate property. The Common Area is owned by Owners of Units as tenants-in-common, in equal, undivided fractional shares.

13.3 *Equitable Servitudes.* The covenants and restrictions set forth in this Declaration shall be enforceable equitable servitudes and shall inure to the benefit of and bind all Owners. These servitudes may be enforced by any Owner or by the Association or by both.

13.4 *Prohibition Against Partition.* [Civil Code §1359] There shall be no judicial partition of the Project or any part of it, nor shall any person acquiring an interest in the Project or any part of it seek any judicial partition, except upon showing that such partition is consistent with the requirements of California Civil Code Section 1359 or any successor statute.

13.5 *Presumption Regarding Boundaries of Units.* In interpreting deeds, declarations and plans, the existing physical boundaries of a Unit, including any Unit reconstructed in substantial accordance with the Condominium Plan and the original construction plans for the Project, shall be conclusively presumed to be its boundaries, rather than the description expressed in the deed, Condominium Plan, or this Declaration. This presumption applies regardless of settling or lateral movement of the building and regardless of minor variances

between boundaries shown on the Condominium Plan or described in the deed and those of the building as constructed or reconstructed.

13.6 *Prohibition Against Severance of Elements.* Any conveyance, judicial sale, or other voluntary or involuntary transfer of a Condominium shall include all interests and appurtenances as shown in the original deed of conveyance. Any conveyance, judicial sale, or other voluntary or involuntary transfer of the Owner's entire estate shall also include the Owner's Membership interest in the Association, as provided in Section 5.3 herein. Any transfer that attempts to sever those component interests shall be void.

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

13.8 *Rights in Common Area.* The Owner of each Condominium is hereby granted nonexclusive rights in the Common Area as described in Section 2.2.4.

ARTICLE 14 - GENERAL PROVISIONS

14.1 *Term.* The provisions of this Declaration shall continue in effect for a term of fifty (50) years from the date of execution. Thereafter, it shall be automatically extended for successive periods of ten (10) years, until the Membership of the Association decides to terminate it.

14.2 *Nonwaiver of Remedies.* Each remedy provided for in this Declaration is separate, distinct, and nonexclusive. Failure to exercise a particular remedy shall not be construed as a waiver of the remedy.

14.3 *Severability.* The provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one (1) provision shall not affect the validity or enforceability of any other provision. If for any reason this Restated Declaration is declared completely invalid in its entirety, the Original Declaration shall be deemed to have survived and shall thereafter become effective without any further action.

14.4 *Binding.* This Declaration, as well as any amendment thereto and any valid action or directive made pursuant to it, shall be binding and the Owners and their heirs, grantees, tenants, successors, and assigns.

14.5 *Interpretation.* The provisions of this Declaration and the Governing Documents shall be liberally construed and interpreted to effectuate its purpose of creating a uniform plan for the development and operation of a common interest development. Failure to enforce any provision of this Declaration shall not constitute a waiver of the right to enforce that provision or any other provision of this Declaration.

14.6 *Limitation of Liability.* The liability of any Owner for performance of any of the provisions of this Declaration shall terminate upon sale, transfer, assignment, or other divestment of the Owner's entire interest in his or her Condominium but only with respect to obligations arising after the date of the divestment.

14.7 *Number and Headings; Code References.* As used in this Declaration, the singular shall include the plural, unless the context requires the contrary. The headings are not a part of this Declaration, and shall not affect the interpretation of any provision. All references to Code Sections, whether Civil Code, Corporations Code, Code of Civil Procedure, or others, shall be deemed to include references to subsequent code sections if the referenced code changes.

14.8 *Attorneys' Fees.* If an attorney is engaged by the Board to enforce the Governing Documents, the Association shall be entitled to recover from the adverse party to the controversy its actual attorneys' fees and costs so incurred. If litigation is commenced to enforce the Governing Documents, the prevailing party shall be entitled to its attorneys' fees and costs. Said costs and attorneys' fees shall constitute a lien on the Condominium which is enforceable pursuant to Article 6 herein. This Section shall also apply to attorneys' fees incurred to collect any post-judgment costs.

14.9 *Variances.* The Board may authorize variances from compliance with any of the architectural or use provisions of this Declaration as follows:

14.9.1 Variances may be granted, without limitation, to restrictions upon use contained in Article 2, restrictions on repair and maintenance in Article 3, and architectural restrictions in Article 4, when circumstances such as topography, location, engineering, economy, hardship, aesthetic or environmental considerations warrant.

14.9.2 Variances shall be in writing and shall become effective upon final approval by the Board or an authorized committee.

14.9.3 When a variance is granted, no violation of the Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of 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 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 Separate Interest, including, but not limited to, zoning ordinances and setback lines or requirements imposed by any governmental entity having jurisdiction.

14.9.4 The Association may charge a reasonable fee to cover any costs associated with the variance approval process, or for issuance of a variance.

14.9.5 The Board may enact additional Rules and Regulations regarding the variance approval process, the circumstances under which a variance may be granted, and the execution of indemnity or other agreements by the Owner as a condition to issuance of a variance.

14.10 *Governing Document Priorities.* If there is a conflict among the Governing Documents, or any provision thereof, the following documents shall take precedence in the order given: (1) the Articles, (2) this Declaration, (3) the Bylaws, and (4) the Rules and Regulations.

14.11 *Conflict with Laws.* Provided any federal, state or local Law is inconsistent with any provision or provisions of the Governing Documents, and compliance with that Law is mandatory, neither the Association, the Board nor any Member thereof shall have any liability for complying with the Law or for failing to comply with provisions of the Governing Documents if compliance would violate such Law.

IN WITNESS WHEREOF, the undersigned has executed this Amended and Restated Declaration of Restrictions this 16 day of June, 1999.

BELLEFONTAINE CONDOMINIUM OWNERS ASSOCIATION,
a California nonprofit mutual benefit corporation

By:


President

By:


Secretary

[Acknowledgement Page Follows]

EXHIBIT A - DEFINITIONS

1. *"Act"* [Civil Code §1350] means the Davis-Stirling Common Interest Development Act, California Civil Code Section 1350 *et seq.*, as it may be amended from time to time.
2. *"Architectural Committee"* means the committee, if any, appointed by the Board to carry out the duties described in Article 4 of this Declaration and any other duties pertaining to the management and approval of architectural modifications within the Property.
3. *"Articles"* means the Articles of Incorporation of Bellefontaine Condominium Owners Association, that were filed in the Office of the Secretary of State of the State of California on June 21, 1972, and any amendments thereto now existing or hereafter adopted.
4. *"Association"* [Civil Code §§1351(a) & 1353] means Bellefontaine Condominium Owners Association, a California nonprofit mutual benefit corporation created for the purpose of managing a common interest development.
5. *"Board"* means the Board of Directors of the Association.
6. *"Bylaws"* means the Bylaws of the Association and any duly adopted amendments thereto, which are incorporated herein by reference.
7. *"Capital Expenditure" or "Capital Improvement"* means the use of Association funds to construct or build an addition to the Project, where such use of funds is optional under the Governing Documents, rather than mandatory, and is not otherwise required by Law. For purposes of the Governing Documents, the maintenance, repair or replacement of Improvements within the Project which the Association is obligated to maintain, using materials of similar kind, or using materials which are needed due to changes in building or fire codes or due to discontinued manufacture or unavailability, shall not be considered a Capital Expenditure or Capital Improvement, notwithstanding that such expenditure or Improvement may be considered a capital expenditure or capital improvement for tax purposes.
8. *"Common Area"* [Civil Code §1351(b)] means the entire Property except all Condominiums as defined in this Declaration and as shown on the Condominium Plan. The term "Common Area" shall include all Exclusive Use Common Areas. As described in the definitions set forth in the 1972 Declaration, the following are part of the Common Area: bearing walls, columns, floors, ceilings, roofs, foundations, elevator equipment and shafts, central heating, central refrigeration and central air conditioning equipment, reservoirs, chutes, conduits, wires and other utility installations, wherever located, except the Outlets thereof when located within a Unit.
9. *"Common Expenses"* [Civil Code §1351(c)] means and includes the actual and estimated expenses of operating the Condominium Property and the Association Property, and any reasonable reserve for such purposes as found and determined by the Board and all sums designated common expenses by or pursuant to the Governing Documents.

10. *"Common Interest Development"* [Civil Code §1351(c)] shall have the meaning set forth in Civil Code Section 1351(c), as the same may be amended from time to time.

11. *"Condominium"* [Civil Code §1351(f)] means an estate in real property, as defined in California Civil Code Section 1351, consisting of an undivided interest in common in a portion of the Property coupled with a separate interest in space called a Unit, the boundaries of which are shown and described on the Condominium Plan.

12. *"Condominium Plan"* [Civil Code §1351(e)] means that certain amended condominium plan Recorded December 8, 1972 as File/Page No. 328577 that amended the Condominium Plan Recorded on June 9, 1972 as File/Page No. 147404. Condominium Plan shall include any other amendments of Record to the foregoing documents.

13. *"County"* means San Diego County, California.

14. *"Declaration" or "Restated Declaration"* [Civil Code §1351(h)] means this Amended and Restated Declaration of Restrictions and any amendments thereto.

15. *"Director"* means a member of the Board.

16. *"Eligible Lender"* means a holder, insurer or institutional guarantor of a First Mortgage that provides a written request to the Association stating the name and address of such holder, insurer or institutional guarantor and the Unit number, and requesting notice to which such Eligible Lender is due under the Governing Documents.

17. *"Exclusive Use Common Area" or "Exclusive Use Area"* [Civil Code §1351(i)] means those portions of the Common Area set aside for the exclusive use of one (1) or more, but fewer than all, of the Owners and which is appurtenant to a Unit or Units as shown on the Condominium Plan or deed of conveyance and pursuant to the provisions herein. Exclusive Use Common Areas are airspaces whose boundaries are described on the Condominium Plan and typically do not include any vertical or horizontal structural components at or near the boundary between the Exclusive Use Common Area and the surrounding Common Area. The Exclusive Use Common Areas consist of Parking Areas, Parking Spaces and Balconies.

18. *"Governing Documents"* [Civil Code §1351(j)] means this Declaration and any other documents such as the Articles, Bylaws, Condominium Plan or Rules and Regulations which govern the operation and conduct of the Association and its Members.

19. *"Improvement"* means any structure or appurtenances thereto of every type and kind, including but not limited to, buildings, walkways, sprinkler pipes, roads, driveways, parking areas, fences, screening walls, block walls, retaining walls, awnings, stairs, decks, landscaping, hedges, windbreaks, exterior surfaces of any visible structure and the paint or finish on such surfaces, planted trees and shrubs, poles, signs, and water softener fixtures or equipment.

20. *"Law"* means any federal, state or local statute, law, ordinance, rule or regulation.
21. *"Member"* means every person or entity entitled to Membership in the Association as provided in this Declaration and in the Bylaws.
22. *"Mortgage"* means a mortgage or deed of trust encumbering a Condominium or any other portion of the Project. *"First Mortgage"* means a Mortgage that has priority over all other mortgages and liens encumbering the same Condominium or other portions of the Project.
23. *"Mortgagee" or "Lender"* means a Person to whom a Mortgage is made and includes the beneficiary of a deed of trust and any institutional guarantor or insurer of a mortgage. *"Institutional Mortgagee"* means a mortgagee that is a financial intermediary or depository, such as a bank, savings and loan, or mortgage company, that is chartered under federal or state Law and that lends money on the security of real property or invests in such loans, or any insurance company or governmental agency or instrumentality, including the Federal National Mortgage Association (FNMA), the Federal Home Loan Mortgage Corporation (FHLMC), and the Government National Mortgage Association (GNMA). *"First Mortgagee"* means a mortgagee that has priority over all other mortgagees or holders of mortgages or liens encumbering the same Condominium or other portions of the Project. The term *"Beneficiary"* shall be synonymous with the term *"Mortgagee."*
24. *"Mortgagor"* means a Person who mortgages his, her, or its property to another (i.e., the maker of a mortgage), and shall include the trustor of a deed of trust. The term *"Trustor"* shall be synonymous with the term *"Mortgagor."*
25. *"Notice and Hearing"* means notice to an Owner and an opportunity for the Owner to be heard, prior to the imposition of any fine, penalty or other disciplinary measure, in the manner set forth in the Bylaws.
26. *"Outlet"* shall mean, by way of example, and not limitation, the point at which any portion of a utility facility, which is located in an electrical or wiring box or panel and any pipe or other utility facility, first becomes reasonably accessible from within an Owner's Unit. More specifically, the term *"Outlet"* shall mean the point at which any utility facility can be serviced without the need for destructive entry into walls, floors, ceilings or any portion of the Common Area.
27. *"Owner"* means the Record holder or holders of Record of fee title to a Condominium Unit and any contract sellers under Recorded contracts of sale. *"Owner"* shall not include any persons or entities who hold an interest in a Condominium Unit merely as security for performance of an obligation.
28. *"Person"* means a natural individual, a corporation, or any other entity with the legal right to hold title to real property.

29. *"Project" or "Development" or "Property"* [Civil Code §§1351(k) & 1353] means the common interest development which is a condominium project as described herein and on the Condominium Plan, including all Improvements thereon and means the real property described in Recital "A" above.

30. *"Record" or "File" or "Recordation"* means, with respect to any document, the recordation or filing of such document in the Office of the County Recorder of San Diego County, California.

31. *"Reserves" or "Reserve Account"* [Civil Code §1365.5(c)] means funds that the Board has identified from the Association's annual budget for use to defray the future repair or replacement of, or additions to, those major components which the Association, under the Governing Documents, is obligated to maintain.

32. *"Resident"* means any person who resides, temporarily or permanently, in any Unit.

33. *"Rules and Regulations"* means any Rules and Regulations for the Association regulating the use of the Units, Exclusive Use Common Areas, Common Areas, the Project and any facilities located thereon adopted by the Board pursuant to Subsection 5.6 herein.

34. *"Unit" or "Living Unit" or "Separate Interest"* [Civil Code §1351(l)(3)] means a separate interest in space as defined in California Civil Code Section 1351. Each Unit, Living Unit or Separate Interest shall be a separate, residential freehold estate, as separately shown, numbered and designated in the Condominium Plan. In interpreting deeds, declarations and plans, the existing physical boundaries of the Unit or a Unit constructed or reconstructed in a substantial accordance with the Condominium Plan and the original plans thereof, if such plans are available, shall be conclusively presumed to be its boundaries, rather than the description expressed in the deed, Condominium Plan or Declaration, regardless of settling or lateral movement of the building and regardless of minor variances between boundaries, as shown on the Condominium Plan or defined in the deed and Declaration, and the boundaries of a building as constructed or reconstructed. Living Unit also includes those portions of the Project described in the Condominium Plan as parking, patio and balcony.

35. *"Voting Power"* means the total number of votes eligible to be cast in the Association based on one vote per Condominium Unit, less the votes of any Condominium whose voting rights have been suspended.

EXHIBIT B - MAINTENANCE DUTIES

**Division of Maintenance and Repair Responsibility
Between Association and Owners**

COMPONENT(S)	Owner	Association
Air Conditioning System - Common Central Chiller System		X
Air Conditioning System - Individual Unit and Forced Air Components	X	
Appliances - Built-in and Free Standing in Unit	X	
Appliances - Common Area, including Laundry Rooms		X
Balcony Deck Railings		X
Balcony Deck Tile, Carpeting, etc.	X	
Balcony Door - Flashing/Waterproofing, Frames & Tracks, Hardware, Locks and Screens	X	
Cable TV System		X
Carpeting - <i>See Floor Coverings</i>	-	-
Carport/Parking Space - Concrete/Asphalt Surfaces		X
Caulking and Flashing - Exterior		X
Caulking - Interior (e.g. bathrooms, kitchen)	X	
Common Area Improvements, including Sidewalks, Driveways, Landscaping		X
Doors, Building Entry - Frame, Doors, Flashing/Waterproofing, Locks and Hardware, Interior Surface Painting		X
Doors, Unit Entrance - Interior Surface, Hardware, Locks	X	
Doors, Unit Entrance - Screen/Storm/Security	X	
Doors, Unit Entrance - Frame, Door, Flashing/Waterproofing, Exterior Surface Painting		X
Drains - Bathtubs, Showers, Sinks	X	
Drains - Yards/Planters		X
Driveways, Outdoor		X
Electrical Panel/Circuit Breakers - Inside Unit or serving one Unit exclusively	X	
Electrical Panel/Circuit Breakers - Outside Unit or serving two or more Units		X

COMPONENT(S)	Owner	Association
Electrical Switches, Sockets, Wall Plates - Unit Interior	X	
Electrical Switches, Sockets, Wall Plates - Common Exterior		X
Electrical Wiring - from Electric Meter to the Circuit Breaker Panel, from Circuit Breaker to Outlets, or serving one Unit exclusively	X	
Exterior Building Surfaces, Faucets, Handles, Washers, and Lighting Fixtures		X
Fences - Wrought Iron - Maintenance, Repair & Replacement		X
Floor Coverings - Carpet, Vinyl and Tile (Inside Units)	X	
Floor Coverings - Carpet, Vinyl and Tile (In Common Area, including Galleries, Laundries)		X
Garage Gate Personal Remote Controls - Maintenance, Repair & Replacement	X	
Garage Gate, Hardware and Electric Door Opener - Maintenance, Repair & Replacement		X
Gas Lines (for Boilers)		X
Gutters & Downspouts		X
Heater Unit - Including Individual Air Conditioning Unit and Forced Air Components (Inside Unit)	X	
Hot Water Recirculating System & Pumps from Boiler		X
Intercom - Master Entry System		X
Landscaping - Common Area		X
Lighting Fixtures - Attached to Outside of Units and Common Area		X
Lighting Fixtures - Inside Units	X	
Painting and Wall Coverings (Unit Interior)	X	
Painting and Coloring (Common Area and Exterior Trim)		X
Pest Control - Inside Units, except for Build-wide eradication	X	
Pest Control - Common Area and Inside & Outside Units (if needed as part of a Building-wide eradication)		X
Plumbing Fixtures - Unit Interior (Toilets/Tubs/Sinks/Faucets, etc.)	X	
Plumbing Lines (Unit Interior) behind walls, floors or ceilings to the vertical utility chases, except soil pipes in the concrete floors or serving one Unit exclusively	X	
Plumbing Lines - in Utility Chases or serving two or more Units		X

COMPONENT(S)	Owner	Association
Recreational Equipment (Common Use)		X
Roof - Vents, Flashing & All Other Roofing Components		X
Sewer Lines - Below Ground		X
Sewer/Toilet Backups (In Line Serving One Unit Only)	X	
Sewer/Toilet Backups (In Line Serving Two or More Units)		X
Sidewalks - Common Area		X
Stucco - Repair, Replacement, Coloring, Texturing, etc.		X
Tile - Vinyl or Ceramic (Lobby and Loggia)		X
Toilet - Fixture, Wax Ring & Other Components	X	
Wallpaper/Paneling - <i>See Painting and Wall Coverings</i>	-	-
Water Heater / Boiler		X
Water Lines - Below Ground		X
Window and Door Glass, Frames, Hardware, Flashing/Waterproofing (all, including west wall (Bay side), balcony windows (6th Avenue side), except for those maintained by the Association as noted below)	X	
Window and Door Glass, Frames, Hardware, Flashing/Waterproofing (Only the exterior windows facing Sixth Avenue in the Unit master bedroom area and the exterior windows in the north wall of the master bedroom in the #_03 Column Units)		X
Wiring - Telephone (if serving one Unit exclusively)	X	
Wiring - Telephone (if serving two or more Units and not maintained by the utility)		X
Replacing Wall, Floor or Ceiling Coverings that the Association must damage as part of making repairs	X	
Replacing Drywall, Studs, Concrete Floors, and Ceiling Components (except coverings) which the Association must damage to make repairs		X

EXHIBIT C - CERTIFICATE OF ASSOCIATION PRESIDENT

**CERTIFICATION OF PRESIDENT
AS TO APPROVAL OF
AMENDED AND RESTATED
DECLARATION OF RESTRICTIONS**

I, Stephen G. Smith, declare and state as follows:

1 I certify that I am the President of Bellefontaine Condominium Owners Association, a California nonprofit mutual benefit corporation (hereafter "Association").

2 This certification is executed, according to the provisions contained in Article IX, Section 2 of the Declaration ("Declaration"), as said term is defined in California Civil Code Section 1355, to certify that the amendment requirements of the Declaration have been met.

3 I certify that there are currently thirty (30) Living Units in the Project, each of which is considered to have one Owner. Thus, there are thirty (30) Owners in the Project.

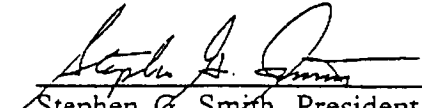
4 I certify that, based on the facts recited in Paragraph 3 above and according to Article IX, Section 2 of the Declaration, the written consent of at least two-thirds (2/3) of the Owners is needed to amend the Declaration. Thus, approval by the Owners of at least twenty (20) Units is needed to amend the Declaration.

5 I certify that, as of the date this document is executed, the following shows the number of written consents completed by the Owners.

Total Written Consents Completed by Owners		
<u>Yes</u>	<u>No</u>	<u>No Response/Abstain</u>
21	1	8

6 Since these totals reflect approval by at least twenty (20) Owners, I certify that the amendment was approved.

On behalf of the Association, I declare under penalty of perjury under the laws of the State of California that the foregoing facts are true and correct. Executed on June 16, 1999 at San Diego, California.

By: 
Stephen G. Smith, President