

MEMBER DRAFT 2/10/2021

**RECORDING REQUESTED BY
AND
WHEN RECORDED MAIL TO:**

CASA DEL REY HOA OF SANTA
CLARA
c/o

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

**AMENDED AND RESTATED DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS OF
CASA DEL REY HOA OF SANTA CLARA**

NOTICE

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

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3
4 **AMENDED AND RESTATED DECLARATION OF**
5 **COVENANTS, CONDITIONS AND RESTRICTIONS OF**
6 **CASA DEL REY HOA OF SANTA CLARA**
7
8

9 This Amended and Restated Declaration of Covenants, Conditions and
10 Restrictions is made on the date set forth at the end of this document by CASA
11 DEL REY HOA OF SANTA CLARA, a California nonprofit mutual benefit
12 corporation (referred to in this document as the "Association").
13
14

15 **RECITALS OF BACKGROUND FACTS; DECLARATIONS**
16

17 A. The Association is the successor in interest to CASA DEL REY, a general
18 partnership, which, as Declarant, executed that certain DECLARATION OF
19 COVENANTS, CONDITIONS AND RESTRICTIONS, dated January 4, 1978, and
20 recorded on January 13, 1978, in Book D404, at Page 359, Document No.
21 5900662, Official Records of Santa Clara County, State of California (referred to
22 in this document as the "1978 Declaration").
23

24 B. Amendments to the 1978 Declaration were recorded on various dates as set
25 forth in **Exhibit A**. The 1978 Declaration together with all of the instruments
26 enumerated in **Exhibit A** is referred to herein as the "Original Declaration."
27

28 C. The Original Declaration establishes certain limitations, easements, covenants,
29 restrictions, conditions, liens, and charges which run with, and are binding upon
30 all parties having or acquiring any right, title, or interest in, that certain real
31 property located in the County of Santa Clara, State of California, and more
32 particularly described as follows:
33

34 Lots 1 through 40, inclusive, and Common Area Lot 41, as shown
35 on that certain map entitled "Tract No. 6046," filed for record on
36 May 18, 1977, in Book 397 of Maps, at Pages 4 and 5, which as
37 amended by that certain map entitled "Amended Tract No. 6046,"
38 filed for record on January 4, 1978, in Book 410 of Maps, at Pages
39 40 and 41, in the Official Records of Santa Clara County, State of
40 California.
41

42 D. THE MEMBERS, constituting at least fifty-one percent (51%) of the Total Voting
43 Power of the Association, desire to amend, modify, and otherwise change the
44 Original Declaration pursuant to Section 7.03 of the Original Declaration, and DO
45 HEREBY DECLARE that the Original Declaration, as amended, shall be, and is
46 hereby, AMENDED AND RESTATED IN ITS ENTIRETY as set forth in the within

1 AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS
2 AND RESTRICTIONS OF CASA DEL REY HOA OF SANTA CLARA.
3

- 4 E. IT IS FURTHER HEREBY DECLARED that all of the real property described in
5 Recital Paragraph C, constitutes a planned development within the meaning of
6 Section 4175 of the California *Civil Code*.
7
- 8 F. IT IS FURTHER HEREBY DECLARED that all of the real property described in
9 Recital Paragraph C, above, is and shall be held, owned, operated, managed,
10 conveyed, hypothecated, encumbered, leased, used, occupied, and improved
11 subject to the following covenants, conditions, and restrictions set forth herein, all
12 of which are declared and agreed to be in furtherance of a plan and purpose of
13 protecting, preserving, and enhancing the value, desirability, and attractiveness
14 of the said real property and every part thereof, and of fostering the development,
15 management, improvement, enjoyment, and sale of the said real property and
16 any part thereof.
17
- 18 G. IT IS FURTHER HEREBY DECLARED that all of the covenants, conditions, and
19 restrictions set forth herein shall constitute enforceable equitable servitudes as
20 provided in *Civil Code* section 5975, shall constitute covenants that shall run with
21 the said real property, and shall be binding upon and inure to the benefit of each
22 Owner of any portion of the said real property or the owner or holder of any
23 interest or estate therein and their heirs, successors, and assigns.
24
25

26 **ARTICLE 1 DEFINITIONS**
27

- 28 1.1 Additional Charges. “Additional Charges” shall mean all costs, fees, charges,
29 and expenditures including, but not limited to, interest, late charges, attorney
30 fees, recording and filing fees, and all other costs actually incurred by the
31 Association in collecting and/or enforcing payment of Assessments.
32
- 33 1.2 Annual Assessment. “Annual Assessment” shall have the meaning set forth in
34 Section 8.7.
35
- 36 1.3 Architectural Committee. “Architectural Committee” shall mean the committee, if
37 any, appointed pursuant to Article 7 (“Architectural Approval”).
38
- 39 1.4 Articles of Incorporation. “Articles of Incorporation” shall mean the Amended and
40 Restated Articles of Incorporation of Casa del Rey HOA of Santa Clara, as they
41 may be amended from time to time, and as filed with the Office of the Secretary
42 of State of California.
43
- 44 1.5 Assessments. “Assessments” shall mean any or all of the following: Annual
45 Assessments, Special Assessments, Reimbursement Assessments, and
46 Enforcement Assessments.

- 1
2 1.6 Association. “Association” shall mean Casa del Rey HOA of Santa Clara, a
3 California nonprofit mutual benefit corporation, its successors and assigns.
4
5 1.7 Board of Directors. “Board of Directors” or “Board” shall mean the governing
6 body of the Association.
7
8 1.8 Bylaws. “Bylaws” shall mean the Amended and Restated Bylaws of the
9 Association as they shall be duly adopted by the Board of Directors and the
10 Members and any duly-adopted amendments thereof.
11
12 1.9 City. “City” shall mean the City of Santa Clara.
13
14 1.10 Civil Code. “Civil Code” shall mean the California *Civil Code* as amended from
15 time to time.
16
17 1.11 Common Area. “Common Area” shall mean all real property, together with all
18 improvements and appurtenances thereon, owned or held by the Association
19 from time to time for the common use and enjoyment of the Owners and
20 Residents of the Development. The Common Area consists of Lot 41 as shown
21 on the Subdivision Map of the Development. The Common Area consists of
22 private streets, curbs, gutters and storm drainage system, visitor parking spaces,
23 signs, private driveways serving individual Dwellings, open space, landscaping,
24 including trees, plants and grass, fences, gates, walls, utility boxes, sidewalks,
25 trash service area, fire sprinklers for dumpster area, the clubhouse recreation
26 building and meeting rooms, the swimming pool and related equipment, the
27 gated pool area and poolside restrooms. The Common Area also includes the
28 storm drainage easement and system located within Lots 2 through 6, 14, 15, 18
29 through 30 and 38 as shown on the Subdivision Map. Some portions of the
30 Common Area constitute “Exclusive Use Common Area” as defined in Section
31 1.19 (“Exclusive Use Common Area”).
32
33 1.12 Contract Purchaser / Contract Seller. “Contract Purchaser” and “Contract Seller”
34 shall mean the purchaser and the seller, respectively, under an installment land
35 contract in which title to the property is transferred after the final installment
36 payment is made.
37
38 1.13 Corporations Code. “Corporations Code” shall mean the California *Corporations*
39 *Code* as amended from time to time.
40
41 1.14 County. “County” shall mean the County of Santa Clara.
42
43 1.15 Declaration. “Declaration” shall mean this Amended and Restated Declaration of
44 Covenants, Conditions and Restrictions of Casa del Rey HOA of Santa Clara,
45 recorded in the Office of the County Recorder of Santa Clara County, State of
46 California, and any duly-recorded amendments thereof.
47

1 1.16 Development. “Development” shall mean all the real property described in this
2 Declaration comprising the Casa del Rey planned development and any
3 additional real property as may hereafter be brought within the jurisdiction of the
4 Association.

5
6 1.17 Dwelling. “Dwelling” shall mean a structure designed for human residential use
7 and occupancy and all improvements thereto which is located upon a Lot.

8
9 1.18 Enforcement Assessment. “Enforcement Assessment” shall have the meaning
10 set forth in Section 8.11.

11
12 1.19 Exclusive Use Common Area. “Exclusive Use Common Area” shall mean any
13 portion of the Common Area the exclusive use of which is set aside, allocated,
14 assigned, and restricted to the exclusive use or possession of the Owners and
15 Residents of one (1) or more but less than all of the Lots and which is
16 appurtenant to a Lot or Lots. An exclusive easement to such Exclusive Use
17 Common Area may be specifically granted in each individual grant deed
18 conveying a Lot or may be granted by this Declaration. The Exclusive Use
19 Common Area appurtenant to each Lot consists of the following and no other
20 portions of the Development constitute Exclusive Use Common Area:

21
22 1.19.1 Private Driveway. “Private Driveway” shall mean the driveway located
23 upon the Common Area between the private street and the front of the
24 garage of a Dwelling.

25
26 1.20 First Mortgage / First Mortgagee. “First Mortgage” shall mean a Mortgage that
27 has first priority over all other Mortgages. “First Mortgagee” shall mean the
28 beneficiary under a First Mortgage.

29
30 1.21 Governing Documents. “Governing Documents” shall mean the Articles of
31 Incorporation, Bylaws, Declaration, and Rules.

32
33 1.22 Individual Delivery / Individual Notice. “Individual Delivery” or “Individual Notice”
34 shall mean delivery to a Member or Members by one (1) of the following
35 methods, as provided in *Civil Code* section 4040:

36
37 (a) By first-class mail with postage prepaid, registered or certified mail,
38 express mail, or overnight delivery by an express service carrier,
39 addressed to the recipient at such recipient’s address last shown on the
40 books of the Association; or

41
42 (b) By email, facsimile, or other electronic means if the recipient has
43 consented in writing or by email to that method of delivery. The consent
44 may be revoked, in writing or by email, by the recipient. Delivery by
45 electronic transmission must also comply with *Corporations Code* sections
46 20 and 21. Among other things, Section 20 of the *Corporations Code*
47 requires the Association to obtain consent from the person to whom the

1 document is transmitted to receive it by means of electronic transmission
2 as well as other technical requirements.

3
4 1.23 Lot. “Lot” shall mean any plot of land shown upon any recorded Subdivision Map
5 of the Development upon which a Dwelling has been constructed, but excluding
6 the Common Area. There are forty (40) Lots in the Development.

7
8 1.24 Maintenance. “Maintenance” or to “maintain” (whether the term is capitalized or
9 not) shall mean the act of caring for property and keeping it in its existing state,
10 preserving it from failure or deterioration, including painting, caulking, cleaning,
11 and minor, non-structural upkeep. In the case of landscaping, “maintenance” or
12 to “maintain” shall mean regular fertilizing, irrigation, pruning, and other garden
13 management practices necessary to promote healthy plant growth free of weeds
14 or dead or dying plants.

15
16 1.25 Member. “Member” shall mean an Owner.

17
18 1.26 Member in Good Standing. “Member in Good Standing” shall mean a Member of
19 the Association who is current in the payment of all Annual Assessments and
20 Special Assessments imposed in accordance with the Governing Documents,
21 and who is in compliance with all of the provisions of the Governing Documents.
22 A Member shall be deemed to be in Good Standing unless, after notice and an
23 opportunity for hearing, pursuant to Article 14 (“Enforcement; Notice; Hearings”),
24 the Board has found the Member to be not in Good Standing and has so notified
25 the Member in accordance with *Civil Code* section 5855.

26
27 1.27 Mortgage / Mortgagee. “Mortgage” shall mean a duly-recorded deed of trust or
28 mortgage in the conventional sense encumbering a Lot. “Mortgagee” shall mean
29 a beneficiary under a Mortgage.

30
31 1.28 Owner. “Owner” shall mean the record owner, whether one (1) or more persons
32 or entities, of the fee simple title to any Lot, including Contract Sellers but
33 excluding Contract Purchasers, and excluding those persons having such
34 interest merely as security for the performance of an obligation.

35
36 1.29 Party Fence. See Section 10.1 (“Party Wall and Party Fence Defined”).

37
38 1.30 Party Wall. See Section 10.1 (“Party Wall and Party Fence Defined”).

39
40 1.31 Reimbursement Assessment. “Reimbursement Assessment” shall have the
41 meaning set forth in Section 8.10.

42
43 1.32 Repair. “Repair” (whether the term is capitalized or not) shall mean the minor
44 restoration of property that is torn, broken, or otherwise damaged, or has
45 sustained wear, tear, or deterioration such that minor restoration is necessary.

46

- 1 1.33 Replacement. “Replacement” or to “replace” (whether the term is capitalized or
2 not) shall mean substantial reconstruction, restoration, or substitution of the
3 whole or a substantial part of property that has deteriorated or has been
4 damaged or destroyed through usage or through hazard or catastrophe such that
5 it is no longer useable or serviceable in its current condition. In the case of
6 landscaping, “replacement” or to “replace” shall mean the removal and replanting
7 of trees, shrubs, lawns, and other plants that are dead or dying or otherwise not
8 serviceable or the substitution of plants for hardscape or substitution of
9 hardscape for plants.
10
11 1.34 Resident. “Resident” shall mean any person who lawfully resides on a Lot within
12 the Development whether or not such person is an Owner.
13
14 1.35 Rules. “Rules” shall mean the policies, rules, and regulations governing the
15 administration, management, operation, use, and occupancy of the
16 Development, including the use of the Common Area and facilities, the personal
17 conduct of Owners and Residents, members of their household, pets, tenants,
18 invitees, and guests within the Development, enforcement of the Governing
19 Documents, and any other matter that is within the jurisdiction of the Association,
20 as adopted, published, or amended by the Board from time to time and subject to
21 applicable law including *Civil Code* section 4340 and following.
22
23 1.36 Special Assessment. “Special Assessment” shall have the meaning set forth in
24 Section 8.8.
25
26 1.37 Subdivision Map. “Subdivision Map” shall mean that certain map entitled
27 “Amended Tract No. 6046” filed for record on January 4, 1978, in Book 410 of
28 Maps, Pages 40 and 41, in the Office of the County Recorder of Santa Clara
29 County, which amended that certain map entitled “Tract No. 6046” filed for record
30 on May 18, 1977, in Book 397 of Maps, Pages 4 and 5.
31
32 1.38 Total Voting Power. “Total Voting Power” shall mean the total number of votes of
33 all Members entitled to vote at a particular time, calculated on the basis of one
34 (1) vote for each Lot.
35
36

37 **ARTICLE 2 HOMEOWNERS ASSOCIATION**

38
39 2.1 Management and Operation; Bylaws. The Association is an “association” as
40 defined in *Civil Code* section 4080 and as such shall have the power and the
41 authority to manage and operate the Development in accordance with the
42 Governing Documents and the provisions of applicable law. The Association
43 shall have all of the powers set forth in the Governing Documents together with
44 general power to do any and all things that a nonprofit mutual benefit corporation
45 may lawfully do under the laws of the State of California, subject only to the
46 limitations upon the exercise of such powers as are expressly set forth in the

1 Governing Documents. Provisions concerning the operation of the Association
2 as a nonprofit mutual benefit corporation are set forth in the Bylaws.

3
4 2.2 Legal Standing. To the fullest extent permitted by law, including *Civil Code*
5 section 5980, the Association shall have standing to institute, defend, settle, or
6 intervene in litigation, arbitration, mediation, or administrative proceedings in its
7 own name as a real party in interest, and without joining with it the Owners, in
8 matters pertaining to the following:

- 9
10 (a) Enforcement of the Governing Documents,
11
12 (b) Damage to the Common Area,
13
14 (c) Damage to the separate interests that the Association is obligated to
15 maintain, repair, or replace,
16
17 (d) Damage to a separate interest that arises out of, or is integrally related to,
18 damage to the Common Area or separate interests that the Association is
19 obligated to maintain, repair, or replace.

20
21 2.3 Membership. Every Owner of a Lot shall be a Member of the Association and
22 shall remain a Member thereof until such time as his or her ownership of such
23 Lot ceases for any reason. Fee ownership of a Lot shall be the sole qualification
24 for membership in the Association. Membership shall be appurtenant to and may
25 not be separated from ownership of a Lot and shall not be transferred,
26 encumbered, pledged, alienated, or otherwise hypothecated in any way, except
27 in connection with the sale or encumbrance of the Lot to which it is appurtenant.

28
29 2.4 Voting. Only Members shall be entitled to vote, and only one (1) vote shall be
30 cast for each Lot, as more particularly set forth in the Bylaws.

31
32 2.5 Association Rules. Subject to applicable law including *Civil Code* section 4340
33 and following, regarding notice and procedures, the Board shall have the power
34 and the authority to establish, promulgate, amend, repeal, and enforce Rules.

35
36
37 **ARTICLE 3 PROPERTY SUBJECT TO THIS DECLARATION**

38
39 3.1 Legal Description. The property subject to this Declaration and to the jurisdiction
40 of the Association is described in Recital Paragraph C, above.

41
42 3.2 Classification of Property. The property subject to this Declaration is a planned
43 development. All of the property subject to the Declaration is divided into the
44 following categories:

- 45
46 (a) Common Area,

1
2 (b) Exclusive Use Common Area, and

3
4 (c) Lots.

5
6 3.3 Ownership Interest; No Separate Conveyance. The ownership interest of each
7 Lot Owner shall include: (i) a designated Lot, (ii) a Membership in the
8 Association, and (iii) any exclusive easements or easements appurtenant to such
9 Lot upon the Exclusive Use Common Area and such other easements as are
10 applicable, all as described in the Declaration or in the deed to the Lot.
11 Membership, and each Owner's undivided interest in the Common Area, and any
12 such easements shall be appurtenant to and may not be separated from
13 ownership of a Lot and shall not be transferred, encumbered, pledged, alienated,
14 or otherwise hypothecated in any way, except in connection with the sale or
15 encumbrance of the Lot to which it is appurtenant.

16
17 3.4 Undivided Interests Cannot Be Changed. The undivided interests in the
18 Common Area established in the Declaration cannot be changed except with the
19 approval of one hundred percent (100%) of the Owners or as provided in **Section**
20 **12.7** ("Revision of Documents") following condemnation of a portion of the
21 Development.

22
23 3.5 Limitation on Partition of Common Area. There shall be no subdivision or
24 partition of the Common Area, nor shall any Owner seek any partition or
25 subdivision of the Common Area. Notwithstanding any provision to the contrary
26 contained in this Declaration and in order to provide for a means of terminating
27 the Development if this should become necessary or desirable, two-thirds (2/3) of
28 the Owners of Lots shall have the right to petition the Superior Court having
29 jurisdiction to alter or vacate the Subdivision Map under California *Government*
30 *Code* section 66499.21 and following, or any comparable provisions of law, and
31 to vest title to the Common Area in the Owners as tenants in common and order
32 an equitable partition of the Common Area in accordance with the laws of the
33 State of California. If any Lot shall be owned by two (2) or more co-tenants as
34 tenants in common or as joint tenants, nothing contained in this Declaration shall
35 be deemed to prevent a judicial partition by sale as between such co-tenants.

36
37 3.6 Mergers, Consolidations and Annexations. Upon approval of at least two-thirds
38 (2/3) of the Members, the Board of Directors, acting on behalf of the Association,
39 shall have the power to participate in mergers and consolidations with other
40 nonprofit organizations organized for the same purposes as this Association, or
41 annex additional residential property and Common Area.

42
43 3.7 Capital Improvements. The Board of Directors shall have the power and
44 authority to provide for the construction, installation, or acquisition of capital
45 improvements upon the Common Area, provided that in any fiscal year
46 expenditures for such capital improvements shall not exceed five percent (5%) of

1 the budgeted gross expenses of the Association for that fiscal year without the
2 approval of a majority of the Total Voting Power of the Association.

3
4 3.8 Borrow; Mortgage Common Area. The Board of Directors, acting on behalf of the
5 Association, shall have the power to borrow money and, upon approval of at
6 least two-thirds (2/3) of the Members, mortgage, pledge, deed in trust, or
7 otherwise hypothecate the Common Area and facilities thereon as security for
8 money borrowed by the Association; *provided, however*, that such approval shall
9 not be required in the case of the sale by the Association of a Lot acquired by the
10 Association as the result of foreclosure of the Association's lien.

11
12 3.9 Dedication, Sale or Transfer of Common Area to Public Agencies/Utilities. Upon
13 approval of at least two-thirds (2/3) of the Members, the Board acting on behalf of
14 the Association shall have the power and authority to dedicate, sell, or transfer
15 any interest in or to all or any part of the Common Area to any public agency,
16 authority, or utility, to be used for such purposes and subject to such conditions
17 as may be agreed to by the Members.

18
19
20 **ARTICLE 4 MECHANIC'S LIENS; EASEMENTS**

21
22 4.1 Mechanic's Lien Against Common Area. In the event there shall be filed against
23 the Common Area a notice of mechanic's lien for, or purporting to be for, labor or
24 materials alleged to have been furnished or delivered for any Owner within the
25 Development or his or her Lot, such Owner shall forthwith cause such lien to be
26 discharged by payment, bond, or otherwise. If the Owner fails to cause the lien
27 to be discharged, the Board may send written notice to the Owner specifying that
28 unless the Owner causes the lien to be discharged within five (5) days from the
29 date of such notice, the Board may cause the lien to be discharged. Within such
30 five (5) day period, and notwithstanding any other provisions of the Governing
31 Documents concerning notice or hearing, the Owner shall be permitted a hearing
32 before the Board regarding the validity of such lien and any offsets or defenses
33 thereto. At that time, the Board shall determine whether the lien adversely and
34 improperly affects and encumbers the rights and interests of the Association or
35 the other Owners. If the Board of Directors determines that the lien does
36 adversely and improperly affect and encumber such rights and interests and that
37 adequate protection of such rights and interests has not been provided, the
38 Board may cause the lien to be discharged by payment, bond, or otherwise. The
39 Board shall have the right to levy a Reimbursement Assessment against the
40 Owner responsible for causing the lien to be discharged in an amount equal to all
41 amounts paid by the Association together with interest thereon at the legal rate
42 and all costs and expenses paid or incurred in connection therewith, including
43 reasonable attorney fees.

44
45 4.2 Easements in General. In addition to all easements reserved and granted on the
46 Subdivision Map, there are hereby specifically reserved and granted for the

1 benefit of the Lots and Lot Owners in common and for each Lot and Lot Owner
2 severally, and for the Association, as their respective interests shall obtain, the
3 easements, reciprocal negative easements, secondary easements, and rights-of-
4 way as particularly identified in this Article 4.

5
6 4.3 Exclusive Use Common Area Easements. “Exclusive Use Common Areas” are
7 enumerated in Section 1.19. Exclusive Use Common Areas, if any, are subject,
8 as the servient tenements, to exclusive easements in favor of the Lots to which
9 they are attached or assigned, as the dominant tenements, and such exclusive
10 easements shall be appurtenant to those designated Lots. An exclusive
11 easement to such Exclusive Use Common Area may be specifically granted in
12 each individual grant deed conveying a Lot; however, the failure of any such
13 deed to set forth such grant of easement shall not invalidate the exclusive
14 easement granted in this Declaration.

15
16 4.4 Owner’s Non-exclusive Easements of Enjoyment. Every Owner of a Lot shall
17 have a non-exclusive easement of use of and enjoyment in, to, and throughout
18 the Common Area of the Development; *provided, however*, such non-exclusive
19 easements shall be subordinate to, and shall not interfere in any way with the
20 exclusive easements, if any, appurtenant to Lots over Exclusive Use Common
21 Area. Each such non-exclusive easement shall be appurtenant to and pass with
22 the title to every Lot, subject to the following rights and restrictions:

23
24 (a) The right of the Board to establish and enforce Rules governing the use of
25 the Common Area and facilities thereon;

26
27 (b) The right of the Board to charge reasonable admission and other fees for
28 the use of any facilities situated upon the Common Area;

29
30 (c) The right of the Board to suspend an Owner’s right to use the recreational
31 facilities as provided in Section 14.8 (“Imposing Sanctions”);

32
33 (d) The right of the Board, as set forth in Section 3.8 (“Borrow; Mortgage
34 Common Area”), to mortgage, pledge, encumber, or otherwise
35 hypothecate the Common Area and facilities thereon as security for
36 money borrowed by the Association;

37
38 (e) The right of the Board, as set forth in Section 3.9 (“Dedication, Sale or
39 Transfer of Common Area to Public Agencies/Utilities”), to sell or transfer
40 personal property owned by the Association;

41
42 (f) The right of the Association or its authorized agents, to enter any Lot when
43 reasonably necessary as set forth in Section 4.10 (“Easements of the
44 Association to Enter Lots”);

45
46 (g) The right of the Board, as set forth in Section 4.11 (“Board’s Power to
47 Grant Non-exclusive Easements and Licenses to Owners”), to grant

1 easements, licenses, and rights-of-way upon the Common Area to
2 Owners;

3
4 (h) The right of the Association to establish Annual Assessments or charges
5 and to collect same for the use of any Common Area facility or of any
6 private streets or driveways situated upon the Common Area;

7
8 (i) The right of the Association to suspend the right to use of any of the
9 Common Area recreational facilities by an Owner or Resident as set forth
10 in **Section 14.8** ("Imposing Sanctions") for any period during which any
11 assessment against his Lot remains unpaid, or for any infraction of its
12 published Rules; but only after notice and a hearing before the Board as
13 set forth in **Article 14** ("Enforcement; Notice; Hearings"); and

14
15 (j) The right of the Association or its authorized agents, as provided in this
16 Declaration, to perform its obligations under this Declaration, including
17 obligations with respect to construction, maintenance, repair, or
18 replacement for the benefit of the Common Area or the Owners in
19 common.

20
21 4.5 Easement for Vehicular Ingress and Egress. An easement for vehicular ingress
22 and egress to and from each Dwelling over the private roads and driveways in
23 the Common Area is reserved for the non-exclusive use of each Lot.

24
25 4.6 Party Wall and Party Fence Easements. There shall be an easement for
26 reasonable repairs over the areas immediately adjacent to each side of all such
27 walls and fences for the benefit of all persons having an interest therein; *provided*
28 *however*, that such easement shall allow entry only at reasonable times and shall
29 in no event be deemed to permit entry into the interior portions of any residence.
30 Any damage resulting from use of the easement shall be repaired at the expense
31 of the Owner causing the same.

32
33 4.7 Easements of Encroachment. If any portion of any way or other part of an
34 improvement as originally constructed upon the Properties, including without
35 limitation eaves or other overhangs of a structure, encroaches upon any part of
36 the Common Area or upon the Lot or Lots used or designated for use by another
37 Owner, an easement for the encroachment and for the maintenance, repair and
38 replacement of the same is granted to and for the benefit of the Owners of such
39 encroaching structure. No such easement shall exist, however, in respect to an
40 encroachment caused by construction of any improvement on any Lot after
41 completion of construction of the original improvements thereon by the Declarant,
42 its successor and assigns.

43
44 4.8 Easements in Case of Partial or Total Destruction of Lot. In the event a Dwelling
45 constructed on a Lot becomes partially or totally destroyed or in need of repair or
46 replacement, and in full compliance with the provisions within **Article 12**
47 ("Damage or Destruction; Condemnation"), mutual and reciprocal easements are

1 granted to the Owner of the Lot upon which the damaged or destroyed Dwelling
2 is located, the Owner of the abutting Lots and the Association to the extent
3 reasonably necessary to make repairs and replacement to the damaged or
4 destroyed property and protecting the structure on the Lot adjacent thereto. Any
5 dispute as to the extent of such easement shall be submitted to the Board of
6 Directors for arbitration pursuant to **Article 14** ("Enforcement; Notice; Hearings")
7

8 4.9 Utility Easements. There are reserved and there shall exist easements over and
9 under the Development or any portion thereof for the purpose of constructing,
10 erecting, operating, or maintaining thereon, therein, or thereunder overhead or
11 underground lines, cables, wires, conduits, or other devices for electricity, cable
12 television, power, telephone and other purposes, public sewers, storm water
13 drains and pipes, water systems, sprinkling systems, water, heating and gas
14 lines or pipes, and any similar public or quasi-public improvements or facilities,
15 and for any other purposes deemed by the Board to be appropriate and not
16 inconsistent with the purposes and interests of the Association, together with the
17 Association's right and authority to grant and transfer the same to serve the
18 Development. Each purchaser and Owner of a Lot, in accepting a deed to a Lot,
19 expressly consents thereto; *provided, however*, that no such easement or rights-
20 of-way may be granted or transferred if it would unreasonably interfere with the
21 use, occupancy, or enjoyment by an Owner or Resident of any Lot and any
22 existing exclusive easements over Common Area appurtenant thereto, if any,
23 without the consent of the Owner(s) affected.
24

25 4.10 Easements of the Association to Enter Lots. The Association or its agents may
26 enter any Lot when reasonably necessary for the purpose of carrying out any
27 maintenance, repair, improvement or replacement which the Association is
28 permitted or required to carry out, and the Association shall have and is hereby
29 granted an easement and right of entry for such purpose. Prior to entry, the
30 Association shall give to the Owner twenty-four (24) hours' notice except in case
31 of an emergency. Such entry shall be made with as little inconvenience to the
32 Owner as practicable, and any damage caused thereby shall be the responsibility
33 of the Association.
34

35 4.11 Board's Power to Grant Non-exclusive Easements and Licenses to Owners.
36 Notwithstanding any other provisions of the Governing Documents, the Board
37 shall have the power in its discretion without approval vote of the Members to
38 grant and convey licenses for use, rights-of-way, and non-exclusive easements
39 in, over, or under the Common Area or any portion thereof to Owners, for such
40 purposes as the Board deems to be appropriate and not inconsistent with the
41 purposes and interests of the Association.
42

43 4.12 Board's Power to Assign Exclusive Use Parking Spaces. The Association, acting
44 through the Board, shall have the right to assign each Lot the exclusive use of
45 not more than two (2) automobile parking spaces within the Common Area,
46 which parking spaces shall be located upon the Private Driveway nearest and
47 adjacent to the Dwelling located on the Lot. The Association shall have no power

1 to reassign a Private Driveway parking space without the express written consent
2 of all affected Owners. All other Common Area parking spaces are for guest
3 parking only.
4

- 5 4.13 Board's Power to Grant Exclusive Easements to Owners. Notwithstanding any
6 other provisions of the Governing Documents, including but not limited to the
7 provisions in Section 4.12 ("Board's Power To Assign Parking Spaces") or
8 described in *Civil Code* section 4600(b), upon approval of a majority of the Total
9 Voting Power of the Association, the Board shall have the power in its discretion
10 to grant and convey exclusive easements in, over, or under the Common Area or
11 any portion thereof to Owners; *provided, however*, that such grant shall not
12 unreasonably interfere with the use, occupancy, or enjoyment by an Owner or
13 Resident of any Lot and any existing exclusive easements over Common Area
14 appurtenant thereto, if any, without the consent of the Owner(s) affected.
15

16
17 **ARTICLE 5 USE RESTRICTIONS**

18
19 5.1 Use of Common Area Generally. All use of Common Area is subject to the
20 Governing Documents. Subject to the provisions of the Governing Documents,
21 the Common Area shall be held, maintained, and used to meet the common
22 interests of the Owners and the Residents, members of their household, tenants,
23 and guests.
24

25 5.2 No Alteration of Common Area. Except as may be authorized by the Board, no
26 person or entity other than the Association or its duly-authorized agents shall (i)
27 construct, reconstruct, refinish, alter, or maintain any improvement upon the
28 Common Area, (ii) make or create any excavation or fill upon the Common Area,
29 (iii) change the natural or existing drainage of the Common Area, or (iv) plant,
30 remove, or destroy any seed, plant material, tree, shrub, or other vegetation upon
31 the Common Area.
32

33 5.3 No Obstruction of Common Area. The Common Area shall be kept free of
34 rubbish, debris, and other unsightly or unsanitary materials. There shall be no
35 obstruction of any part of the Common Area nor shall anything impair access to
36 the Common Area. Each Owner shall avoid causing any damage to the
37 Common Area.
38

39 5.4 No Smoking in Common Area. For the safety of the property and for the health,
40 safety, and security of all Residents of the Development, no smoking of
41 cigarettes, electronic cigarettes or "e-cigarettes," personal vaporizers, electronic
42 nicotine delivery systems, cigars, pipes, or any other tobacco product, marijuana,
43 legal or illegal substance shall be permitted anywhere in the Common Area,
44 whether indoors or outdoors, including Exclusive Use Common Area. "Smoking"
45 shall include the inhaling, exhaling, burning, or carrying of any lighted or
46 electronic cigarettes, cigars, pipe, personal vaporizers, electronic nicotine

1 delivery systems, or any other tobacco product, marijuana, or legal or illegal
2 substance, and shall include smoke or vapor from any such activity drifting from
3 a Lot into the Common Area. Specifically, smoking is not allowed in the outdoor
4 pool area, or anywhere within the clubhouse recreational building including the
5 meeting rooms located in the Common Area. The Board may adopt and enforce
6 smoking Rules in addition to the provisions of this **Section 5.4**.

7
8 5.5 Delegation of Use. Any Owner may delegate his or her rights of use and
9 enjoyment, including easements, in the Development to the members of his or
10 her household, tenants, Contract Purchasers, and guests, subject to the terms of
11 the Governing Documents. It is the express purpose and intent of this **Section**
12 **5.5** to limit the right of use and enjoyment of the Common Area amenities to
13 Residents of the Development and their accompanied guests. Upon the leasing
14 or renting of a Lot, or upon occupancy of a Lot by a Contract Purchaser, the
15 Owner shall be deemed to have delegated and assigned all such rights
16 exclusively to the tenants or Contract Purchasers of such Lot. Any rights of
17 enjoyment that have been delegated by an Owner are subject to suspension to
18 the same extent that rights of Owners are subject to suspension as provided in
19 the Governing Documents.

20
21 5.6 Residential Use. Except to the extent permitted in **Section 5.8** ("Restriction on
22 Businesses"), Lots shall be occupied and used only for single family residential
23 purposes in conformity with the requirements of applicable zoning laws or other
24 state or local rules or regulations.

25
26 5.7 Number of Occupants. No Dwelling shall be permanently occupied by a number
27 of Residents that is more than two (2) times the number of bedrooms, plus one
28 (1), based on the number of legal bedrooms contained in the Dwelling. For
29 example, seven (7) Residents in a three bedroom Dwelling or nine (9) Residents
30 in a four bedroom Dwelling. In no event shall any Dwelling be occupied by more
31 individuals than permitted by applicable zoning laws or other governmental
32 regulations.

33
34 5.8 Restriction on Businesses.

35
36 5.8.1 Types of Businesses Allowed. No business of any kind shall be
37 established, maintained, operated, permitted, or conducted within the
38 Development except: (i) professional, administrative, or clerical activity
39 as may be permitted by applicable governmental ordinances without
40 the requirement of a conditional use permit but only if such activity
41 does not entail the presence of employees, patrons, clients, or vendors
42 except on an infrequent basis; does not require storage of large
43 amounts of bulky goods or inventory; there is no external evidence of
44 such activity including but not limited to a significant increase in traffic
45 within the Development; the activity complies with all applicable
46 governmental ordinances; and the activity is merely incidental to the

1 use of the Lot for residential purposes and (ii) certain care facilities
2 that, by law, cannot be prohibited within the Development.

3
4 5.8.2 Indemnification Regarding Business Activity. To the fullest extent
5 permitted by law, every Owner or Resident who conducts or engages
6 in any business, commercial endeavor, or profession within the
7 Development, or whose tenant does so, agrees to and shall indemnify
8 and defend the Association, its officers, directors, employees, and
9 agents and shall hold them harmless from and against any cost, loss,
10 claim, or damages of any kind, arising out of the conduct or presence
11 of such activity, including but not limited to attorney fees, any claims for
12 consequential damages, and any claims arising or alleged to arise out
13 of the enforcement or nonenforcement by the Association of the
14 Governing Documents, including but not limited to the restriction on
15 business contained in this Section 5.8. Any amounts owed pursuant to
16 this Section 5.8.2 may be assessed as a Reimbursement Assessment.

17
18 5.9 Compliance with Laws. Each Owner and Resident shall comply with all
19 requirements of all federal, state, and local governmental authorities and all laws,
20 ordinances, rules and regulations applicable to his or her Lot and Dwelling and
21 the Common Area.

22
23 5.10 Unlawful Conduct; Nuisances; Noise. No noxious, illegal or offensive activities
24 shall be carried on, in or upon any Lot, or any part of the Development, nor shall
25 anything be done thereon, through noise or otherwise, which may be or may
26 become an annoyance or a nuisance to or which may in any way interfere with
27 the quiet enjoyment of any Residents of their respective Lots or Dwellings. The
28 Association shall not be obligated to enforce this Section 5.10 when a dispute
29 under the Declaration is solely between neighbors, does not involve Common
30 Area, or is not an emergency. In any violation or dispute involving neighbors,
31 Residents shall take reasonable steps to work with each other to resolve their
32 differences before reporting a violation or dispute to the Association. Resident's
33 complaints to the Association about neighbors shall: (a) be in writing; (b) give as
34 much detail as possible concerning the dispute; (c) provide specific information
35 about what informal efforts to resolve the matter were undertaken by the
36 complaining Resident(s); and (d) provide the name, address, phone numbers,
37 and email address of the complaining Resident(s).

38
39 5.11 Conditions Affecting Insurance. Nothing shall be done, placed, or kept within the
40 Development that will increase the rate of insurance or result in the cancellation
41 of insurance under any insurance policy maintained by the Association, or which
42 will be in violation of any governmental statute, ordinance, rule, or regulation. If
43 any Owner or Resident, member of their household, tenant, invitee, or guest shall
44 violate this Section 5.11, the Lot Owner shall be liable to the Association for any
45 resulting increase in insurance premiums and any other damages, which may be
46 assessed against the responsible Owner as a Reimbursement Assessment.

47

1 5.12 Outbuildings. In no event shall any outbuilding, shed, tent or similar structure be
2 used for human occupancy, either temporarily or permanently.

3
4 5.13 Requirement of Architectural Approval. As addressed in Article 7 (“Architectural
5 Approval”), construction, installation, modification, or alteration of buildings,
6 outdoor structures, landscaping, and outdoor lighting are subject to prior
7 architectural approval.

8
9 5.14 Animals.

10
11 5.14.1 No Commercial Purposes. No animals shall be kept, bred, or
12 maintained within the Development for any commercial purpose.

13
14 5.14.2 Number of Pets. The number of pets per Lot shall be as provided in
15 the applicable City code. Unless otherwise provided in the Rules, a
16 “reasonable number” of dogs and/or cats kept in a Lot shall be deemed
17 to be no more than three (3), in any combination (for example, two (2)
18 dogs and one (1) cat, two cats and one dog, or three cats or three
19 dogs).

20
21 5.14.3 Control of Dogs. While in Common Areas, each dog must be
22 restrained as required by applicable City code.

23
24 5.14.4 Responsibility for Pets. The owner of each pet shall be responsible for
25 immediately removing and disposing of any waste introduced to any
26 portion of the Development by such pet. Owners, Residents, their
27 tenants, and guests shall prevent their pets from soiling any portion of
28 the Common Area and shall immediately clean up any mess left by
29 their pet.

30
31 5.14.5 Indemnification Regarding Pets. Each Owner, Resident, and any
32 person bringing or keeping an animal within the Development shall be
33 absolutely liable to the Association and all other persons for any injury
34 or damage to persons or property caused by the animal brought upon
35 or kept upon the Development by such person or by members of his or
36 her household, tenants, invitees, or guests. To the fullest extent
37 permitted by law, each Owner agrees to and shall indemnify and
38 defend the Association, its officers, directors, employees, and agents
39 and shall hold them harmless from and against any cost, loss, claim, or
40 damages of any kind, arising out of or resulting from the presence or
41 conduct of any animal brought upon or kept within the Development by
42 the Owner, members of his or her household, tenants, invitees, or
43 guests including but not limited to attorney fees, any claims for
44 consequential damages, and any claims arising or alleged to arise out
45 of the enforcement or nonenforcement by the Association of the
46 Governing Documents, including but not limited to the restrictions on
47 animals contained in this Section 5.14. Any amounts owed pursuant to

1 this Section 5.14.5 may be assessed as a Reimbursement
2 Assessment.

3
4 5.14.6 Removal of Nuisance Pets. The Association shall have the right to
5 prohibit the keeping of any animal which, after the responsible Owner
6 or Resident has an opportunity for a hearing called by the Board
7 pursuant to Section 14.12 ("Hearing Called by the Board; Executive
8 Session; Open Meeting"), is found by the Board to be a nuisance.

9
10 5.14.7 Pet Rules. The Board may adopt and enforce pet Rules in addition to
11 the provisions of this Section 5.14.

12
13 5.15 Trash Disposal. Trash, garbage, accumulated waste plant material, other waste
14 and refuse, and recyclable waste shall be deposited only in dumpsters or other
15 containers provided for that purpose by the garbage collection service in
16 designated areas of the Common Area. All such waste shall be placed for pick
17 up as required by the disposal service and any Rules adopted by the
18 Association. No Owner or Resident shall permit or cause any garbage, trash, or
19 other waste or refuse to be disposed of upon any portion of any Lot or elsewhere
20 in the Development, except in such containers. Furniture, appliances, water
21 heaters, construction or remodeling debris, and other bulky items or hazardous
22 materials must be properly disposed of off-site by the Owner or Resident at his or
23 her sole expense and shall not be placed in Association waste containers or
24 discarded in the dumpster areas.

25
26 5.16 Signs, Banners, Flags. Only the following types of signs, posters, banners, or
27 flags shall be displayed to the public view from any portion of the Development:

- 28
29 (a) Signs required by legal proceedings;
30
31 (b) A noncommercial sign or poster no larger than nine (9) square feet in size
32 or a noncommercial flag or banner no larger than fifteen (15) square feet
33 in size, displayed upon a Lot or Dwelling, and limited to the fullest extent
34 permitted by *Civil Code* section 4710;
35
36 (c) A single sign of customary and reasonable dimension and design,
37 complying with the provisions of any applicable ordinance and the
38 Architectural Rules, if any, and reasonably located on a Lot advertising a
39 Lot for sale or rent;
40
41 (d) Other signs which by law cannot be prohibited;
42
43 (e) A flag of the United States, subject to the City or County restrictions as to
44 size and as to time, place, and manner of display, as provided in *Civil*
45 *Code* section 4705;
46

- 1 (f) Garage sale signs located temporarily on an Owner's Lot on the day of the
2 garage sale and to be removed within twenty-four (24) hours after the end
3 of the garage sale. Garage sale signs shall comply with clause (b) of this
4 Section 5.16;
- 5
- 6 (g) A single identification sign which has been approved by the Board located
7 on a Lot identifying the number or address of the Lot and/or the names of
8 the occupants;
- 9
- 10 (h) Signs approved by the Board as required for traffic control and regulation
11 of streets or open areas within the Development; and
- 12
- 13 (i) Signs on the Common Area as approved by the Board for a purpose
14 reasonably related to the affairs of the Association, including signs located
15 at or near any entrance to the Development identifying the Development.
- 16

17 5.17 Vehicles and Parking.

18

19 5.17.1 Parking Generally. Vehicles shall not be parked anywhere within the
20 Development except wholly within a garage, a Private Driveway, or in a
21 designated parking space. Parking is not allowed at any time on
22 private Common Area streets.

23

24 5.17.2 Resident Parking: Garage and Private Driveway. The parking facilities
25 for Residents are the garage of the Dwelling on the Resident's Lot, and
26 the Private Driveway appurtenant to, and designated for, such Lot.

27

28 5.17.3 Guest Parking: Common Area Parking Spaces. The Development
29 contains eight (8) Common Area parking spaces which shall remain
30 unassigned and shall only be for the use of guests of
31 Owners/Residents; *provided, however,* that if an Association
32 maintenance project temporarily prevents normal use of Residents'
33 parking facilities, such Residents may use the Common Area parking
34 spaces. No vehicle shall be parked continuously in the Common Area
35 parking spaces for longer than seventy-two (72) hours, or as needed if
36 an Association maintenance project temporarily prevents normal use of
37 Residents' parking facilities. Boats, trailers, and campers shall not be
38 parked, stored or maintained within the unassigned Common Area
39 parking spaces without the approval of the Board and subject to any
40 related the Rules of the Association.

41

42 5.17.4 Prohibited and Restricted Vehicles. Unreasonably noisy or foul
43 smelling vehicles are prohibited vehicles. Prohibited vehicles may not
44 be operated in or brought into the Development. Dilapidated or
45 inoperable vehicles and unregistered vehicles are restricted vehicles.
46 Restricted vehicles shall not be kept or parked within the Development
47 other than inside a garage.

- 1
2 5.17.5 Vehicle Repairs in the Development. No motor vehicles or boats shall
3 be constructed, reconstructed, repaired, or serviced within the
4 Development (other than minor emergency repairs to the extent
5 necessary to move the vehicle to a repair facility) except within the
6 garage of a Dwelling or in a Private Driveway but not for more than
7 seventy-two (72) hours.
8
- 9 5.17.6 Other Parking Space Use Restrictions; Storage Pods. The Board may,
10 in its discretion, briefly permit storage pods or other such non-vehicular
11 conveyances to be placed in the parking spaces within the Common
12 Area, including the Private Driveways, if preapproved by the Board
13 pursuant to Article 7 (“Architectural Approval), and as more specifically
14 noted in Section 7.2.12 (“Storage Units; Temporary Structures”).
15
- 16 5.17.7 Parking Rules. In addition to the provisions of this Section 5.17, the
17 Board shall have the power and authority to adopt, promulgate, and
18 enforce Parking Rules and shall have the power to impose fines and
19 other sanctions for violations of provisions of the Governing
20 Documents relating to vehicles and parking.
21
- 22 5.17.8 Parking Enforcement and Towing. The provisions of this Section 5.17
23 apply to all vehicles within the Development, including vehicles of
24 guests and invitees. Subject to the provisions of applicable law,
25 including California *Vehicle Code* section 22658, the Board shall have
26 the power and authority to cause the towing, at the vehicle owner’s
27 expense, of vehicles that are parked within the Development in
28 violation of any of the provisions of the Governing Documents. Costs
29 incurred by the Association relating to the towing and/or storage of any
30 vehicle parked in violation of any provision of the Governing
31 Documents shall be assessed as a Reimbursement Assessment
32 against the Owner responsible or whose household member, Contract
33 Purchaser, tenant, invitee, or guest is responsible for the presence of
34 such vehicle.
35
36
37

1 **ARTICLE 6** **RENTING OR LEASING**

2
3 6.1 Requirements for Renting.

4
5 6.1.1 Written Lease. An Owner renting his or her Lot shall do so pursuant to
6 a written lease or rental agreement. The lease or rental agreement
7 shall expressly provide:

- 8
9 (i) for an initial term of at least one hundred eighty (180) days;
10
11 (ii) that its terms are subject to all of the provisions of the
12 Governing Documents;
13
14 (iii) that failure of the tenant, members of the tenant's household,
15 invitees, or guests to comply with applicable provisions of the
16 Governing Documents shall constitute a default under the terms
17 of such lease or rental agreement; and
18
19 (iv) that in the event of any such default, the Association shall be
20 entitled to maintain an eviction action against the tenant to the
21 same extent as the Owner of the Lot, the Association being
22 deemed to be a third party beneficiary under such lease or
23 rental agreement, as provided in **Section 6.8** ("Association As
24 Third Party Beneficiary").
25

26 6.1.2 No Subletting. No subletting shall be permitted.

27
28 6.1.3 Copy of Lease. An Owner renting his or her Lot shall file a copy of the
29 signed lease or rental agreement with the Board. The Owner may
30 redact or blackout the financial terms (i.e., the amount of rent and
31 security deposit) from the copy provided to the Board.
32

33 6.1.4 Provide Governing Documents to Tenants. An Owner renting his or
34 her Lot shall provide the tenant(s) with a copy of the Governing
35 Documents and any subsequent changes thereto. Such requirement
36 may be fulfilled by providing the Tenant with access to the documents
37 through an online website or other equivalent access, provided that (1)
38 if a tenant requests a printed copy, the Owner must provide same, and
39 (2) the Owner provides to the Association the affidavit described in
40 **Section 6.1.5** ("Affidavit of Tenants").
41

42 6.1.5 Affidavit of Tenants. Upon request by the Association, or anytime a
43 lease or rental agreement is executed, updated or otherwise amended,
44 the Owner shall cause all tenants and occupants to execute and
45 submit to the Association an affidavit or certificate in a form prescribed
46 by the Association, which includes the following and such other

1 matters as are reasonably required by the Association: (i) that
2 he/she/they understand, (ii) that he/she/they have received copies of
3 the Governing Documents, or have been provided with online access
4 thereto, as described in Section 6.1.4 ("Provide Governing Documents
5 to Tenants"), (iii) that he/she/they understand that the lease is
6 expressly subject to all the provisions of the Governing Documents,
7 and (iv) that he/she/they understand that the breach of any provision of
8 the Governing Documents shall constitute a default under the lease.
9

10 6.1.6 House Sitters. The provisions of Section 6.1.4 ("Provide Governing
11 Documents to Tenants") and Section 6.1.5 ("Affidavit of Tenants") shall
12 apply with respect to any person occupying a Lot as a guest of the
13 Owner, as a paid or unpaid house sitter, or in a similar capacity when
14 no Owner is in residence.
15

16 6.1.7 Owner's Contact Information. An Owner renting his or her Lot shall
17 provide the Association with contact information for the Owner or a
18 representative of the Owner with authority to act on behalf of the
19 Owner with respect to the Lot and the tenants, including telephone
20 number, email address, mailing address, and such other contact
21 information as the Association may require.
22

23 6.2 Notice of Non-Owner Occupants. Without limiting the generality of the provisions
24 contained in Section 6.1 ("Requirements for Renting"), each Owner shall notify
25 the Board and the Association's manager of the names of (i) any tenants or any
26 Contract Purchasers occupying such Owner's Lot, and (ii) any guest, house
27 sitter, or other person occupying the Lot when no Owner is in residence (whether
28 or not such person is paying rent or is being compensated by the Owner). If
29 requested by the Board, each Owner, tenant, or Contract Purchaser shall also
30 notify the Board or the Association's manager of the names of all members of his
31 or her household to whom such Owner, tenant, or Contract Purchaser has
32 delegated any rights of enjoyment in the Development as provided herein and
33 the relationship each such person bears to such Owner, tenant, or Contract
34 Purchaser.
35

36 6.3 No Transient Rentals. No Owner shall be permitted to lease, rent, or otherwise
37 operate his or her Lot for transient or hotel purposes, which shall include, but is
38 not limited to, rental for any period less than thirty (30) days or any rental (even if
39 the term is longer than thirty days) where the occupant of a Dwelling is provided
40 customary hotel services such as room service for food and beverage, maid
41 service, periodic furnishing of clean bed linen and towels, laundry service, or
42 bellboy services. This Section 6.3 shall not be deemed to permit an initial lease
43 or rental term shorter than one hundred eighty (180) days as provided in Section
44 6.1.1(i) ("Written Lease").
45

46 6.4 Rental of Entire Lot. No Owner shall rent or lease less than the entire Lot except
47 that an accessory dwelling unit as defined in California *Government Code*

1 sections 65852.2 and 65852.22 may be rented separately from the principal
2 Dwelling on the Lot. The preceding sentence is intended to prohibit the operation
3 of a rooming house or similar operation within the Development. This **Section**
4 **6.4** is not intended to prohibit a resident Owner from sharing his or her Lot or
5 Dwelling with a roommate or other person(s) with whom the Owner maintains a
6 common household.
7

8 6.5 No Vacation Clubs; No Time Share Arrangements. No Lot or Lots or any portion
9 thereof shall be leased, subleased, occupied, rented, let, sublet, or used for or in
10 connection with any time sharing agreement, plan, program or arrangement,
11 including, without limitation, any so called “vacation license,” “travel club,”
12 “extended vacation,” “home-exchange club,” any other membership or time
13 interval ownership arrangement, or any time-share estate or time-share use as
14 defined in Section 11212 of the California *Business and Professions Code*. The
15 term “time sharing” as used herein shall be deemed to include, but shall not be
16 limited to, any agreement, plan, program, or arrangement under which the right
17 to use, occupy, or possess any Lot or Lots or any portion thereof or Dwelling
18 thereon rotates among various persons, either corporate, partnership, individual,
19 or otherwise, on a periodically recurring basis for value exchanged, whether
20 monetary or like kind use privileges, according to a fixed or floating interval or
21 period of time. This **Section 6.5** shall not be construed to limit the personal use
22 of any Lot or any portion thereof by its Owner and such Owner’s social or familial
23 guests.
24

25 6.6 Private Exchanges Permitted. **Section 6.5** (“No Vacation Clubs; No Time Share
26 Arrangements”) shall not be deemed to prohibit an Owner from entering into a
27 private exchange arrangement with another person whereby the Owner will
28 occupy the dwelling of the other party to the exchange for a defined temporary
29 period and that other person will occupy the Owner’s Dwelling during the same
30 period; provided that the exchange period shall not exceed ninety (90)
31 consecutive days and only one (1) such exchange shall be permitted in any
32 calendar year. Each Owner who enters into a private exchange arrangement
33 shall provide written notice to the Board in advance of arrival of the guest(s),
34 which notice shall include the guest(s) name(s) and such other information as the
35 Board shall require.
36

37 6.7 Implementation. Upon request from the Board, each Owner then renting or
38 leasing a Lot shall provide to the Board such information as the Board may
39 reasonably require in order to implement the provisions of this **Article 6** including
40 but not limited to the names of the tenants and the members of the tenant’s
41 household and the duration of the lease and/or a copy of the signed lease. Any
42 rental or leasing of a Lot commencing after this Declaration is recorded and the
43 renewal of a tenancy in effect on the date this Declaration is recorded shall be
44 pursuant to a written lease or rental agreement in accordance with **Section 6.1**
45 (“Requirements for Renting”).
46

1 6.8 Association As Third Party Beneficiary. Notwithstanding the failure of an Owner
2 to comply with the requirements of **Section 6.1** (“Requirements for Renting”) and,
3 whether or not it is so stated in a written contract or other agreement between
4 such Owner and such tenant, the Owner and the tenant of any Lot subject to this
5 Declaration shall be conclusively deemed to have agreed that the Association is
6 an intended third party beneficiary to the contract between the Owner and the
7 tenant; that failure of the tenant, members of the tenant’s household, tenant’s
8 invitees, or guests to comply with applicable provisions of the Governing
9 Documents shall constitute a breach of the terms of the contract between the
10 Owner and the tenant; and that the Association shall have the right but not the
11 obligation to enforce the contract and to pursue every remedy available under the
12 contract, and under this Declaration including but not limited to the rights granted
13 pursuant to **Section 8.18** (“Assignment of Rents As Security for Payment”), or
14 under the law. The power of the Association as provided in this **Section 6.8** shall
15 be exercised in good faith, in a reasonable and nondiscriminatory manner, and
16 only after notice and opportunity for a hearing as provided in **Article 14**
17 (“Enforcement; Notice; Hearings”).
18

19 6.9 Indemnification Regarding Tenant’s Actions. Each Owner leasing or renting a
20 Lot shall be strictly responsible and liable to the Association for the actions of
21 such Owner’s tenant(s) in or about all Dwellings, Lots, and Common Area and for
22 each tenant’s compliance with the provisions of the Governing Documents. No
23 provision of any lease or rental agreement shall relieve the Lot Owner of his or
24 her obligations pursuant to the Governing Documents. To the fullest extent
25 permitted by law, every Owner of a Lot that is occupied by persons other than the
26 Owner pursuant to a rental agreement or lease or otherwise, agrees to and shall
27 indemnify and defend the Association, its officers, directors, employees, and
28 agents and shall hold them harmless from and against any cost, loss, claim, or
29 damages of any kind, arising out of the conduct or presence of the occupants of
30 the Lot upon the Development, including but not limited to attorney fees
31 (including attorney fees incurred to enforce the provisions of this **Article 6** against
32 the Owner of the Lot or any guest, tenant or other occupant of the Lot), any
33 claims for consequential damages, and any claims arising or alleged to arise out
34 of the enforcement or nonenforcement by the Association of the Governing
35 Documents with respect to such occupants. Any amounts owed pursuant to this
36 **Section 6.9** may be assessed as a Reimbursement Assessment against the
37 responsible Owner and his or her Lot.
38
39

40 **ARTICLE 7 ARCHITECTURAL APPROVAL**

41
42 7.1 Prior Architectural Approval Required. Prior architectural approval in accordance
43 with this **Article 7** must be obtained before making any exterior addition or
44 change or alteration of any kind to a Dwelling, within a Lot or within the
45 Development. The foregoing includes but is not limited to:
46

- 1 (a) Installing, altering or adding any building, accessory dwelling unit, fence,
2 wall, hedge, or similar barrier, balcony, screen, skylight, window, patio
3 cover, carport cover, tent, awning, improvement or other structure of any
4 kind, screen, exterior lighting, exterior wiring, mast, pole, tower, antenna,
5 receiver, satellite dish or transmitter to the extent restricted by **Section**
6 **7.2.8** ("Satellite Dishes and Antennas"), or attaching any of the foregoing
7 to the exterior of any building, balcony or fence;
8
9 (b) Exterior painting;
10
11 (c) Plumbing or electrical work modifications;
12
13 (d) Installing, moving, or removing landscaping.
14

15 No such modification, alteration or addition shall be commenced, erected,
16 painted, or installed within the Development, nor shall any exterior addition or
17 change or alteration be made, until the plans and specifications showing the
18 nature, kind, shape, color, height, size, materials, and location of the same have
19 been submitted to and approved in writing by the Board. The requirement of
20 architectural approval shall not apply to improvements made or constructed by or
21 on behalf of the Association.
22

23 7.2 Some Common Architectural Concerns. This **Section 7.2** enumerates some
24 common areas of architectural concern. These are examples only and do not
25 represent an exhaustive list of changes that require prior architectural approval.
26 Nothing in this **Section 7.2** shall be deemed to limit the generality of **Section 7.1**
27 ("Prior Architectural Approval Required").
28

29 7.2.1 Air Conditioner Units. Prior architectural approval is required for any
30 exterior installation of an air conditioner or heat pump, including
31 installation in a window or door.
32

33 7.2.2 Disproportionate Burden on Common Utility Service; Separate
34 Metering. If an Owner-installed or tenant-installed alteration or addition
35 will increase the electrical, water, or other utility usage for the Owner's
36 Lot, the Board may require that separate metering facilities be installed
37 at the Lot Owner's sole cost and expense or, if that is not feasible, the
38 Board may allocate such utility costs in a manner the Board
39 determines is reasonable and equitable as provided in **Section 8.7.2**
40 ("Allocation of Annual Assessment").
41

42 7.2.3 Exterior Lighting. Exterior lights may be not be installed upon any
43 structure, and existing lighting devices shall not be altered (other than
44 light bulb replacement), without prior architectural approval.
45

46 7.2.4 Exterior Wiring. No telephone, cable television, or other wiring shall be
47 routed along the building exterior unless prior architectural approval

1 has been obtained. If an Owner cannot provide a copy of a bona fide
2 written approval from the Association for any such installation, it shall
3 be presumed to be non-approved.
4

5 7.2.5 Mailboxes. Mailboxes shall comply with all applicable postal
6 regulations and Association Rules, if any. There shall be no free-
7 standing exterior mailboxes or newspaper tubes.
8

9 7.2.6 Masts, Poles, Towers, Other Projections. No outside mast, pole,
10 tower, or projection of any type attached to any structure that extends
11 above the roof of the structure (with the exception of chimneys and
12 vent stacks) and no outside mast or pole shall be placed or permitted
13 to remain without prior architectural approval.
14

15 7.2.7 No Installations on Roof. Absolutely no installation of any kind,
16 including but not limited to skylights, antennas, or air-conditioning
17 equipment, shall be placed or installed upon any roof without obtaining
18 prior architectural approval; and such approval shall be subject to such
19 conditions as the Board may determine, including but not limited to
20 insurance requirements, release of the Association from liability and
21 indemnification of the Association by the Owner concerning damage to
22 property or injury to persons in connection with the installation or
23 presence of the skylight, antennas, or air-conditioning equipment and
24 obligation of the Lot Owner to pay for incremental costs of
25 maintenance, repair, or replacement of the roof on account of the
26 installation or presence of the skylight, antennas, or air-conditioning
27 equipment.
28

29 7.2.8 Satellite Dishes and Antennas. No outside radio or television aerial,
30 antenna, dish, wire, or other receiving or transmitting device shall be
31 erected, constructed, or maintained on any Lot, except (i) those
32 expressly approved by the Board or (ii) those that, by law, cannot be
33 prohibited. It is the intention of this **Section 7.2.8** to restrict outside
34 radio or television aerials, antennas, dishes, wires, and other receiving
35 or transmitting devices in the Development to the fullest extent
36 permitted by law and to authorize the Board to adopt and implement
37 Rules regarding the same.
38

39 7.2.9 Skylights. No skylight shall be installed without prior architectural
40 approval and such approval shall be subject to such conditions as the
41 Board may determine, including but not limited to insurance
42 requirements, release of the Association from liability and
43 indemnification of the Association by the Owner concerning damage to
44 property or injury to persons in connection with the installation or
45 presence of the skylight, and obligation of the Owner to pay for
46 incremental costs of maintenance, repair, or replacement of the roof on
47 account of the installation or presence of the skylight.

1
2 7.2.10 Solar Energy Systems. Solar energy systems as defined in *Civil Code*
3 section 801.5(a)(1) and (2) are subject to prior architectural approval
4 pursuant to this Article 7. Nothing in this Declaration shall be deemed
5 to authorize or permit any Owner to install any solar energy system
6 upon any portion of the Common Area.
7

8 7.2.11 Sports Apparatus. No basketball standards (excluding portable,
9 nonattached basketball standards) or fixed sports apparatus shall be
10 placed upon or attached to any Lot or Dwelling without prior written
11 approval of the Architectural Committee.
12

13 7.2.12 Storage Units; Temporary Structures. No shed, tent, temporary
14 structure, cargo container, temporary storage container (“PODS”) shall
15 be erected, maintained, kept, or used anywhere within the
16 Development without the prior architectural approval pursuant to this
17 Article 7. Any approved temporary building shall be used only for
18 purposes incidental to approved construction and shall be removed
19 promptly upon completion of the work.
20

21 7.2.13 Structural Integrity of Dwellings; Floors, Walls, Ceilings, or Utility
22 Systems. Prior architectural approval shall be required for (i) any
23 change that may affect the structural integrity of any Dwelling or Lot or
24 of the Common Area, including but not limited to removing, moving,
25 changing, or creating any opening in a wall, floor, or ceiling within a
26 Dwelling or (ii) any change in the plumbing, electrical wiring, heating
27 and ventilating ducts, or any other system that may affect neighboring
28 Dwellings, Lots or the Common Area.
29

30 7.2.14 Window Replacement. No window frame, sash, or sliding door shall
31 be installed without prior architectural approval and such approval shall
32 be subject to such conditions as the Board may determine, including
33 but not limited to release of the Association from liability and
34 indemnification of the Association by the Owner concerning damage to
35 property or injury to persons in connection with the installation or
36 presence of the new window frame, sash, and/or sliding door, and
37 obligation of the Owner to pay for incremental costs of maintenance,
38 repair, or replacement of the exterior surface of the Dwelling on
39 account of the installation or presence of the window, sash, and/or
40 sliding door.
41

42 7.3 Architectural Rules.
43

44 7.3.1 In General. Subject to the requirements of *Civil Code* section 4340
45 and following, the Board may from time to time adopt, amend, and
46 repeal rules and regulations to be known as “Architectural Rules.”
47 Architectural Rules shall set forth the standards for architectural review

1 and guidelines for architectural design, placement of buildings and
2 other structures, outdoor lighting, and landscaping, color schemes,
3 exterior finishes and materials, and similar features which are
4 recommended for use in the Development and may include restrictions
5 on satellite dishes and solar energy systems consistent with applicable
6 law; *provided, however*, that Architectural Rules shall not be in
7 derogation of any minimum standards required by this Declaration.
8

9 7.3.2 Solar Energy Systems. Pursuant to *Civil Code* sections 714 and
10 714.1, reasonable restrictions on solar energy systems are permitted
11 provided they do not significantly increase the cost of the system or
12 significantly decrease the efficiency or specified performance, and they
13 allow for an alternative system of comparable cost, efficiency, and
14 energy conservation benefits. Such Rules may restrict installation in
15 Common Areas and may require that the Association be indemnified
16 for loss or damage caused by installation, maintenance, or use of solar
17 energy systems. Nothing in this Declaration shall be deemed to
18 authorize or permit any Owner to install any solar energy system upon
19 any portion of the Common Area.
20

21 7.4 Preliminary Consultation Prior to Submitting Application. Any Owner considering
22 performing any work requiring prior approval may apply to the Board for
23 preliminary consultation by submitting preliminary plans or drawings of the
24 contemplated work. The purpose of the preliminary consultation procedure is to
25 allow an Owner considering making substantial improvements an opportunity to
26 obtain guidance concerning design considerations before expending substantial
27 sums for plans and other exhibits required to apply for actual approval. Within
28 sixty (60) days after receiving a request for a preliminary consultation, the Board
29 shall consider the preliminary information submitted and shall respond in writing
30 to the Owner. The Board's response shall give the requesting Owner such
31 direction concerning the form and substance of an approval application for the
32 contemplated work as the Board deems proper or desirable for the guidance of
33 the Owner. The issuance of a preliminary consultation response by the Board
34 shall not under any circumstances be deemed approval of any contemplated
35 work; nor, once an Owner submits a request for approval, shall it preclude the
36 Board from requesting additional information about the proposed work based on
37 the actual application.
38

39 7.5 Written Request for Board's Approval. Any Owner proposing to perform any
40 work that requires prior approval pursuant to this **Article 7**, shall submit to the
41 Board (or the committee if one is appointed) a written request setting forth the
42 nature of the proposed work and furnishing such information and documentation
43 as the Board may require depending on the nature and size of the proposed
44 work. Such information and documentation may include but is not limited to: (i)
45 floor plans, (ii) color samples of exterior materials, (iii) specifications, (iv) building
46 plans, (v) wall sections, (vi) exterior elevations, (vii) roof plans, (viii) landscaping

1 plans, (ix) graphics and exterior furnishings, and (x) the Owner's proposed
2 construction schedule.

3
4 7.6 Fees; Professional Consultants. The Board may charge a reasonable fee or fees
5 for review of architectural or landscaping applications, drawings, plans, and
6 specifications which may include the cost of retaining outside consultants
7 including but not limited to architects, engineers, soils experts, or contractors.

8
9 7.7 Meetings. To the extent required by *Civil Code* section 4765 and as provided in
10 *Civil Code* section 4900, an Owner's request for approval shall be considered by
11 the Board in an open Board meeting. The Owner and, in the Board's discretion,
12 other interested persons, may present information relevant to the requested
13 approval.

14
15 7.8 Basis for Decisions; Good Faith. The Board's decisions shall be made in good
16 faith and shall not be unreasonable, arbitrary, or capricious. It is recognized and
17 intended that the Board will employ subjective criteria and judgments in its review
18 of and determination concerning plans and proposals submitted to it. The Board
19 shall make its decisions from the perspective of the interest of the Development
20 as a whole in the fostering of the coherence, value, attractiveness and aesthetic
21 compatibility of all architectural designs and features in the Development, after
22 consideration of such factors the Board reasonably determines to be relevant
23 and after reasonable investigation consistent with the scope and circumstances
24 of the proposal submitted to the Board. The Board shall grant the requested
25 approval only if:

26
27 (a) The Owner has submitted a complete application;

28
29 (b) The Board finds that the plans and specifications conform to this
30 Declaration and to the Architectural Rules in effect at the time such plans
31 were submitted to the Board;

32
33 (c) The Board finds that the proposed work will, if approved, be consistent
34 and compatible with the architectural and aesthetic standards prevailing
35 within the Development and will be in harmony with the external design
36 and appearance of other existing structures and improvements within the
37 Development, and as to location with respect to topography and finished
38 grade elevations; and

39
40 (d) The Board determines that the proposed work would be consistent with
41 the standards of the Development and the purposes of this Declaration as
42 to quality of workmanship and materials.

43
44 7.9 Decisions in Writing; Timely Decision; Reasonable Conditions. All approvals and
45 rejections of requests for approval shall be in writing and shall be issued by the
46 Board within forty-five (45) days from the date of submission of a complete
47 application to the Board. Any approval may include such reasonable conditions

1 as the Board may determine. If a request is rejected, the decision shall include
2 an explanation of the Board's decision.
3

4 7.10 Variations. The Board may, but is not obligated to, grant variances or
5 adjustments in its discretion if necessary to overcome practical difficulties due to
6 topography or other conditions unique to a particular Lot, avoid unnecessary
7 expense, or prevent unnecessary hardship in the application of the provisions of
8 the Declaration; *provided, however*, that such variance or adjustment does not
9 violate the purpose or purposes intended to be served by the standard or criteria
10 being waived in each instance and is in conformity with the intent and purposes
11 of the Declaration; and, *provided further*, that no such variance shall constitute a
12 waiver of such provision with respect to any future application whether for the
13 same Lot or any other Lot. Any variance granted by the Board shall be noted in
14 the written approval of the proposed work and may be required by the Board to
15 be recorded in the County records.
16

17 7.11 Failure of Board to Make Timely Decision. If the Board fails to act on a request
18 for approval within the time specified in Section 7.9 ("Decisions in Writing; Timely
19 Decision; Reasonable Conditions"), the Owner shall be entitled to invoke internal
20 dispute resolution pursuant to *Civil Code* section 5910, discussed in Section
21 14.16 ("Internal Dispute Resolution"); *except that*, (i) in the case of an application
22 for installation or use of a solar energy system subject to *Civil Code* section 714,
23 any application that is not denied by the Board within forty-five (45) days from
24 receipt of a complete application shall be deemed approved; and (ii) in the case
25 of an application for installation of an electric vehicle charging station subject to
26 *Civil Code* section 4745, any application that is not denied by the Board within
27 sixty (60) days from receipt of a complete application shall be deemed approved.
28 Nevertheless, as provided in Section 7.2.10 ("Solar Energy Systems"), nothing in
29 this Declaration shall be deemed to authorize or permit any Owner to install any
30 solar energy system upon any portion of the Common Area or Exclusive Use
31 Common Area.
32

33 7.12 Failure to Obtain Required Approval. If any work that requires prior approval
34 pursuant to this Article 7 is performed without such approval having been
35 obtained, the Board shall be entitled to proceed in accordance with the provisions
36 of Section 7.19 ("Failure to Remedy Non-conformity") and as though the Board
37 had given written notice of non-conformity with approved plans per Section 7.18
38 ("Notice of Non-conformity").
39

40 7.13 Compliance with Governmental Requirements. The Owner of the Lot is required
41 to obtain all permits and governmental authorizations, if any, required for any
42 work done upon such Owner's Lot and such Owner must comply with all
43 applicable zoning and building codes as well as other applicable laws and
44 ordinances. The Owner of each Lot is solely responsible for complying with any
45 applicable building permit process or other governmental requirements with
46 respect to any work done upon the Owner's Lot. Submission of a request for
47 approval by the Board and the review and approval of any proposals, plans, or

1 other submittals shall in no way be deemed to be satisfaction of or compliance
2 with any building permit process or any other governmental requirements, nor
3 shall it constitute the assumption of any responsibility by or impose any liability
4 on the Association, the Board, or its or their members as to the accuracy,
5 efficacy, or sufficiency thereof. When Architectural approval standards of the
6 Association are more stringent than applicable governmental standards, the
7 more stringent standards of the Association shall apply, notwithstanding the fact
8 that governmental approval may have been obtained based on governmental
9 standards that are less stringent than those of the Association.

10
11 7.14 Commencement of Approved Work. Upon receipt of written approval, the Owner
12 shall, as soon as practicable, satisfy all conditions of the approval and diligently
13 proceed with the commencement and completion of all approved work.
14 Commencement of the approved work shall occur, in all cases, within six (6)
15 months from the date of such approval. If the Owner fails to comply with this
16 paragraph, any approval previously given shall be deemed revoked unless the
17 Board, upon written request of the Owner made prior to the expiration of the time
18 for commencement of the approved work, extends the time for such
19 commencement. The Board shall not grant an extension of time for
20 commencement of the work if the Board finds that there has been a material
21 change in the circumstances upon which the original approval was granted.

22
23 7.15 Notice to Association Before Commencement of Work; Bond. The Board, in its
24 discretion, may require an Owner to give the Association and any other Owner
25 whose Lot will be affected by the work up to thirty (30) days' prior written notice
26 before commencing approved work so that the Association or other Owner may
27 record a notice of non-responsibility or take other appropriate action. The Board
28 may require from the Owner performing work a bond or other assurance (such as
29 disbursement through a voucher system of payments directly to materialmen,
30 contractors, and subcontractors) to protect against mechanic's or materialmen's
31 liens arising against the Common Area or other Lots.

32
33 7.16 Completion; Extension of Deadline. The Owner shall complete all approved work
34 within one (1) year after commencement thereof; except that in the case of
35 reconstruction after substantially total destruction of the improvements on a Lot,
36 the construction or reconstruction shall be completed within eighteen (18) months
37 after commencement thereof. In the case of projects under construction when
38 this Declaration is recorded, the construction or reconstruction shall be
39 completed by the completion date specified in the project approval or, if no such
40 completion date was specified, within one year (or in the case of original
41 construction on a vacant Lot or reconstruction after substantially total destruction
42 of the improvements on a Lot within eighteen months), after the date of
43 recordation. The date for completion may be extended as long as such
44 completion is rendered impossible or would result in great hardship to the Owner
45 due to strikes, fires, national emergencies, natural calamities, or other
46 supervening forces beyond the control of the Owner or his or her agents,
47 provided the Owner notifies the Board of such occurrence within a reasonable

1 time after becoming aware of it. If an Owner fails to comply with this Section
2 7.16, the Board shall be entitled to proceed in accordance with the provisions of
3 Section 7.19 (“Failure to Remedy Non-conformity”) and as though the Board has
4 given written notice of non-conformity with approved plans per Section 7.18
5 (“Notice of Non-conformity”).
6

7 7.17 Notice of Completion; Inspection of Completed Work. Upon the completion of
8 any work for which approval is required under this Article 7, the Owner shall give
9 written notice of completion to the Board. The written notice shall include copies
10 of all applicable permits, job cards, and building permit inspections. Within sixty
11 (60) days after receiving notice of completion from the Owner, the Board or its
12 duly-authorized representative may inspect such work to determine if it
13 substantially complies with the granted approval and Owner shall cooperate with
14 the Board to conduct such inspection. If the Board fails to notify the Owner of
15 any non-conformity within such sixty (60) day period, the work shall be deemed
16 to be in accordance with the granted approval. If the Owner fails to give notice of
17 completion, the Board shall be entitled to proceed in accordance with the
18 provisions of Section 7.19 (“Failure to Remedy Non-conformity”) and as though
19 the Board had given written notice of non-conformity with approved plans per
20 Section 7.18 (“Notice of Non-conformity”).
21

22 7.18 Notice of Non-conformity. If the Board finds that the work was not done in
23 substantial conformity with the granted approval, it shall notify the Owner in
24 writing before the end of such sixty (60) day period set forth in Section 7.17
25 (“Notice of Completion; Inspection of Completed Work”) specifying particulars of
26 non-conformity and requiring the Owner to remedy the same within thirty (30)
27 days from the date of the notice from the Board or such longer time as the Board
28 may designate in the notice.
29

30 7.19 Failure to Remedy Non-conformity. If the Owner fails to remedy such non-
31 conformity within the time specified in the notice of non-conformity, the Board
32 shall then, pursuant to the procedures set forth in Section 14.12 (“Hearing Called
33 by the Board; Executive Session; Open Meeting”), set a date on which a hearing
34 before the Board shall be held regarding the alleged non-conformity. If the Board
35 finds at such hearing that a substantial non-conformity exists, the Board may, in
36 addition to any other remedy available under the Governing Documents or
37 applicable law, order the Owner to remedy or remove such non-conformity. If the
38 Owner thereafter fails to do so within the time specified by the Board, the Board
39 may, in addition to any other remedy available under the Governing Documents
40 or applicable law, remove or remedy the non-conformity and, in that event, all
41 expenses incurred by the Association in connection therewith shall be assessed
42 against the Owner as a Reimbursement Assessment.
43

44 7.20 Non-waiver. The approval by the Board of any plans, drawings, or specifications
45 for any work done or proposed, or for any other matter requiring approval under
46 this Article 7, shall not be deemed to constitute a waiver of the right to withhold

1 approval of any similar plan, drawing, specification, or matter subsequently
2 submitted for approval with respect to the same Lot or any other Lot.

3
4 7.21 Disclaimer of Liability. Neither the Board, nor any committee, nor any member
5 thereof shall be liable to the Association, to any Owner, or to any person deriving
6 an interest through an Owner for any damage, loss, or prejudice suffered or
7 claimed on account of: (i) the approval or disapproval of any plans, drawings,
8 and specifications, whether or not defective; (ii) the construction or performance
9 of any work, whether or not pursuant to approved plans, drawings, and
10 specifications; or (iii) the development of any property within the Development;
11 *provided, however,* that the Board, committee, or such member has acted in
12 good faith on the basis of such information as may be possessed by it or him or
13 her. Without limiting the generality of the foregoing, the Board or any committee
14 may, but is not required to, consult with or hear the views of the Association or
15 any Owner with respect to any plans, drawings, specifications, or any other
16 proposal submitted for approval pursuant to this **Article 7**. Every purchaser, by
17 acquiring title to a Lot or portion thereof agrees not to bring any action or suit
18 against the Board, the committee, or its or their members seeking to recover any
19 such damages.
20

21 **ARTICLE 8 ASSESSMENTS AND LIENS**

22
23
24 8.1 Covenant of Owner. Each Owner of a Lot within the Development, by
25 acceptance of a deed or other conveyance thereof, whether or not it shall be so
26 expressed in such deed or conveyance, shall be deemed to have covenanted
27 and agreed to pay to the Association all: (i) Annual Assessments, (ii) Special
28 Assessments, (iii) Reimbursement Assessments, and (iv) Enforcement
29 Assessments levied by the Association as hereinafter provided, together with all
30 Additional Charges.
31

32 8.1.1 Association's Power to Collect. Such deed or conveyance shall be
33 deemed to vest in the Association the right and power to initiate all
34 actions and procedures as the Board shall deem necessary or
35 appropriate for the collection of such Assessments and Additional
36 Charges and for the enforcement of the liens hereinafter provided for.
37

38 8.1.2 Assessments Are a Personal Obligation. Assessments levied by the
39 Association pursuant to this Declaration, together with all Additional
40 Charges, shall be a personal debt and obligation of the Owner against
41 whom they are assessed, and shall bind his or her heirs, devisees,
42 personal representatives, successors, and assigns.
43

44 8.1.3 Obligation Runs with the Land. The obligation to pay Assessments
45 and Additional Charges and the right and power of the Association to
46 initiate all actions and procedures for collection shall run with the land,

1 so that each successive Owner or Owners of any Lot shall, in turn,
2 become liable to pay all such Assessments and Additional Charges
3 assessed that become due and payable during the time he or she is
4 Owner of such Lot.

5
6 8.1.4 Owner's Liability After Transfer. After an Owner transfers his or her
7 ownership interest in any Lot, he or she shall not be liable for any
8 Assessments levied thereafter with respect to such Lot. Such Owner
9 shall remain personally liable, however, for all unpaid amounts due and
10 owing at the time of transfer, together with Additional Charges accruing
11 until time of collection. No assumption of personal liability by a
12 successor Owner shall relieve any Owner from personal liability for
13 delinquent Assessments. A Contract Seller of any Lot shall continue to
14 be liable for all Assessments and Additional Charges until a
15 conveyance by deed of such Lot is recorded in the Office of the County
16 Recorder.

17
18 8.2 Creation of Lien. Each Assessment levied by the Association pursuant to this
19 Declaration, together with all Additional Charges, shall be a charge upon the land
20 and upon levy shall be secured by a continuing lien upon the property against
21 which such Assessment is levied. The Association shall have a separate lien
22 and a separate lien is hereby created upon each Lot to secure the payment of
23 any such Assessments and Additional Charges as may be levied under this
24 Declaration.

25
26 8.2.1 Lien Is Continuing. The lien provided for herein shall continue to
27 secure all Assessments and Additional Charges levied upon any Lot
28 notwithstanding the transfer of record title to such Lot, and any such
29 transfer shall be subject to the Association's lien, provided that, prior to
30 such transfer, a notice of delinquent assessment has been recorded as
31 provided in the Declaration and by law.

32
33 8.2.2 Priority of Association's Assessment Liens. The priority of all such
34 liens on each Lot shall be in inverse order so that upon the foreclosure
35 of the lien for any particular charge on any Lot, any sale of such Lot
36 pursuant to foreclosure of the lien will be made subject to all liens
37 securing Assessments and Additional Charges on such Lot that
38 become due and payable subsequent to the lien being foreclosed
39 upon.

40
41 8.3 Purpose of Assessments. The Assessments levied by the Board shall be used
42 exclusively to pay for the costs of management and operation of the
43 Development, of conducting the business and affairs of the Association, to
44 promote the recreation, health, safety, welfare, benefit, and interests of the
45 Owners and Residents in the Development, and for the improvement and
46 maintenance, repair, and replacement of the Common Area and, to the extent
47 provided for in the Governing Documents or by law, of the Lots situated within

1 the Development or which, in the opinion of the Board, shall be deemed to be
2 necessary or proper for the management of the Development or of the affairs of
3 the Association, or the benefit of the Owners, or for the enforcement of the
4 Governing Documents.

5
6 8.4 Funds to Be Held in Association's Name. Unless otherwise determined by the
7 Board, the Association shall maintain at least two (2) separate accounts in one
8 (1) or more banks or other depositories selected by the Board, which accounts
9 shall be clearly designated Casa del Rey HOA of Santa Clara operating account
10 and Casa del Rey HOA of Santa Clara reserve account. The Assessments
11 collected by the Association shall be properly deposited into such accounts.
12 Withdrawal of funds from Association accounts shall be subject to the
13 requirements of Section 10.4 of the Bylaws ("Checks, Drafts, and Evidences of
14 Indebtedness").

15
16 8.5 Funds Held in Trust for Owners. The Assessments collected by the Association
17 shall be held in trust by the Association for and on behalf of each Owner. Upon
18 sale or transfer of any Lot by any Owner, the Owner's interest in the funds held in
19 trust by the Association shall terminate and shall be deemed automatically
20 transferred to the successor-transferee of such Owner.

21
22 8.6 Authority of the Board to Levy Assessments. The Board shall have the power
23 and the duty to levy Annual Assessments and Special Assessments sufficient to
24 meet the Association's obligations under the Governing Documents and
25 applicable law.

26
27 8.7 Annual Assessment.

28
29 8.7.1 Calculation of Estimated Requirement. Prior to the beginning of each
30 fiscal year, the Board shall estimate the net funds required by the
31 Association for such fiscal year to manage, administer, operate, and
32 maintain the Development; to conduct the affairs of the Association;
33 and to perform all of the Association's duties in accordance with the
34 Governing Documents, including a reasonable amount allocated to
35 contingencies and to a reserve fund for restoration, repair, and/or
36 replacement of those components for which the Association is
37 responsible and which must be repaired or replaced on a periodic
38 basis. The amount of estimated required funds shall constitute the
39 Annual Assessment.

40
41 8.7.2 Allocation of Annual Assessment. The Board shall allocate and assess
42 the Annual Assessment equally among the Lots by dividing the amount
43 by the number of Lots within the Development. Notwithstanding the
44 foregoing, if the Annual Assessment includes charges for commonly
45 metered utilities supplied to the Lots and any Owner-installed or
46 tenant-installed alteration to a Lot or any business use conducted upon
47 a Lot results in disproportionate electrical, water, or other utility usage

1 for that Lot, the Board may allocate such commonly metered utility
2 costs as the Board determines is reasonable and equitable.

3
4 8.7.3 Payment of Annual Assessment. Unless the Board shall designate
5 otherwise, Annual Assessments shall be levied on an annual basis and
6 shall be paid in twelve (12) equal monthly installments during the fiscal
7 year, and each installment shall be due and payable on the first day of
8 each month.

9
10 8.7.4 Notice of Annual Assessment. Not less than thirty (30) days and not
11 more than ninety (90) days prior to the beginning of each fiscal year,
12 the Board shall send to each Owner a notice of the amount of the
13 Annual Assessment allocated to his or her Lot, except that if there is
14 an increase in the Annual Assessment over the previous year, in
15 compliance with *Civil Code* section 5615, the notice shall be provided
16 to the Owner by Individual Delivery not less than thirty days and not
17 more than sixty (60) days before the due date of the increased Annual
18 Assessment.

19
20 8.7.5 Permitted Increase in Annual Assessment. Pursuant to *Civil Code*
21 section 5605(b), except as otherwise provided by law, the Board shall
22 not increase the Annual Assessment for any fiscal year above the
23 amount of the Annual Assessment for the preceding fiscal year by
24 more than twenty percent (20%) (or such other limitation on the
25 increase as may be imposed by law), except upon the affirmative vote
26 of a majority of Members voting on any such increase in the Annual
27 Assessment, provided that a quorum is established. For purposes of
28 the preceding sentence and to the extent required pursuant to *Civil*
29 *Code* section 5605(c), a quorum shall mean more than fifty percent
30 (50%) of the Members of the Association, notwithstanding any lower
31 quorum requirement which may be set forth in the Bylaws.

32
33 8.7.6 Revised Annual Assessment. Subject to the provisions of **Section**
34 **8.7.5** ("Permitted Increase in Annual Assessment") or as otherwise
35 permitted by law, if at any time during the course of any fiscal year, the
36 Board determines the amount of the Annual Assessment to be
37 inadequate, by reason of a revision of its estimate of either expenses
38 or income or otherwise, the Board shall have the right, at a regular or
39 special meeting of the Board, to revise the Annual Assessment for the
40 balance of the fiscal year. To the extent required by *Civil Code* section
41 5615, notice of any such increase shall be given to the Members by
42 Individual Delivery and such revised Annual Assessment shall become
43 effective on the first day of the next month that is at least thirty (30)
44 days and not more than sixty (60) days after the date of such notice.

45
46 8.7.7 Failure to Fix Annual Assessment. The failure or omission by the
47 Board to fix or levy any Annual Assessment before the expiration of

1 any fiscal year, for that fiscal year or the next fiscal year, shall not be
2 deemed either a waiver or a modification in any respect of the
3 provisions of this Declaration, or a release of any Owner from the
4 obligation to pay Assessments or any installment thereof for that or any
5 subsequent year, but the amount of the Annual Assessment fixed for
6 the preceding fiscal year shall be the amount of the Annual
7 Assessment for the ensuing fiscal year until a new Annual Assessment
8 is levied.
9

10 8.8 Special Assessments.

11
12 8.8.1 Purpose of Special Assessments. If at any time during any fiscal year
13 the Annual Assessment proves inadequate for any reason, including
14 nonpayment of any Owner's share thereof or the unexpected repair,
15 replacement, or reconstruction of improvements located in the
16 Development, or if funds are otherwise required for any authorized
17 activity of the Association, the Board may levy a Special Assessment
18 in the amount of such actual or estimated inadequacy or cost.
19

20 8.8.2 Permitted Amount of Special Assessments. Except in the case of an
21 emergency situation as defined in *Civil Code* section 5610, in any fiscal
22 year the Board may not levy Special Assessments which, in the
23 aggregate, exceed five percent (5%) of the budgeted gross expenses
24 of the Association for that fiscal year (or such other limitation on the
25 amount as may be imposed by law), except upon the affirmative vote
26 of a majority of the Members voting on any such Special Assessment,
27 provided that a quorum is established. For purposes of the preceding
28 sentence and to the extent required pursuant to *Civil Code* section
29 5605(c), a quorum shall mean more than fifty percent (50%) of the
30 Members of the Association, notwithstanding any lower quorum
31 requirement which may be set forth in the Bylaws.
32

33 8.8.3 Allocation of Special Assessments. Special Assessments shall be
34 allocated and assessed among the Lots in the same manner as Annual
35 Assessments.
36

37 8.8.4 Notice of Special Assessment. Upon the imposition of a Special
38 Assessment or an increase in a Special Assessment, in compliance
39 with *Civil Code* section 5615, notice thereof shall be given to each
40 Owner by Individual Delivery, not less than thirty (30) days and not
41 more than sixty (60) days prior to the due date of the Special
42 Assessment.
43

44 8.8.5 Payment of Special Assessments; Cost of Payment Plans. Special
45 Assessments shall be payable in a lump sum or in installments as may
46 be determined by the Board with regard to each Special Assessment
47 when it is imposed. If the Association incurs additional expenses

1 because of a payment method selected by an Owner (for example, but
2 not limited to, paying a Special Assessment in installments instead of
3 in a lump sum), the Association may charge such expense to the
4 Owner as an Additional Charge or as a Reimbursement Assessment.
5 Nothing in this **Section 8.8** shall be deemed to obligate the Association
6 to offer or permit alternate payment plans.
7

8 **8.9 Application of Surplus Funds (IRS Resolution).** If, as of the end of any fiscal
9 year, there is an excess of membership income over membership expenses as
10 defined in Internal Revenue Code section 277 for the year ended, the Board shall
11 determine, without the need for a Member vote, whether such excess shall be
12 applied to reserves and deposited in the Association's reserve account or shall
13 be applied against the subsequent tax year's Member Assessments as provided
14 in Internal Revenue Service Revenue Ruling 70-604. If the Board does not
15 determine to so apply such excess membership income to reserves or to the
16 subsequent year's Member Assessments, any other lawful disposition of such
17 excess income shall be as determined by the vote of the Members.
18

19 **8.10 Reimbursement Assessments.** The Board, after notice and a hearing as
20 provided for in **Section 14.11** ("Notices: Content, Delivery") and **Section 14.12**
21 ("Hearing Called by the Board; Executive Session; Open Meeting"), may levy a
22 Reimbursement Assessment against an Owner and his or her Lot:
23

- 24 (a) To reimburse the Association for costs incurred to maintain, repair, or
25 replace property (including property within a Lot) when such damage is
26 due to the act or neglect of such Owner, his or her Contract Purchaser, or
27 member of his or her household, pet, tenant, invitee, or guest, or as
28 otherwise provided in the Governing Documents;
- 29 (b) If the failure of such Owner, his or her Contract Purchaser, or member of
30 his or her household, pet, tenant, invitee, or guest to comply with any
31 provision of the Governing Documents has necessitated or resulted in an
32 expenditure of funds by the Association to deal with such lack of
33 compliance or to bring such person or the Lot into compliance;
- 34 (c) To reimburse the Association for any costs of collecting from an Owner
35 any amount the Owner is obligated to pay the Association.
36
37
38

39 Without limiting the generality of the foregoing, and to the fullest extent
40 permitted by law, all costs including attorney fees, incurred by the
41 Association to enforce **Section 5.8** ("Restriction on Businesses"), **Section**
42 **5.14** ("Animals"), **Section 6.8** ("Association As Third Party Beneficiary"),
43 **Section 6.9** ("Indemnification Regarding Tenant's Actions"), **Section 8.18**
44 ("Assignment of Rents As Security for Payment"), and **Section 14.6**
45 ("Injunctions"), or to defend any claim arising or alleged to arise from any
46 of the foregoing sections, shall be reimbursed to the Association as a

1 Reimbursement Assessment. Any Reimbursement Assessment shall be
2 due and payable to the Association when levied.
3

4 8.11 Enforcement Assessments. Subject to the requirements set forth in **Section 14.8**
5 (“Imposing Sanctions”), the Board may levy an Enforcement Assessment (and
6 any fine or monetary penalty imposed by the Board in accordance with the
7 provisions of the Governing Documents shall be deemed to be such an
8 Enforcement Assessment), for violation of any of the provisions of the Governing
9 Documents. Any Enforcement Assessment shall be due and payable to the
10 Association when levied.
11

12 8.12 No Offsets. All Assessments levied by the Board shall be payable in the full
13 amount specified, including any Additional Charges imposed as provided by the
14 terms of this Declaration, and no offsets against any such amounts shall be
15 permitted for any reason whatsoever, including without limitation a claim that the
16 Association has failed to properly exercise its duties of maintenance or
17 enforcement.
18

19 8.13 Bad Checks. An Owner who writes a check to the Association on insufficient
20 funds may be charged a service fee in the amount permitted by *Civil Code*
21 section 1719 and may be liable for damages to the Association in an amount
22 equal to three (3) times the amount of the bad check, as provided by statute.
23

24 8.14 Delinquent Assessments; Acceleration in the Event of Delinquency. Any
25 installment or other portion of an Assessment not received within fifteen (15)
26 days after its due date shall be delinquent and, to the fullest extent permitted by
27 law including *Civil Code* section 5650(b), shall be subject to a late charge and,
28 thirty (30) days after the due date, interest not to exceed the maximum rate
29 permitted by law, as well as all other Additional Charges. If any monthly
30 installment of the Annual Assessment or any installment of a Special
31 Assessment that has been levied or is permitted to be paid on an installment
32 basis is delinquent for a period of sixty (60) days, the Association may, but shall
33 not be obligated to, declare the entire balance of the Annual Assessment or the
34 Special Assessment immediately due and payable together with all other
35 delinquent amounts.
36

37 8.15 Enforcement by Action at Law or Foreclosure. The Board, on behalf of the
38 Association, may enforce the payment of any delinquent Assessment plus
39 Additional Charges by bringing an action at law against any Owner personally
40 obligated to pay the same, or by foreclosing the lien against the Owner’s Lot by
41 judicial or non-judicial foreclosure, to the fullest extent permitted by law. To the
42 extent prohibited by *Civil Code* section 5725(b), the amount of an Enforcement
43 Assessment may not become a lien that is enforceable by non-judicial
44 foreclosure.
45

46 8.15.1 Pre-lien Notice. At least thirty (30) days prior to recording a notice of
47 delinquent assessment against a Lot to collect a debt that is past due,

1 the Association shall provide written notice to the Owner(s) of the Lot,
2 as required by *Civil Code* section 5660 (“Pre-lien Notice”).
3

4 8.15.2 Prior to Recording a Lien. Prior to recording a notice of delinquent
5 assessment, the Association shall comply with all applicable
6 requirements imposed by law, including offering to participate in
7 internal dispute resolution (Section 14.16 “Internal Dispute Resolution”)
8 or alternative dispute resolution (Section 14.17 “Alternative Dispute
9 Resolution Before Initiating Lawsuit”) to the extent required pursuant to
10 *Civil Code* section 5670 and making the decision to record a lien for
11 delinquent Assessments at an open meeting of the Board, to the extent
12 required pursuant to *Civil Code* section 5673.
13

14 8.15.3 Owner’s Right to Discuss Payment Plan. To the extent provided in
15 *Civil Code* section 5665, an Owner may submit to the Board a written
16 request to discuss a payment plan for a debt noticed in a pre-lien
17 notice. If the Owner’s written request is mailed to the Board (as
18 evidenced by a postmark or receipt of mailing) within fifteen (15) days
19 after the postmark on the pre-lien notice, the Board shall meet with the
20 Owner within forty-five (45) days of the postmark date of the Owner’s
21 written request, unless there is not a regularly scheduled Board
22 meeting within the period, in which case the Board, in its discretion,
23 may hold a special meeting in executive session to meet with the
24 Owner or may designate a committee of one (1) or more Board
25 members to meet with the Owner.
26

27 8.15.4 Notice of Delinquent Assessment. The amount of the past due debt
28 noticed in the pre-lien notice shall be a lien from and after the
29 recording of a notice of delinquent assessment. No later than ten (10)
30 days after recordation, a copy of the notice of delinquent assessment
31 shall be mailed by certified mail in compliance with *Civil Code* section
32 5675 to every person whose name is shown as an Owner of the Lot in
33 the Association records or in such manner and to such persons as may
34 be required by applicable law.
35

36 8.15.5 Delinquent Assessments of Less Than \$1,800. To the extent provided
37 in *Civil Code* section 5720(b), delinquent Assessments totaling less
38 than One Thousand Eight Hundred Dollars (\$1,800) that are less than
39 twelve (12) months delinquent may not be collected by judicial or non-
40 judicial foreclosure, but may be collected in any other manner provided
41 by law including a civil action in small claims court to the extent
42 provided in *Civil Code* section 5720(b)(1) or recording a lien as
43 provided in *Civil Code* section 5720(b)(2). Prior to recording such a
44 lien the Association shall offer to participate in internal dispute
45 resolution (Section 14.16 “Internal Dispute Resolution”) to the extent
46 required by *Civil Code* section 5720(b)(2).
47

1 8.15.6 Initiating Foreclosure. As provided in *Civil Code* section 5700(a), no
2 procedures shall be initiated to foreclose the lien securing any noticed
3 past due debt under this **Article 8** until after the expiration of thirty (30)
4 days following the recording of a notice of delinquent assessment. To
5 the extent required pursuant to *Civil Code* section 5705(b), the
6 Association shall offer to participate in internal dispute resolution
7 (**Section 14.16** "Internal Dispute Resolution") or alternative dispute
8 resolution (**Section 14.17** "Alternative Dispute Resolution Before
9 Initiating Lawsuit"). To the extent required by *Civil Code* section
10 5705(c), a decision to initiate foreclosure shall be made only by the
11 Board in an executive session meeting.
12

13 8.15.7 Amount Due and Payable. Except with respect to the amount of any
14 Enforcement Assessment, upon the recording of the notice of
15 delinquent assessment referred to above, the Association may, at its
16 option, declare the entire balance of all sums then due or to become
17 due from the Owner, immediately due and payable, which total sum
18 may then be included in any suit, action, or other procedure initiated to
19 collect said sums, including all Additional Charges.
20

21 8.15.8 Notice of Initiating Foreclosure. To the extent required pursuant to
22 *Civil Code* section 5705(d), the Association shall provide written notice
23 of initiating foreclosure to the record Owner of the Lot, including notice
24 by personal service to any resident Owner.
25

26 8.16 Power of Sale. Each Owner does hereby appoint the Association as trustee to
27 enforce and to foreclose any lien which is established pursuant to the terms of
28 this Declaration, by private power of sale, as provided in Division III, Part 4, Title
29 14, Chapter 2, Article 1, (Section 2920 and following) of the *Civil Code* of the
30 State of California, and does further grant to the Board of Directors, on behalf of
31 the Association, the authority and power to sell the Lot of such Owner in the
32 event of any default in payment of any Assessments or Additional Charges levied
33 against such Lot, for lawful money of the United States, to the highest bidder, to
34 satisfy said lien. The Association, as trustee for the remaining Owners, or any
35 other Owner, may purchase the Lot at said sale.
36

37 8.17 Right of Redemption. To the extent provided pursuant to *Civil Code* section
38 5715(b), a non-judicial foreclosure to collect delinquent Assessments shall be
39 subject to a right of redemption.
40

41 8.18 Assignment of Rents As Security for Payment. As security for the payment of all
42 liens provided for under this Declaration, each Owner hereby gives to and
43 confers upon the Association the right, power, and authority during the
44 continuance of such ownership to collect the rents, issues, and profits of the
45 Owner's Lot, reserving unto the Owner the right, prior to any default by such
46 Owner in performance of that Owner's obligations under the Governing
47 Documents in payment of any indebtedness to the Association, to collect and

1 retain such rents, issues, and profits as they become due and payable. Upon
2 any such default, the Association may (i) instruct the tenant to pay rent to the
3 Association as and when such rents become due or (ii) at any time upon ten (10)
4 days' written notice to such Owner (either in person, by agent, or by a receiver to
5 be appointed by a court, and without regard to the adequacy of any security for
6 such indebtedness) in its own name sue for or otherwise collect such rents,
7 issues, and profits, including those past due and unpaid, and in either event
8 apply the same, less costs and expenses of operation and collection, including
9 reasonable attorney fees, upon any such indebtedness, and in such order as the
10 Association may determine or as required by applicable law. Owner waives the
11 giving of any and all notices required by the laws of the State of California in
12 order for the Association to exercise the rights provided by this **Section 8.18**.
13 The collection of such rents, issues, and profits, and the application thereof as
14 aforesaid, shall not cure or waive any default under the Governing Documents or
15 invalidate any act done pursuant to this Declaration. The assignment of rents
16 and powers described in this **Section 8.18** shall not affect, but shall in all respects
17 be subordinate to, the rights and power of the holder of any First Mortgage on
18 any Lot, or any part thereof, to do the same or similar acts.
19

20 8.19 Remedies Are Cumulative. The Board may commence any procedure for the
21 collection of delinquent Assessments upon its own decision. The remedies
22 provided in this Declaration for collection of delinquent Assessments shall be
23 cumulative and not exclusive; that is, the Association may use one (1) or more or
24 all of the available remedies to collect delinquent Assessments to the fullest
25 extent permitted by law.
26

27 8.20 Partial Payments. The Association's acceptance of a partial payment, whether
28 involuntary or voluntary, shall not prevent the Association from pursuing any or
29 all of its available collection remedies.
30

31 8.21 Certificate of Satisfaction and Release of Lien. Upon payment in full of a
32 delinquent Assessment, including any Additional Charges, or the satisfaction
33 thereof, the Board shall cause to be recorded, in the same manner as the notice
34 of delinquent assessment, a further certificate stating the satisfaction thereof and
35 the release of the lien.
36

37 8.22 Subordination to Lien of First Mortgage. Except as otherwise expressly provided
38 by law, the lien securing each of the Assessments provided for under this
39 Declaration shall have priority as of the date of recordation of the notice of
40 delinquent assessment as provided in **Section 8.15.4** over all other liens and
41 encumbrances applicable to the Lots; *provided, however*, that such Assessment
42 lien shall be subordinate to the lien of any First Mortgage recorded against the
43 Lot prior to the date the notice of delinquent assessment was recorded; and
44 *provided, further*, that such subordination shall apply only to the Assessments
45 which have become due and payable prior to the sale of such property pursuant
46 to a decree of foreclosure of any such First Mortgage, or pursuant to a power of
47 sale contained in any such First Mortgage. Such foreclosure sale shall not

1 relieve such property from liability for any Assessments and Additional Charges
2 becoming due after the sale of such property pursuant to a decree of foreclosure
3 of any such First Mortgage, or pursuant to a power of sale contained in any such
4 First Mortgage, nor from the lien of any subsequent Assessment, including
5 Assessments levied against all Lots proportionately to compensate for the unpaid
6 Assessments and Additional Charges, which shall constitute a lien upon the
7 purchased Lot in accordance with this Article 8.

8
9 8.23 Waiver of Exemptions. Each Owner, to the extent permitted by law, does hereby
10 waive, to the extent of any liens created pursuant to this Declaration, the benefit
11 of any homestead or exemption laws of the State of California in effect at the
12 time any Assessment or installment thereof becomes delinquent or any lien is
13 imposed pursuant to the terms of this Declaration.

14
15 8.24 Property Exempt from Assessments. The following property subject to this
16 Declaration shall be exempt from the Assessments, Additional Charges, and
17 liens created herein:

- 18
19 (a) All property dedicated to and accepted by the City or County or other local
20 public authority and devoted to public use;
21
22 (b) Any Lot which is owned by the Association as a result of the Association
23 having acquired such Lot through foreclosure; *provided, however*, that
24 such exemption shall apply only during the period in which the Association
25 is record owner of such Lot; and
26
27 (c) All Common Area.

28
29
30 **ARTICLE 9 MAINTENANCE OF PROPERTY**

31
32 9.1 Association's Responsibility for Common Area Generally. The Association shall
33 provide maintenance, repair, and replacement of the Common Area and all
34 facilities, improvements, and landscaping thereon, including but not limited to
35 private streets, curbs, gutters and storm drainage system, visitor parking spaces,
36 signs, Private Driveways, open space, landscaping, including trees, plants and
37 grass, fences, utility boxes, sidewalks, trash service area, fire sprinklers for
38 dumpster area, the clubhouse recreation building and meeting rooms, the
39 swimming pool and related equipment, the gated pool area and poolside
40 restrooms the storm drainage system in the storm drainage easement as shown
41 on the Subdivision Map, and all other real and/or personal property that may be
42 acquired by the Association, keeping such property in good condition and repair;
43 *provided, however*, that the Association shall not be responsible for maintenance,
44 repair, or replacement of Exclusive Use Common Area portions of the Common
45 Area to the extent the responsibility therefor is expressly assigned to one (1) or

1 more Owners, as set forth in **Section 9.3.6** (“Owner’s Responsibility for Upkeep
2 of Private Driveway”). Without limiting the generality of the foregoing:
3

4 9.1.1 Landscaping; Janitorial; Painting in Common Area. The Association
5 shall specifically be responsible for providing lighting, landscaping,
6 gardening (including periodic replacement, as the Board deems
7 necessary, of trees, shrubs, and other plants upon the Common Area),
8 and janitorial services for the Common Area, as needed, and shall
9 cause any and all other acts to be done which may be necessary to
10 assure the maintenance of the Common Area in good condition and
11 repair, including painting of the exterior surfaces of Common Area
12 building(s) and such other portions of the Common Area as the Board,
13 in its discretion, determines to be necessary.
14

15 9.1.2 Common Area Utilities and Services. The Association shall procure
16 and pay for water, sewage, garbage, electrical, gas, and any other
17 utility service for the Common Area and (to the extent not separately
18 metered or charged) for the Lots. The Association shall maintain all
19 the aforementioned utility installations serving the Common Area
20 *except for* those installations maintained by utility companies, public,
21 private, or municipal. The Association shall maintain all
22 aforementioned utility installations that serve the Lots located in the
23 Common Area except for (i) those installations maintained by utility
24 companies, public, private, or municipal (including, but not necessarily
25 limited to, electrical utilities) and (ii) gas utility lateral lines that serve a
26 single Lot exclusively.
27

28 9.1.3 Common Area Perimeter Fences. The Association shall maintain,
29 repair, and replace all fences upon the Common Area including but not
30 limited to the fencing and gates surrounding the pool, and any fences
31 situated on or approximately on the boundary line between a Lot and
32 any portion of the Common Area, as set forth in **Section 9.1.4** (“Shared
33 Fences”) but excluding Party Fences (described in **Article 10** (“Party
34 Wall and Party Fences”).
35

36 9.1.4 Shared Fences. “Shared fences” shall mean and refer to any fence
37 situated upon or approximately upon the boundary between any Lot
38 and any portion of the Common Area. Except for situations described
39 in **Section 9.10** (“Owner’s Liability to Association for Negligent
40 Damage”), the cost of maintenance, repair, and replacement of shared
41 fences shall be borne by the Association.
42

43 9.1.5 Employees or Independent Contractors. The Association may perform
44 its obligations and provide such services as the Board shall determine
45 through employees of the Association or through independent
46 contractors. In either case, Residents or Owners shall not interfere

1 with or attempt to instruct any of such persons in the performance of
2 their duties.

3
4 9.2 Association's Responsibility for Lots and Exclusive Use Common Area. Unless
5 otherwise stated in this Declaration, the Owners are responsible for maintaining,
6 repairing and replacing their separate interest Lots and Dwellings. The
7 Association shall be responsible for the following components of the separate
8 interest Lots and Dwellings and Exclusive Use Common Area:

9
10 9.2.1 Painting. The Association shall have the exclusive right and
11 responsibility to periodically paint the exterior surfaces of the
12 Dwellings. For purposes of painting, exterior surfaces shall mean the
13 surfaces covering the exterior perimeter walls as such surface may be
14 replaced from time to time (including but not limited to siding or stucco,
15 the exterior surfaces of the balconies and the railings, the exterior
16 underside surface of rear and side balconies (but not the surface of
17 such balcony floors), exterior trim pieces around doors and windows;
18 the outside surface of front doors and front door frames, garage doors
19 and garage door frames, and the exterior surface of all gutters,
20 downspouts and vents). Any exterior improvements later placed upon
21 a Dwelling that was not a part of the original improvements planned for
22 and constructed upon the Dwellings are not a part of the "exterior
23 surfaces" for which the Association is responsible for painting.

24
25 The Association shall not be responsible for painting the floor surfaces
26 of rear and side balconies, exterior doors or door frames, window
27 frames or sashes, flashing around windows or doors, door or window
28 handles, hardware or locks, mailboxes, or any exterior decoration,
29 fixture or improvement placed upon any Dwelling.

30
31 "Painting" shall include varnishing, cleaning and priming surfaces as
32 necessary and caulking and sealing cracks as necessary to prepare
33 the exterior surfaces for the application of paint.

34
35 9.2.2 Exterior Building Surfaces. Other than as described in Section 9.2.1
36 ("Painting"), the Association shall be responsible for maintaining,
37 repairing, and replacing the exterior surfaces of Dwellings as follows:
38 siding, stucco or other exterior covering of the perimeter walls and the
39 moisture proof barrier below such exterior covering; trim including
40 pieces around doors and windows, and garage doors. Such
41 maintenance, repair, and replacement shall be periodically performed
42 by the Association as determined by the Board.

43
44 Other than the components noted above, the Association is not
45 responsible for maintaining, repairing, or replacing any portion of the
46 Dwellings, including the rear and side balconies (other than painting as
47 described in Section 9.2.1 ("Painting")), any glass, window frames,

1 window sashes, doors (other than front doors and garage doors),
2 flashing around windows or doors, door or window hardware or locks,
3 screens, any other exterior decoration or fixture, or any structural
4 systems to which the stucco, siding, exterior coverings and/or moisture
5 proof barriers are attached.
6

7 9.2.3 Roof Coverings. The Association shall have the exclusive right and
8 responsibility to provide maintenance, repair, and replacement of the
9 roofs of the Dwellings due to normal wear and tear and exposure to the
10 elements. "Roof" shall mean the exterior surface layers of the roofing
11 systems covering the Dwellings as they may be replaced from time to
12 time (including but not limited to shakes, shingles, ceramic and asphalt
13 tile, and tar and gravel surfacing, flashing, scuppers, and building
14 paper and felt or other secondary weatherproofing systems, the
15 plywood substrate or similar component upon which these exterior
16 surface coverings are attached. "Roof coverings" as used herein shall
17 not include the trusses or any other portions of the Dwelling unless
18 described above.
19

20 9.2.4 Front Balconies. In addition to the exterior surface maintenance
21 described in this Section 9.2, the Association shall have the exclusive
22 right and responsibility to provide maintenance, repair, and
23 replacement of the walking surface of the front balconies of the
24 Dwellings due to normal wear and tear and exposure to the elements.
25 This Section 9.2.4 only applies to the front balconies of those
26 Dwellings that were originally constructed by the developer with such
27 front balconies, and expressly excludes rear or side balconies or front
28 balconies not part of the original construction and any Owner-installed
29 balcony.
30

31 9.2.5 Gutters and Downspouts. The Association shall have the exclusive
32 right and responsibility to provide maintenance (including periodic
33 painting as provided in Section 9.2.1 ("Painting") and periodic
34 cleaning), repair, and replacement of the gutters and downspouts of
35 the Dwellings. The foregoing shall not include disposal of downspout
36 water at grade level, or maintenance, repair, or replacement of
37 foundation drains, if any.
38

39 9.2.6 Skylights and Roof-mounted Appliances; Obligation Runs with the
40 Land. The Association shall not be responsible for maintenance,
41 repair, or replacement of skylights or any roof-mounted appliances,
42 such as air-conditioning equipment or solar devices installed by
43 Owners. In the event that removal and reinstallation of Owner-installed
44 skylights, roof-mounted appliances, or other personal property affixed
45 to the roof is necessary or appropriate to facilitate the Association's
46 maintenance, repair, or replacement of the roof, upon thirty (30) days'
47 notice, the Owner shall be responsible for the removal and

1 replacement of such items, including any costs incurred for such
2 removal and replacement, as provided in **Section 9.3.5** (“Owner-
3 installed Skylights; Solar Systems; Other Roof-mounted Appliances”).
4 In the event that an Owner fails to remove such Owner-installed
5 skylight or other roof-mounted appliance after the thirty-day notice, the
6 Association shall remove and reinstall such appliance, with the costs
7 incurred by the Association in such work removing and reinstalling
8 such items, charged to the Owner as a Reimbursement Assessment.
9 The Association shall not be liable for any damage to an Owner-
10 installed skylight or roof-mounted appliance that may result from the
11 Association’s performance of its duty to repair or replace the roof as
12 described in **Section 9.2.3** (“Roof Coverings”) or such removal
13 described in this **Section 9.2.6**. In addition, the Owner may be charged
14 any additional costs incurred by the Association in the performance of
15 its responsibility to maintain, repair, and replace the roof, resulting from
16 the presence of such Owner-installed skylight, appliance, or device, as
17 the case may be. Responsibility for such incremental costs shall run
18 with the land and shall be binding upon the Owner who installed the
19 skylight, appliance, or device and each successor Owner of the Lot,
20 unless and until the Owner removes the skylight, appliance, or device
21 and restores the affected portion of the roof to the then-existing
22 Association standard as determined by the Board.
23

24 9.2.7 Landscaping. The Association shall have the exclusive right and
25 responsibility to provide landscaping and gardening (including
26 maintenance and periodic replacement, as the Board deems
27 necessary, of grass, trees, shrubs, and other plants as well as
28 irrigation and other landscaping improvements) in the unenclosed
29 portion of each Lot. The Association shall not be responsible for the
30 maintenance of any item that may be planted or placed by any Owner
31 in the unenclosed portion of each Lot.
32

33 9.2.8 Private Driveways. Except as provided in **Section 9.3.6** (“Owner’s
34 Responsibility for Upkeep of Private Driveway”), the Association shall
35 have the exclusive right and responsibility to provide for maintenance,
36 repair, and replacement of the Private Driveways serving the Lots up to
37 the garage entry.
38

39 9.2.9 Certain Portions of Utility Laterals in Lots. Except as stated in this
40 **Section 9.2.9**, the Association is not responsible for utility connections
41 to or serving the Lots, including, but not limited to, telephone lines,
42 cable television lines, internet service, fiber optic lines, fire alarm and
43 other security services. The Association’s responsibility to maintain,
44 repair and replace utility laterals and related components on the Lots is
45 limited to the following:
46

1 (i) Water lines. The Association is responsible for water lines up to
2 *but not including* the exterior main shutoff valve for each Lot.
3 Owners are responsible for the exterior main shutoff valve and
4 any water lines from the valve extending toward the Lot or
5 Dwelling.
6

7 (ii) Sewer lines. The Association is responsible for sewer laterals
8 connecting the mains to the Lots up to and including the clean-
9 out typically located near a Lot's garage door, including
10 replacement of broken clean-out covers. Owners are
11 responsible for the portion of the lateral extending from such
12 clean-out toward the Lot or Dwelling.
13

14 9.2.10 Limitation of Association's Responsibility in Case of Termites. Except
15 for the Association's responsibility for maintenance, repair, and
16 replacement of any of the components described in this **Section 9.2**,
17 the Association shall not be responsible for maintenance, repair, and
18 replacement of any portion of the Lot required due to the presence of
19 wood destroying pests or organisms, including mold, decay, dry rot,
20 and termites, as described in **Section 9.5** ("Wood Destroying
21 Organisms").
22

23 9.2.11 No Other Responsibility of Association. Except as provided in this
24 **Section 9.2**, the Association shall not otherwise be responsible for
25 maintenance, repair, or replacement of any other portion of the Lot,
26 including the Dwelling thereon.
27

28 9.3 Owner's Responsibility for Lots.

29 9.3.1 Owner's Responsibility for Improvements on Lots. Except to the extent
30 that maintenance, repair, or replacement of any improvement on a Lot
31 is expressly and clearly made the responsibility of the Association as
32 provided in **Section 9.2** ("Association's Responsibility for Lots and
33 Exclusive Use Common Area"), each Owner shall be responsible for
34 the maintenance, repair and replacement of his or her Lot and all
35 improvements thereon, keeping the same in a clean, sanitary,
36 workable, and attractive condition.
37

38 9.3.2 Patios. Each Owner shall be responsible to provide maintenance,
39 repair, and replacement of any patio serving the Lot, including any
40 portion thereof that encroaches upon the Common Area.
41

42 9.3.3 Owner's Responsibility for Party Walls and Party Fences. Owner's
43 responsibility for Party Walls and Party Fences shall be as set forth in
44 **Article 10** ("Party Walls and Party Fences").
45
46

1 9.3.4 Utility Lateral Lines. Each Owner shall be responsible for the
2 maintenance, repair and replacement of utility lateral lines as follows:

3
4 (i) Water lines. Owners are responsible for the exterior main
5 shutoff valve and any water lines from the valve extending
6 toward the Lot or Dwelling.

7
8 (ii) Sewer lines. Owners are responsible for the portion of the
9 sewer lateral extending from the clean-out (e.g., the clean-out
10 located closest to a Lot's garage door) toward the Lot or
11 Dwelling.

12
13 (iii) Gas. The utility company is responsible for anything up to and
14 including the Lot meter. Owners are responsible for all gas lines
15 from the Lot meter toward and into the Lot.

16
17 9.3.5 Owner-installed Skylights, Solar Systems, Other Roof-mounted
18 Appliances. Without limiting the generality of **Section 9.3.1** ("Owner's
19 Responsibility for Lots"), in the case of an Owner-installed skylight,
20 solar system, or any roof-mounted appliance or device that was not
21 part of the original construction of the Dwelling or a replacement
22 thereof, the Owner installing the same shall be responsible for
23 maintenance, repair, and replacement (when necessary) of such
24 skylight, appliance, or device as well as any incremental cost that may
25 be incurred by the Association in the performance of its responsibility
26 to maintain, repair, and replace the roof, resulting from the presence of
27 such skylight, appliance, or device, as the case may be. Responsibility
28 for such incremental costs shall run with the land and shall be binding
29 upon the Owner who installed the skylight, appliance, or device and
30 each successor Owner of the Lot, unless and until the Owner removes
31 the skylight, appliance, or device and restores the affected portion of
32 the roof to the then-existing Association standard as determined by the
33 Board.

34
35 9.3.6 Owner's Responsibility for Upkeep of Private Driveway. Each Owner
36 shall be responsible for day-to-day upkeep of the Private Driveway
37 appurtenant to his or her Lot, keeping the area free of debris and
38 promptly cleaning any fluid leaks.

39
40 9.3.7 Owner's Cooperation. Each Owner and Resident shall cooperate with
41 the Board and its agents in the performance of maintenance, repair, or
42 replacement by the Association of any portion of Common Area or the
43 Lots that is the Association's responsibility.

44
45 9.3.8 Compliance with Architectural Provisions. An Owner's right and
46 responsibility for maintaining, repairing or replacing any portions of his
47 or her Lot or Exclusive Use Common Area shall be subject to any

1 applicable provisions of the Governing Documents relating to
2 landscaping and architectural control, including **Article 7** (“Architectural
3 Approval”).
4

5 9.4 **Concealed Damage.** If, in the course of performing maintenance, repairs, or
6 replacement that is the Association’s responsibility, the Association or its agents
7 discover damage that is the Owner’s responsibility, the responsible Owner(s)
8 shall be promptly notified of the situation and of the time in which required repairs
9 or replacement must be performed in order for the Association to proceed with or
10 complete the work for which the Association is responsible. If, for any reason,
11 the responsible Owner does not perform or arrange for timely performance of the
12 required repairs or replacement, and the Board in its reasonable judgment
13 determines that a delay in the performance of such work by the Owner would
14 unreasonably delay or increase the cost of the work for which the Association is
15 responsible, then the Association shall have the right to arrange for the
16 performance of such repairs or replacement and charge the cost thereof to the
17 responsible Owner as a Reimbursement Assessment. Repair or replacement
18 performed by the Association pursuant to this **Section 9.4** may be performed on
19 shortened notice to the Owner, notwithstanding the repair period authorized in
20 **Section 9.8** (“Board’s Discretion to Require Maintenance”).
21

22 9.5 **Wood Destroying Organisms.** As provided in *Civil Code* section 4780(b), each
23 Owner is responsible for and shall perform maintenance and repair of his or her
24 Lot and Dwelling (other than those portions thereof that are the responsibility of
25 the Association, as provided in in **Section 9.2** (Association’s Responsibility for
26 Lots and Exclusive Use Common Area”) occasioned by the presence of wood
27 destroying pests or organisms, including responsibility for abatement. Without
28 limiting the generality of the foregoing, every Owner and Resident shall be
29 responsible for taking reasonable measures to prevent conditions that may cause
30 such damage, including but not limited to use of proper spacers under planters
31 and other objects that may trap moisture, stacking of firewood on racks, and
32 prompt removal of leaves, dirt, and other debris and may be liable to the
33 Association for the cost of maintenance, repair, or replacement due to damage,
34 including the presence of mold, decay, or dry rot, as provided in **Section 9.10**
35 (“Owner’s Liability to Association for Negligent Damage”) or to others as provided
36 in **Section 9.11** (“Owner’s Liability to Other Lot Owners or Residents”).
37

38 9.6 **Authority for Entry of Lot or Exclusive Use Common Area.** The Association or its
39 agents shall have the right to enter any Lot or any portion of Exclusive Use
40 Common Area whenever such entry is necessary, in the Board’s discretion, for
41 purposes of inspection and/or in connection with the performance of any
42 maintenance, repair, construction, or replacement for which the Association is
43 responsible or for which it is authorized to perform. Such entry shall be made
44 with as little inconvenience to the Residents as practicable and only upon
45 reasonable advance written notice of not less than twenty-four (24) hours, except
46 that in emergency situations notice shall be given as the situation reasonably
47 permits.

1
2 9.7 Acceptance of Condition of Lot. Each Owner, by acceptance of a deed to a Lot,
3 accepts responsibility for the condition of the Lot including but not limited to
4 existing defects, unresolved architectural violations of any predecessor Owner,
5 and failure of a predecessor Owner to perform maintenance, repairs, or
6 replacement upon the Lot or any encroachments upon the Common Area that
7 are the responsibility of the Lot Owners, and the Association shall be entitled to
8 exercise all of its enforcement powers with respect to the obligations of Lot
9 Owner in connection with such conditions, whether or not such conditions were
10 disclosed to the Owner. The foregoing shall not be deemed to waive the
11 responsibility of the Association for the performance of maintenance, repair, or
12 replacement upon the Lot as provided in **Section 9.2** (“Association’s
13 Responsibility for Lots and Exclusive Use Common Area”).
14

15 9.8 Board’s Discretion to Require Maintenance. The Board shall have the discretion
16 to determine whether any maintenance, repair, or replacement that is the
17 responsibility of an Owner is necessary to preserve the appearance and value of
18 the property within the Development or any portion thereof and may notify an
19 Owner of the work the Board deems necessary. In the event an Owner fails to
20 perform such work within sixty (60) days after notification by the Board to the
21 Owner, the Board may, after written notice to the Owner and the right of a
22 hearing before the Board pursuant to **Section 14.12** (“Hearing Called by the
23 Board; Executive Session; Open Meeting”), cause such work to be done and
24 charge the cost thereof to the Owner as a Reimbursement Assessment.
25

26 9.9 Limitation of Association’s Liability. In the case of damage to a Lot, any Dwelling
27 or improvement thereon, or the contents thereof, arising or allegedly arising from
28 the Association’s performance of its maintenance, repair, or replacement
29 obligations, the Association shall not be responsible or liable for such damage,
30 except to the extent arising from the willful misconduct or gross negligence of the
31 Association, its employees, contractors, or agents.
32

33 9.10 Owner’s Liability to Association for Negligent Damage. In the event the need for
34 any maintenance, repair, or replacement performed by the Association is caused
35 by the willful or negligent act or omission of an Owner or a Resident, a member
36 of his or her household, pets, tenants, invitees, or guests, the cost of such
37 maintenance, repair, or replacement not covered by insurance, including any
38 applicable insurance deductible and the cost of materials, labor, supplies, and
39 services shall be charged to, and paid by, the Owner of the Lot in the form of a
40 Reimbursement Assessment.
41

42 9.11 Owner’s Liability to Other Lot Owners or Residents. In the case of damage to a
43 Lot or Residence or its contents arising or allegedly arising from another Lot or
44 the conduct of the Owner or Resident of another Lot (for example and not by way
45 of limitation, damage to a Residence resulting from water leaking from another
46 Lot), if any affected party or their insurers should assert claims against the Owner
47 or Resident of another Lot to recover damages, any such claims shall not alter

1 the obligation of each Lot Owner as provided in this Declaration to maintain,
2 repair, and replace their respective Lots and Dwellings; to carry insurance; and to
3 perform and/or pay for repairs or reconstruction of their Lot and Residence in the
4 event of casualty. Moreover, any such claims shall not affect the authority of the
5 Board to enforce a Lot Owner's obligations with respect to his or her own Lot or
6 Residence under the Declaration and shall not obligate the Association or the
7 Board to intervene in any such claims or disputes between Lot Owners or
8 Residents.

9
10
11 **ARTICLE 10 PARTY WALLS AND PARTY FENCES**

- 12
13 10.1 Party Wall and Party Fence Defined. "Party Wall" or "Party Fence" shall mean
14 each wall or fence built as part of the original construction of the Dwellings within
15 the Development and placed on or approximately on the boundary line between
16 the Lots. A fence that is situated on the boundary line between a Lot and
17 Common Area is a "shared fence" and shall be maintained, repaired, or replaced
18 pursuant to **Section 9.1.4** ("Shared Fences"), above.
- 19
20 10.2 General Rules of Law to Apply. Unless and to the extent they conflict with the
21 provisions of the Declaration, the general rules of law regarding party walls and
22 party fences and liability for property damage due to negligence or willful acts or
23 omissions shall apply thereto, as provided in this **Article 10**.
- 24
25 10.3 Changes, Impairments, or Permanent Structural Attachments. There shall be no
26 changes in, impairments of, or permanent structural attachments made to any
27 such wall unless expressly made in conformity with this **Article 10** and consented
28 to by all Owners having an interest in said wall.
- 29
30 10.4 Sharing of Maintenance, Repair, and Replacement Costs. The cost of
31 maintenance, repair, and replacement of a Party Wall or Party Fence shall be
32 shared by the Owners pursuant to the terms of any written agreement entered
33 into between the Owners thereof for that purpose. In the absence of such a
34 written agreement, such costs shall be shared by the Owners who make use of
35 the Party Wall or Party Fence in proportion to such use; provided that if a Party
36 Wall or Party Fence is destroyed or damaged by fire or other casualty, any
37 Owner who has used the Party Wall or Party Fence may restore it, and if the
38 other Owners thereafter make use of the Party Wall or Party Fence, they shall
39 contribute to the cost of restoration thereof in proportion to such use, without
40 prejudice, however, to the right of any such Owners to call for a larger
41 contribution from the others under any rule of law regarding liability for negligent
42 or willful acts or omissions. There shall be an easement for reasonable repairs
43 over the areas immediately adjacent to each side of all such walls and fences for
44 the benefit of all persons having an interest therein as set forth further in **Section**
45 **4.6** ("Party Wall and Party Fence Easements"). Notwithstanding the foregoing,

1 the responsibility for maintenance, repair, and replacement of Party Fences may
2 be assumed by the Association if so determined by the Board.

3
4 10.5 Weatherproofing. Notwithstanding any other provision of this **Article 10**, an
5 Owner who by his or her negligent or willful act causes an interior Party Wall to
6 be exposed to the elements shall bear the whole cost of furnishing the necessary
7 protection against such elements.

8
9 10.6 Right to Contribution Runs with Land. The right of any Owner to contribution
10 from any other Owner under this **Article 10** shall be appurtenant to and run with
11 the land and shall pass to such Owner's successors in title.

12
13 10.7 Party Wall or Party Fence Disputes. Party Walls and Party Fences are not
14 Common Area and are not the responsibility of the Association. Any dispute
15 concerning a Party Wall or Party Fence, or otherwise under the provisions of this
16 **Article 10**, shall be subject to the alternative dispute resolution provisions in
17 **Section 14.17** ("Alternative Dispute Resolution Before Initiating Lawsuit").
18

19
20 **ARTICLE 11 INSURANCE**

21
22 11.1 Insurance Coverage to Be Maintained by Association. The Association shall
23 procure and maintain, as a common expense of all Owners, the types of
24 insurance described in **Section 11.2** ("Master Hazard Insurance to Be Maintained
25 by Association"), **Section 11.3** ("General Liability Insurance to Be Maintained by
26 Association"), and **Section 11.4** ("Other Insurance to Be Maintained by
27 Association"), if and to the extent such insurance, with the coverages described
28 below, is available at a reasonable premium cost.

29
30 11.2 Master Hazard Insurance to Be Maintained by Association.

31
32 11.2.1 Scope of Coverage. The Association shall maintain a blanket policy of
33 fire and extended coverage insurance covering (i) all of the Common
34 Area and all furnishings, equipment, and personal property owned by
35 the Association or owned in common by all of the Owners and (ii) the
36 following real property improvements upon the Lots: (a) the building
37 structure including any additions or extensions thereto; (b) all of the
38 fixtures, machinery, and equipment permanently affixed to the building;
39 windows, monuments, lighting fixtures, and exterior signs; (c) the
40 standard fixtures installed within the structures upon the Lots at the
41 time of original construction by the developer and any equivalent
42 replacements and upgrades thereof, including but not limited to interior
43 walls and doors; ceiling, floor and wall surface materials (for example,
44 paint, wallpaper, mirrors, carpets, and hardwood floors); utility fixtures
45 (including gas, electrical, and plumbing); cabinets, built-in appliances;
46 heating and air-conditioning systems; water heaters installed as part of

1 the original construction and any equivalent replacement thereof; but
2 excluding any personal property located within a structure upon the
3 Lot; and (d) lawns, trees, shrubs and plants upon the Lots. The limits
4 of coverage shall be equal to one hundred percent (100%) of the full
5 insurable replacement costs exclusive of land, foundation, excavations,
6 and other items normally excluded from coverage. The policy may
7 contain a reasonable deductible and the amount of the deductible shall
8 be added to the face amount of the policy in determining whether the
9 insurance equals the replacement cost.

10
11 11.2.2 Policy Endorsements. The policy may include such endorsements as
12 the Board, in its discretion, shall determine based on the character and
13 replacement cost of the Common Area and Lot improvements from
14 time to time, such as:

- 15
16 (i) an agreed amount endorsement or its equivalent,
17
18 (ii) an increased cost of construction endorsement or a contingent
19 liability from operation of building laws endorsement or their
20 equivalent,
21
22 (iii) an extended coverage endorsement,
23
24 (iv) coverage for costs of demolition,
25
26 (v) glass coverage,
27
28 (vi) coverage for loss or damage as a result of theft, vandalism,
29 malicious mischief; coverage for equipment breakdown of any
30 equipment required to run and operate the Development; and
31 for sprinkler leakage; windstorm, or water damage,
32
33 (vii) coverage to permit cash settlement covering full value of the
34 improvements in case of partial destruction and a decision not
35 to rebuild,
36
37 (viii) coverage for demolition in the event of total or partial destruction
38 and a decision not to rebuild, and
39
40 (ix) maintenance fees receivable coverage in case of damage to a
41 Lot by a covered peril and the Board is unable, after reasonable
42 effort, to collect assessments from the Owner of the affected
43 Lot.
44
45

1 11.2.3 General Policy Provisions. Such policy shall:

- 2
- 3 (i) name the Association as the first-named insured and the
- 4 Owners as named insureds with policy benefits payable to the
- 5 Association as trustee for the Owners or any of them,
- 6
- 7 (ii) contain a standard Mortgagee clause,
- 8
- 9 (iii) provide a waiver of subrogation as to any and all claims against
- 10 the Association, its officers and directors, the manager, and the
- 11 Owners and a waiver of all defenses based upon acts of the
- 12 insureds or the existence of co-insurance, and
- 13
- 14 (iv) require that at least thirty (30) days' prior written notice be given
- 15 to the Association by the insurer before cancellation except that
- 16 in the case of cancellation for nonpayment of premiums or for
- 17 fraud the notice shall be given no less than ten (10) days prior to
- 18 the effective date of the cancellation.
- 19

20 11.2.4 Earthquake Insurance. The Association shall carry earthquake

21 insurance with such coverage and deductibles as the Board may from

22 time to time determine; *provided, however,* that if a Special

23 Assessment in an amount requiring approval of the Members or an

24 increase in the Annual Assessment in an amount requiring approval of

25 the Members shall be required to fund the payment of the earthquake

26 insurance premiums, and the Members shall fail to approve such

27 Special Assessment or increase in the Annual Assessment, the

28 Association shall not be obligated to maintain or procure earthquake

29 insurance.

30

31 11.3 General Liability Insurance to Be Maintained by Association. The Association

32 shall maintain commercial general liability insurance insuring the Association, its

33 officers and directors, its managers, and the Owners against any liability incident

34 to ownership, maintenance, and repair of the Common Area, but excluding the

35 liability of an Owner incident to personal bodily injury and property damage

36 occurring within that Owner's Lot or in any other Lot or upon the Common Area

37 resulting from the negligence of that Owner. Limits of liability shall be set by the

38 Board but shall in no event be less than Two Million Dollars (\$2,000,000).

39

40 11.3.1 Scope of Coverage. Such liability insurance policy shall insure against

41 bodily injury, death, or property damage occurring in, on or about any

42 portion of the Common Area and, if available at a reasonable cost as

43 determined by the Board, shall include:

44

- 45 (i) water damage liability,
- 46

- 1 (ii) hired and non-owned vehicle coverage, theft and collision
2 coverage,
3
4 (iii) liability for property of others,
5
6 (iv) off-premises employee coverage, and
7
8 (v) such other risks as are customarily covered in townhouse
9 developments.

10
11 The City of Santa Clara shall be named as an additional insured in said
12 policy.
13

14 11.3.2 Other Provisions. If available and at a reasonable cost as determined
15 by the Board, such liability insurance policy:
16

- 17 (i) shall name the Association as a first-named insured and
18 Owners as named insureds, with policy benefits payable to the
19 Association as trustee for the Owners or any of them;
20
21 (ii) shall contain a waiver of subrogation as to claims against the
22 Association, the Board members, the Owners and members of
23 the Owner's family who reside with such Owner, except in cases
24 of arson or fraud;
25
26 (iii) shall contain a waiver of the defense of invalidity on account of
27 the conduct of any Owner over which the Board has "no
28 control;"
29
30 (iv) shall require that at least thirty (30) days' prior written notice be
31 given to the Association by the insurer before cancellation
32 except that in the case of cancellation for nonpayment of
33 premiums or for fraud the notice shall be given no less than ten
34 (10) days prior to the effective date of the cancellation;
35
36 (v) shall provide that in no event shall the insurance be brought into
37 contribution with insurance purchased individually by Owners or
38 their Mortgagees;
39
40 (vi) shall exclude policies obtained by the individual Owners from
41 consideration under any "other insurance" clause; and
42
43 (vii) shall contain a provision requiring the insurer to defend lawsuits
44 for which there is coverage under the policy even if the
45 allegations are fraudulent, but authorizing the insurer to make
46 such investigation and settlement of any claim or suit within the
47 policy limit as it deems expedient.

1
2 11.4 Other Insurance to Be Maintained by Association.
3

4 11.4.1 Directors' and Officers' Insurance. The Association shall maintain
5 directors' and officers' liability insurance with limits to be set by the
6 Board but in no event less than Five Hundred Thousand Dollars
7 (\$500,000) or any higher applicable limit set forth in *Civil Code* section
8 5800, and containing a cross-liability endorsement and waiver of
9 subrogation as to the Association, the officers, and the directors, and
10 the agents and employees of any of them. Coverage for prior acts, to
11 the extent obtainable, shall be included.
12

13 11.4.2 Workers' Compensation Insurance. The Association shall maintain
14 workers' compensation insurance to the extent necessary to comply
15 with any applicable laws and may carry such insurance at any time as
16 determined by the Board.
17

18 11.4.3 Fidelity Bond. In accordance with *Civil Code* section 5806, the
19 Association shall maintain a standard fidelity bond covering dishonest
20 acts on the part of officers and directors of the Association, the
21 manager, and any employees or volunteers who are responsible to
22 handle funds of the Association, including computer fraud and funds
23 transferred fraud. Such bond shall name the Association as obligee,
24 shall be written in an amount which shall be determined by the Board
25 but in no event less than the combined amount of the Association's
26 reserves and total Assessments for three (3) months, and shall contain
27 a waiver of any defense based on the exclusion of persons serving
28 without compensation.
29

30 11.4.4 Other Insurance. The Association may maintain at any time and from
31 time to time any other insurance, including but not limited to flood
32 insurance, and bonds as the Board may from time to time deem
33 necessary or desirable.
34

35 11.5 Insurance to Be Maintained by Owner. Owners shall have the following
36 obligations and rights to carry individual insurance:
37

38 11.5.1 HO6 Owner's Policy. Each Owner shall be responsible, at his or her
39 sole expense, to carry an "HO6 Owner's Policy" or the equivalent
40 covering the following risks which are not covered by the insurance
41 policies carried by the Association:
42

- 43 (i) the Owner's individual liability for damage to property or injury to
44 person of others occurring within the Lot, recommended to be in
45 an amount not less than Three Hundred Thousand Dollars
46 (\$300,000) for each occurrence or in such other amount as the
47 Board may establish from time to time by Rule;

- 1
2 (ii) property damage to contents and personal property within the
3 Owner's Lot in such amount as the Owner shall determine is
4 adequate;
5
6 (iii) loss assessment coverage (recommended to be in an amount
7 not less than Fifty Thousand Dollars (\$50,000)); and
8
9 (iv) insurance to pay the deductible under the blanket insurance
10 policy carried by the Association pursuant to **Section 11.2**
11 ("Master Hazard Insurance to Be Maintained by Association") in
12 an amount not less than the deductible under that policy or such
13 amount as the Owner shall determine is adequate.
14

15 11.5.2 No Overlapping Coverage. No Owner shall obtain or maintain any
16 policy of insurance that reduces the amount of coverage under any
17 policy obtained or maintained by the Association pursuant to **Section**
18 **11.2** ("Master Hazard Insurance to Be Maintained by Association"),
19 **Section 11.3** ("General Liability Insurance to Be Maintained by
20 Association"), or **Section 11.4** ("Other Insurance to Be Maintained by
21 Association"). If any Owner violates the provisions of this **Section**
22 **11.5.2**, any diminution in insurance proceeds otherwise payable to the
23 Association that results from the existence of such other insurance will
24 be chargeable to the Owner who acquired such other insurance and
25 each Owner hereby assigns to the Association the proceeds of any
26 such policy to the extent any such decrease in proceeds in fact occurs
27 (such proceeds to be applied pursuant to the Declaration as if
28 produced by the Association's coverage). Such Owner will be liable to
29 the Association to the extent of any diminution and the Association
30 shall levy a Reimbursement Assessment against such Owner in the
31 amount of such diminution.
32

33 11.5.3 Other Owner-maintained Insurance. Each Owner shall be responsible,
34 at his or her sole cost and expense, to obtain such other insurance as
35 the Owner shall determine is adequate to cover such other risks as the
36 Owner shall determine, including but not limited to loss of use or loss
37 of rental income.
38

39 11.5.4 Evidence of Insurance; No Obligation of Association. Upon request
40 from the Board, each Owner shall provide evidence of such insurance
41 annually. If an Owner fails to obtain any insurance he or she is
42 obligated or permitted to obtain pursuant to this Declaration, nothing in
43 this Declaration shall be construed to impose any obligation
44 whatsoever on the Association to insure that which the Owner does not
45 insure. The right of the Board to request evidence of insurance that an
46 Owner is obligated to carry pursuant to this Declaration shall not be
47 deemed to impose a duty on the Board or the Association to request

1 such evidence of insurance or impose on the Association any liability
2 to any person arising or claimed to arise out of any action or inaction
3 by the Board, the Association or anyone acting on the Association's or
4 the Board's behalf with respect to verifying any Owner's compliance
5 with the Owner's obligation to carry insurance.
6

7 11.6 Insurance Proceeds. Proceeds of all insurance policies owned by the
8 Association shall be received by the Association and shall be distributed to the
9 Association, the Owners, and their Mortgagees subject to the provisions of the
10 Declaration as their interest may appear; *provided, however*, that whenever
11 repair or reconstruction is required, the proceeds of any insurance received by
12 the Association as a result of any loss shall be applied to such repair or
13 reconstruction except to the extent of any excess insurance proceeds as
14 provided in Section 12.2.4 ("Excess Insurance Proceeds").
15

16 11.7 Responsibility for Payment of Deductible.

17
18 11.7.1 Damage to Common Area. Subject to the provisions of Section 9.10
19 ("Owner's Liability to Association for Negligent Damage"), in the event
20 of damage to the Common Area that is covered by the hazard
21 insurance policy maintained by the Association pursuant to Section
22 11.2 ("Master Hazard Insurance to Be Maintained by Association"), the
23 deductible shall be paid by the Association.
24

25 11.7.2 Damage to Lot. In the event of damage to a Lot that is covered by the
26 blanket hazard insurance policy maintained by the Association
27 pursuant to Section 11.2 ("Master Hazard Insurance to Be Maintained
28 by Association"), the Owner of the damaged Lot shall pay the
29 deductible. In the event of earthquake damage to a Lot that is covered
30 by an earthquake insurance policy maintained by the Association for
31 the benefit of the Lots, the deductible under such earthquake
32 insurance policy shall be assessed as a Reimbursement Assessment
33 equally against all Owners.
34

35 11.7.3 Allocation of Deductible. In the event of a single casualty that results
36 in damage to Common Area and to one (1) or more Lots which
37 damage is covered by the hazard insurance carried by the Association
38 pursuant to Section 11.2 ("Master Hazard Insurance to Be Maintained
39 by Association"), the obligation to pay the deductible shall be allocated
40 between the Association and the affected Lot Owner(s) in proportion to
41 the claim settlement amount received by each party.
42

43 11.7.4 Tort Damages. Nothing in this Section 11.7 shall be deemed to affect
44 any person's right to recover the amount of any deductible paid by
45 such person from any other person responsible for the loss under tort
46 or other theories of liability.
47

1 11.8 Owner's Liability for Conditions Affecting Insurance. As provided in Section 5.11
2 ("Conditions Affecting Insurance"), the responsible Lot Owner shall be liable to
3 the Association if anything is done, placed, or kept within the Development that
4 increases the rate of insurance or results in the cancellation of insurance under
5 any insurance policy maintained by the Association.
6

7 11.9 Insurance Carriers. All insurance policies carried by the Association shall be
8 written by companies that are not prohibited from doing business in the State of
9 California.
10

11 11.10 Annual Review of Policies. The limits and coverage of all insurance policies
12 carried by the Association shall be reviewed at least annually by the Board and
13 increased or decreased in its discretion.
14

15 11.11 Coverage Not Available; Disclaimer. In the event any insurance policy or any
16 endorsement listed in Section 11.2 ("Master Hazard Insurance to Be Maintained
17 by Association"), Section 11.3 ("General Liability Insurance to Be Maintained by
18 Association"), and Section 11.4 ("Other Insurance to Be Maintained by
19 Association"), is for any reason not available, then the Association shall obtain
20 such other or substitute policy or endorsement as may be available which
21 provides, as nearly as possible, the coverage described above. The Association,
22 and its directors and officers, shall have no liability to any Lot Owner or
23 Mortgagee if, after good faith effort, it is unable to obtain or maintain the
24 insurance required pursuant to Section 11.2, Section 11.3, and Section 11.4
25 because the insurance is no longer available or, if available, can be obtained or
26 maintained only at a cost that the Board in its sole discretion determines is
27 unreasonable under the circumstances, or the Members fail to approve any
28 Special Assessment or increase in the Annual Assessment needed to fund the
29 insurance premiums. In accordance with *Civil Code* section 5810, as soon as
30 reasonably practicable, the Association shall notify the Members by Individual
31 Notice if any of the Association's policies described in the Association's annual
32 budget report have lapsed or been canceled, and are not immediately renewed,
33 restored, or replaced, or if there is a significant change, such as a reduction in
34 coverage or limits or an increase in the deductible for any of those policies. If the
35 Association receives any notice of non-renewal of an Association's policy
36 described in the Association's annual budget report and replacement coverage
37 will not be in effect by the date the existing coverage will lapse, the Association
38 shall immediately notify the Members by Individual Notice.
39

40 11.12 Copies of Policies. Copies of all insurance policies (or certificates of insurance)
41 and paid invoices showing that premiums have been paid shall be retained by
42 the Association and shall be available for inspection by Owners at any
43 reasonable time.
44

45 11.13 Adjustment of Losses. The Board is appointed attorney-in-fact by each Owner to
46 file all claims and to negotiate and agree on the value and extent of any loss
47 under any policy carried by the Association pursuant to Section 11.2 ("Master

1 Hazard Insurance to Be Maintained by Association”), **Section 11.3** (“General
2 Liability Insurance to Be Maintained by Association”), and **Section 11.4** (“Other
3 Insurance to Be Maintained by Association”). The Board is granted full right and
4 authority to compromise and settle any claims or enforce any claim by legal
5 action or otherwise and to execute releases in favor of any insured.
6

7 11.14 Premiums. The costs of insurance obtained by the Association shall be a
8 common expense of the Association, shall be included in the Annual
9 Assessment, and shall be paid for out of the operating fund of the Association.
10

11 **ARTICLE 12 DAMAGE OR DESTRUCTION; CONDEMNATION**

12
13
14 12.1 Emergency Repairs. Without waiting to obtain insurance settlements or bids, the
15 Board may undertake such emergency repair work after a casualty as it may
16 deem necessary or desirable under the circumstances including but not limited to
17 mitigating or removing dangerous conditions and other actions that may be
18 necessary to comply with applicable laws, ordinances, and regulations; and the
19 Board may charge the operating account for the costs thereof.
20

21 12.2 Damage to Common Area. In the event of damage to or destruction of the
22 Common Area including Exclusive Use Common Area, or other property of the
23 Association or any part thereof, then the following provisions shall apply:
24

25 12.2.1 Amount of Insurance Proceeds. The Board shall obtain a
26 determination of the amount of available insurance proceeds that will
27 be recovered from the Association’s insurance carrier(s).
28

29 12.2.2 Bids. The Board shall obtain such bids from responsible licensed
30 contractors as the Board deems appropriate to restore the damaged or
31 destroyed property to its condition immediately prior to such damage or
32 destruction (including compliance with current building code and
33 ordinance requirements and any modifications approved by the Board),
34 including provision for a completion bond.
35

36 12.2.3 Sufficient Proceeds. If the insurance proceeds paid to the Association
37 are sufficient to cover the costs of restoration, the Board shall contract
38 with such contractor as the Board in its discretion shall determine and
39 proceed to perform the restoration.
40

41 12.2.4 Excess Insurance Proceeds. Any excess insurance funds shall be
42 deposited in the operating account of the Association.
43

44 12.2.5 Insufficient Proceeds; Decision Not to Repair. If the insurance
45 proceeds, together with reserve funds, if any, allocated for replacement
46 of the damaged or destroyed improvement, are insufficient to cover the

1 costs of repair or replacement of the property damaged or destroyed,
2 the Association may levy a Special Assessment against the Members
3 of the Association up to the maximum amount permitted without a
4 Member approval vote as provided in Section 8.8.2 ("Permitted
5 Amount of Special Assessments") to cover the cost of the repair or
6 replacement not covered by the insurance proceeds. If the sum of
7 insurance proceeds, allocated reserve funds, and Special Assessment
8 funds equals less than eighty-five percent (85%) of the cost of repair or
9 replacement, the Members may elect not to cause such replacement
10 or repair by the vote of at least seventy-five percent (75%) of the Total
11 Voting Power of the Association. In that event, the damaged Common
12 Area shall be cleared and landscaped; *provided, however*, that there
13 shall exist in such Common Area adequate vehicular and pedestrian
14 rights-of-way for Owners to ensure legal access to each Owner's Lot
15 and the costs thereof shall be paid from the insurance proceeds, any
16 allocated reserve funds and, if necessary, the other funds of the
17 Association. Any remaining insurance proceeds shall be used in the
18 manner determined by the Board, provided that such use shall not be
19 inconsistent with the purposes of the Association.
20

21 12.2.6 Alternative Repair Plan. If a decision not to rebuild is approved
22 pursuant to Section 12.2.5 ("Insufficient Proceeds; Decision Not to
23 Repair"), the Board shall use such funds as are available to repair or
24 stabilize the damaged Common Area according to such alternative
25 plan as the Board shall deem appropriate under the circumstances.
26

27 12.3 Damage to a Single Lot.

28
29 12.3.1 Owner to Repair. If a single Lot is damaged or destroyed by fire or
30 other casualty, the available insurance proceeds shall be paid to the
31 Owner(s) of such Lot, or the Mortgagee(s) thereof, as their respective
32 interests appear, and such Owner(s) or Mortgagee(s) shall use the
33 same to rebuild or repair such Lot to its condition prior to the damage
34 or destruction, or to such other condition as shall have been approved
35 in advance by the Board pursuant to Article 7 ("Architectural
36 Approval").
37

38 12.3.2 Commencement and Completion of Repair. Repair or rebuilding shall
39 be commenced and completed within the times specified in Section
40 7.14 ("Commencement of Approved Work") and Section 7.16
41 ("Completion; Extension of Deadline").
42

43 12.3.3 Insufficient Insurance Proceeds. In the event the insurance proceeds
44 are insufficient to complete such work, the Lot Owner shall pay such
45 additional sums as may be necessary to complete such rebuilding and
46 repair.
47

1 12.3.4 Failure to Timely Restore. In the case of total or substantially total
2 destruction of a Dwelling, if restoration is not commenced within one
3 (1) year after the occurrence of the destruction, the Board may require
4 that the foundation and other installations be removed and the Lot
5 restored to a safe, orderly, and natural condition. Nothing in the
6 preceding sentence shall be deemed to limit the right of the
7 Association to otherwise enforce the obligation of an Owner to restore
8 or rebuild the damaged structures and restore the Lot as provided in
9 Section 12.3.1 (“Owner to Repair”).

10
11 12.4 Damage to Two or More Lots.

12
13 12.4.1 Restoration by Association. If two (2) or more Lots are damaged or
14 destroyed by fire or other casualty, the amount of available insurance
15 proceeds shall be paid to the Association. If the estimated cost of
16 repair is in excess of Five Thousand Dollars (\$5,000), the Board shall
17 obtain bids from three (3) or more qualified contractors. The Board
18 shall thereupon contract to repair or rebuild the damaged portions of
19 the Lots to their condition prior to the damage or destruction, or to such
20 other condition as shall have been approved in advance by the Board
21 pursuant to Article 7 (“Architectural Approval”).

22
23 12.4.2 Insufficient Insurance Proceeds. In the event the insurance proceeds,
24 if any, together with reserve funds, if any, allocated for replacement of
25 the damaged or destroyed improvement (for example, roof reserves
26 allocable to the damaged Lot), are insufficient to pay all of the costs of
27 repairing and/or rebuilding the non-earthquake damage, the Board
28 shall levy a Reimbursement Assessment against each affected Owner
29 in the amount of the deficiency for his or her Lot; *provided, however,*
30 that in the event of earthquake damage that is covered by an
31 earthquake insurance policy maintained by the Association for the
32 benefit of the Lots, the deductible under such earthquake insurance
33 policy shall be assessed as a Reimbursement Assessment equally
34 against all Owners as provided in Section 11.7 (“Responsibility for
35 Payment of Deductible”).

36
37 12.4.3 No Obligation of Association to Advance Funds. Nothing in this
38 Declaration shall be deemed to require the Association to contract for
39 or perform any repair or rebuilding upon a Lot unless and until
40 sufficient funds therefor have been remitted to the Association.

41
42 12.4.4 Excess Insurance Funds. In the event any excess insurance proceeds
43 other than earthquake insurance remain, such proceeds shall be
44 distributed to the Owners of the damaged Lots and their Mortgagees
45 as their interest shall appear. In the event of excess earthquake
46 insurance proceeds, such proceeds shall be deposited in the

1 Association's operating account or reserve account, as the Board shall
2 determine.

3
4 12.5 Condemnation of Common Area.

5
6 12.5.1 Association to Represent Owners. If at any time all or any portion of
7 any Common Area, or any interest therein, shall be taken for any
8 public or quasi-public use under any statute, by right of eminent
9 domain, or by private purchase in lieu of eminent domain, the
10 Association shall represent the interests of all Owners in any
11 proceedings relating to such condemnation to the extent such Owners
12 have any interest in the Common Area.

13
14 12.5.2 Condemnation Award. The entire compensation or award in
15 condemnation, to the extent such award is not apportioned among the
16 Owners by court judgment or by agreement between the condemning
17 authority and each of the affected Owners in the Development, shall be
18 paid to the Association and shall be used in the manner determined by
19 the Board, provided that such use shall not be inconsistent with the
20 purposes of the Association.

21
22 12.6 Condemnation of Lots.

23
24 12.6.1 Total Condemnation of Lot. If an entire Dwelling or Lot, or so much
25 thereof as to render the remainder unfit for use as a Dwelling, is
26 condemned or taken for a public or quasi-public use pursuant to any
27 statute, by right of eminent domain, or by private purchase in lieu of
28 eminent domain, the Owner's membership in the Association shall
29 terminate as of the last day of the month in which the condemner
30 obtains the right to possession, or upon the Owner vacating the Lot,
31 whichever occurs last.

32
33 12.6.2 Partial Condemnation of Lot. If only a portion of a Dwelling or Lot is
34 taken and the remainder is fit for use as a Dwelling, the Owner shall
35 continue to be a Member of the Association.

36
37 12.6.3 Rights of Association. In any condemnation action involving an
38 Owner's Dwelling or Lot, the Association shall have the right to seek
39 compensation for any damages incurred by the Association.

40
41 12.7 Revision of Documents. In the event of (i) a partial or complete condemnation of
42 the Common Area or the taking of all or a portion of the Common Area by right of
43 eminent domain or by private purchase in lieu of eminent domain, (ii)
44 condemnation or taking of one (1) or more Lots, or (iii) a decision by the
45 Association by affirmative act or failure to act, not to repair damaged Common
46 Area, the Association shall have the power and authority to resurvey the
47 remaining portion of the Development and to execute and record, on behalf of

1 itself and the individual Owners, all necessary documents to show the altered
2 status of the Development, including but not limited to a revised Subdivision Map
3 and an amended Declaration and readjustment of the percentages of undivided
4 interest of the remaining Owners in the Development, if applicable.
5
6

7 **ARTICLE 13 RIGHTS OF MORTGAGEES**
8

- 9 13.1 Mortgages Permitted. Any Owner may encumber his or her Lot with a Mortgage.
10 Any Owner who encumbers his or her Lot with a Mortgage shall notify the
11 Association in writing of the name and address of his or her Mortgagee and
12 Mortgage insurer, if any.
13
- 14 13.2 Intention to Conform to Mortgagees' Requirements. It is intended that the
15 Declaration, the Bylaws, the Articles of Incorporation and the Development in
16 general shall be able to meet the requirements necessary to purchase,
17 guarantee, insure, or subsidize any First Mortgage of a Lot in the Development
18 by the Federal Home Loan Mortgage Corporation and the Federal National
19 Mortgage Association or any other or successor institution(s) serving the same or
20 similar function. To that end, the Board is authorized, but not obligated, to take
21 such action or adopt such resolution required by any Institutional Mortgagee to
22 bring the Declaration or the Bylaws or the Development into conformity with the
23 requirements of any of these entities or agencies as the Board in its discretion
24 shall determine is reasonably achievable and consistent with the interests of the
25 Association and of its Members as a whole.
26
- 27 13.3 Subordination of Assessment Lien. Assessment liens shall be subordinate to the
28 lien of First Mortgages to the extent provided in **Section 8.22** ("Subordination to
29 Lien of First Mortgage").
30
- 31 13.4 Notice of Mortgage Default. Each Mortgagee of a Lot shall give the Association
32 written notice of default by its mortgagor under the Mortgage within ten (10) days
33 following recordation of a notice of default in accordance with the provisions of
34 *Civil Code* section 2924b or any amendment or superseding statute.
35
- 36 13.5 Mortgage Protection. No breach of any of the covenants, conditions and
37 restrictions nor the enforcement of any lien provisions contained in this
38 Declaration shall render invalid the lien of any First Mortgage made in good faith
39 and for value on any Lot, but all of the covenants, conditions, and restrictions
40 shall be binding upon and effective against any Owner whose title is derived
41 through foreclosure, trustee's sale or otherwise.
42
43
44

1 **ARTICLE 14 ENFORCEMENT; NOTICE; HEARINGS**
2

3 14.1 Violations As Nuisance. Every act or omission constituting or resulting in a
4 violation of any of the provisions of the Governing Documents shall be deemed to
5 constitute a nuisance and, in addition to any other remedies which may be
6 available, such nuisance may be abated or enjoined by the Association or its
7 officers or Board of Directors or by any Owner; *provided, however*, that the Board
8 shall not be obligated to take action to abate or enjoin a particular violation if, in
9 the exercise of its discretion, the Board determines that acting to abate or enjoin
10 such violation is not likely to foster or protect the interests of the Association and
11 its Members as a whole. Notwithstanding the preceding sentence and without
12 limiting the generality of the proviso therein, nothing in the Governing Documents
13 shall be deemed to impose upon the Association, the Board, or the officers,
14 employees, or agents of the Association a duty to intervene in any physical
15 dispute or altercation or any criminal or alleged criminal activity other than to
16 notify law enforcement officials.
17

18 14.2 Violation of Law Is a Violation of the Declaration. Any violation of a state,
19 municipal, or local law, ordinance or regulation pertaining to the ownership,
20 occupancy, or use of any property within the Development is hereby declared to
21 be a violation of this Declaration and subject to any and all of the enforcement
22 procedures set forth herein.
23

24 14.3 Owner's Responsibility for Conduct and Damages. Each Owner shall be fully
25 responsible for informing members of his or her household, Contract Purchasers,
26 tenants, invitees, and guests of the provisions of the Governing Documents, and
27 shall be fully responsible for the conduct, activities, and any Governing
28 Document violation of any of them, and for any damage to the Development or
29 the Association resulting from the negligent or intentional conduct of any of them
30 or the conduct of any pet belonging to any of them. If a Lot is owned jointly by
31 two (2) or more persons, the liability of each Owner in connection with the
32 obligations imposed by the Governing Documents shall be joint and several; that
33 is, each co-Owner individually shall be fully liable and responsible and all co-
34 Owners collectively shall be fully liable and responsible. The foregoing
35 provisions of this **Section 14.3** are in addition to and shall not limit the generality
36 of the provisions of **Section 5.8.2** ("Indemnification Regarding Business Activity"),
37 **Section 5.14** ("Animals"), **Sections 6.8** ("Association As Third Party Beneficiary"),
38 **Section 6.9** ("Indemnification Regarding Tenant's Actions"), and **Section 7.21**
39 ("Disclaimer of Liability").
40

41 14.4 No Avoidance. No Owner may avoid the burdens or obligations imposed by the
42 Governing Documents through non-use of any Common Area facilities or by
43 abandonment of his or her Lot.
44

45 14.5 Enforcement Rights Are Cumulative. To the fullest extent permitted by law,
46 including *Civil Code* section 5975, the Association, its directors, officers, or

1 agents, and any Owner shall have the right to enforce any and all provisions of
2 the Governing Documents by any proceeding at law or in equity, or, with respect
3 to action by the Association, through the use of such other remedies (including
4 self-help remedies that do not breach the peace or otherwise violate applicable
5 law or this Declaration) as are available and deemed appropriate by the Board.
6 Each remedy provided is cumulative and not exclusive.
7

8 14.6 Injunctions. Except for the nonpayment of any Assessment levied pursuant to
9 the provisions of this Declaration, it is hereby declared that a remedy at law to
10 recover damages for a default in the performance of any of the terms and
11 provisions of any of the Governing Documents or for the breach or violation of
12 any such provisions is inadequate and that the failure of any Owner, Contract
13 Purchaser, member of his or her household, tenant, invitee, guest, or household
14 pets or any other occupant or user of any of the property within the Development
15 to comply with any provision of the Governing Documents may be enjoined in
16 any judicial proceedings initiated by the Association, its officers or Board of
17 Directors, or by any Owner or by their respective successors in interest.
18

19 14.7 Limitation on Association's Disciplinary Rights. To the extent provided in *Civil*
20 *Code* section 4510, the Association shall not have the power and authority to
21 cause a forfeiture or abridgment of an Owner's right to the full use and
22 occupancy of his or her Lot as the result of the failure by such Owner, members
23 of his or her household, Contract Purchaser, tenants, invitees, guests or pets to
24 comply with any provision of the Governing Documents, except where such
25 forfeiture or abridgment is the result of the judgment of a court of competent
26 jurisdiction, a decision arising out of an arbitration proceeding, or a foreclosure or
27 sale under private power of sale for failure of such Owner to pay Assessments
28 levied by the Association pursuant to this Declaration and except to the extent of
29 the Association's rights pursuant to **Section 8.18** ("Assignment of Rents As
30 Security for Payment"). The provisions of this **Section 14.7** shall not affect the
31 Association's right to impose other sanctions including imposing Enforcement
32 Assessments as provided in **Section 14.8** ("Imposing Sanctions").
33

34 14.8 Imposing Sanctions. Upon an explicit finding and for reasons specified by the
35 Board following a hearing called by the Board and conducted in accordance with
36 this **Article 14**, the Board shall have the power to impose sanctions on a Member
37 who is in default in the payment of any Assessment or Additional Charge levied
38 by the Board or is found to be in violation of any provision of the Governing
39 Documents. Sanctions may include loss of Good Standing, suspension of other
40 rights, and/or monetary penalties (fines), as described below.
41

42 14.8.1 Loss of Good Standing. The Board may suspend a Member's good
43 standing for so long as the Member remains in default of such payment
44 or until the violation is remedied. When a Member is not in good
45 standing, the Member (or in the case of a Member that is not a natural
46 person, its representative) shall be disqualified from serving on the
47 Board.

- 1
2 14.8.2 Suspension of Other Rights. The Board may suspend a Member's or a
3 Resident's right to use Common Area recreational facilities for so long
4 as a Member remains in default of such payment, or for such period as
5 may be specified by the Board if the violation involves misbehavior
6 related to Common Area recreational facilities.
7
- 8 14.8.3 Monetary Penalties (Fines). The Board may adopt a policy imposing
9 monetary penalties or fines (which shall constitute Enforcement
10 Assessments) pursuant to *Civil Code* section 5850. Such policy, if
11 adopted, shall be distributed to the Members in the annual policy
12 statement pursuant to *Civil Code* section 5310. Multiple fines may be
13 imposed for multiple violations. The schedule of fines may be changed
14 by the Board by a Rule change pursuant to *Civil Code* section 4360
15 and following.
16
- 17 14.8.4 Monthly Sanctions for Continuing Violations. In the case of a
18 continuing violation, such as an uncorrected architectural violation
19 where an Owner fails to remedy the violation after notice from the
20 Board to do so, the Board may impose sanctions, including monetary
21 penalties, such sanctions to remain in effect for a period of one (1)
22 month or until the continuing violation is remedied, whichever occurs
23 sooner. (By way of example and not limitation, a violation in the nature
24 of parking every day in a prohibited parking space would *not* constitute
25 a "continuing violation" but each instance would constitute a separate
26 violation.) If the continuing violation has not been remedied within the
27 one-month period, the Board may impose separate and successive
28 sanctions for the continuing violation, provided the Board conducts a
29 separate hearing, not more frequently than once a month, before
30 imposing each successive sanction. The Board may limit the scope of
31 such hearing to facts and circumstances occurring subsequent to the
32 previous hearing relating to the subject continuing violation.
33
- 34 14.8.5 Reimbursement Assessment Not a Sanction. The imposition of a
35 Reimbursement Assessment pursuant to the Declaration does not
36 constitute and shall not be deemed to be a sanction.
37
- 38 14.9 Investigation of Complaints. Upon receipt of a written complaint from an Owner
39 or a Resident regarding an alleged violation of the Governing Documents, the
40 Board shall conduct an investigation of the allegations in the complaint and shall
41 make relevant findings upon which the Board shall base a decision to pursue or
42 not pursue the matter. If the Board decides not to pursue a matter, it shall notify
43 the complaining party in writing stating the reason(s) for its decision.
44
- 45 14.10 Written Notice of Violation. If the Board determines, whether on its own initiative
46 or pursuant to a written complaint, that a violation of the Governing Documents

1 exists or has occurred, it shall notify the responsible Owner(s) by written notice in
2 compliance with Section 14.11 (“Notices: Content, Delivery”).
3

4 14.11 Notices: Content, Delivery. Any notice of violation required or given under this
5 Article 14 shall be in writing and shall comply with *Civil Code* section 5855 as to
6 content and time of service and with *Civil Code* section 4040 as to method of
7 service.
8

9 14.11.1 Content of Notice of Violation. Any notice given by the Association to a
10 Member shall comply with *Civil Code* section 5855 and shall, at a
11 minimum, set forth a brief description of the act or omission
12 constituting the alleged violation of the Governing Documents; a
13 reference to the specific Governing Document provision or provisions
14 alleged to have been violated; if applicable, a statement that the
15 Member may request a hearing by the Board; the date, time, and
16 location of any hearing called by the Board; and any sanction,
17 disciplinary action, or other enforcement action being contemplated by
18 the Board.
19

20 14.11.2 Delivery of Notice. Any notice may be given by any method provided
21 for in *Civil Code* section 4040; *provided, however*, that (i) if notice is
22 given by mail, it shall be sent postage prepaid by United States first-
23 class mail and/or by certified mail, return-receipt requested; and (ii) if
24 given by the Association to a Member, it shall be sent to the most
25 recent address for the affected Member as shown on the records of the
26 Association. Pursuant to *Civil Code* section 4050(b), if sent by United
27 States mail, delivery of such is deemed complete upon deposit in the
28 United States mail, postage prepaid. Pursuant to *Civil Code* section
29 4050(c), if such notice is sent by electronic means, delivery is deemed
30 complete at the time of transmission.
31

32 14.11.3 Owner's Address for Notice. It shall be each Owner's responsibility to
33 notify the Association in writing of any change in the Owner's address
34 for the purpose of receiving notices from the Association. The fact that
35 a different address appears on correspondence to the Association from
36 an Owner shall not constitute such written notice, unless it is expressly
37 stated that such address is a change of address for the purpose of
38 receiving notice from the Association. Upon transfer of title to a Lot,
39 the transferee shall be responsible for notifying the Association of such
40 transfer. The notification shall set forth the address of the Lot, the
41 names of the transferee and the transferor, and the date of sale or
42 other transfer. Prior to receipt of such notification, any and all
43 communications required or permitted to be given by the Association
44 or the Board to the Lot Owner shall be deemed to be duly made and
45 given to the transferee if duly and timely made and given to the person
46 shown as the Owner of the Lot and at the address in the Association's
47 records.

1
2 14.11.4 Notice to Co-Owners or Occupants. Unless otherwise provided by law,
3 when a Lot is owned by two (2) or more co-Owners or is occupied by
4 two or more occupants, notice to one (1) Owner or to one occupant
5 shall be deemed notice to all Owners or to all occupants, as the case
6 may be.
7

8 14.12 Hearing Called by the Board; Executive Session; Open Meeting. To the extent
9 required by *Civil Code* section 5855, whenever the Board determines to conduct
10 a hearing, it shall notify the affected Owner(s) and/or Resident(s) in writing by
11 Individual Delivery, at least ten (10) days before the Board meeting at which the
12 matter will be considered. If the matter concerns Member discipline or the
13 imposition of sanctions, the Board shall meet in executive session if requested by
14 the Member, *unless* (and then only to the extent) applicable law requires that
15 certain actions by the Board be conducted at an open meeting of the Board, such
16 as *Civil Code* section 5673 concerning a decision to record a lien for delinquent
17 Assessments. If the matter concerns compliance with architectural approval
18 requirements, the hearing shall be conducted in open meeting pursuant to *Civil*
19 *Code* section 4765. In the Board's discretion, other interested person(s) may
20 attend a hearing and may present information relevant to the subject matter of
21 the hearing. If a notified Owner or Resident fails to attend a noticed hearing, the
22 Board may nevertheless conduct its deliberations and make a determination
23 based on its own investigation and any other information supplied to it that the
24 Board deems reasonably reliable.
25

26 14.13 Owner's Request for Hearing. An Owner who has received a notice of violation
27 sent pursuant to Section 14.10 ("Written Notice of Violation") or a notice of
28 corrective action sent pursuant to Section 14.15 ("Enforcement by Association in
29 Emergency Situations") or as otherwise provided in the Governing Documents,
30 may request a hearing before the Board by submitting a written request to the
31 Board. If an Owner requests a meeting to discuss a payment plan for a past due
32 debt owed to the Association, the meeting shall be scheduled and conducted as
33 provided in Section 8.15.3 ("Owner's Right to Discuss Payment Plan"). If the
34 Owner is requesting a hearing concerning a notice of violation sent pursuant to
35 Section 14.10 or a notice of corrective action sent pursuant to Section 14.15, the
36 request for hearing must be submitted within ten (10) days after the date of such
37 notice. The Board shall schedule a hearing at its next regular meeting that is at
38 least five (5) days after its receipt of an Owner's request for hearing or, in the
39 Board's discretion, at another time agreed by the Board and the Owner.
40 Hearings shall be conducted in executive session or at an open meeting as
41 provided in Section 14.12 ("Hearing Called by the Board; Executive Session;
42 Open Meeting").
43

44 14.14 Notice of Hearing Decisions. Within fifteen (15) days after a hearing is
45 conducted, the Board shall notify the Owner or Resident in writing as to its
46 decision. If the Board decides to impose sanctions, the notice shall describe the
47 sanctions imposed and, if applicable, their effective dates.

1
2 14.15 Enforcement by Association in Emergency Situations.

3
4 14.15.1 Definition of Emergency Situation. For purposes of this **Section 14.15**,
5 the following shall constitute emergency situations:

- 6
7 (i) an immediate and unreasonable infringement of or threat to the
8 safety or peaceful enjoyment of Residents of the Development,
9
10 (ii) a traffic or fire hazard,
11
12 (iii) a threat of material damage to or destruction of the
13 Development or any portion thereof,
14
15 (iv) a violation of any provision of the Governing Documents that is
16 of such a nature that there is no material question regarding the
17 identity of the violator or whether the violation has occurred
18 (such as parking violations).
19

20 14.15.2 Immediate Corrective Action. Notwithstanding any other provisions of
21 the Governing Documents, under circumstances that constitute an
22 emergency, the Board or its duly-authorized agents may undertake
23 immediate corrective action. The Board shall promptly thereafter send
24 written notice of corrective action to the affected Owner including
25 notice of any Reimbursement Assessment assessed to the Owner for
26 costs incurred by the Association in connection therewith. If the Owner
27 requests a hearing pursuant to **Section 14.13** (“Owner’s Request for
28 Hearing”), enforcement of any Reimbursement Assessment imposed
29 by the Board shall be held in abeyance and shall be pursued only if
30 affirmed by the Board at the hearing.
31

32 14.16 Internal Dispute Resolution.

33
34 14.16.1 Fair, Reasonable, and Expedient Procedure. The provisions of
35 **Article 7** (“Architectural Approval”) and of **Section 14.9** (“Investigation
36 of Complaints”) through **Section 14.15** (“Enforcement by Association in
37 Emergency Situations”) are intended to provide a fair, reasonable, and
38 expeditious procedure for resolving disputes between the Association
39 and any Member that are subject to *Civil Code* sections 5900 through
40 5920 (which apply to, among other things, enforcement of applicable
41 provisions of the *Corporations Code* and enforcement of the Governing
42 Documents). The above-referenced provisions of the Declaration shall
43 constitute the Association’s “internal dispute resolution” process as
44 required by *Civil Code* section 5905.
45

46 14.16.2 Statutory Default Procedures. If the Association fails to comply with
47 the Association’s internal dispute resolution process, then the

1 Association and the affected Member shall abide by the statutory
2 default procedures provided in *Civil Code* section 5915, or successor
3 statute. Any resolution so agreed upon by the parties thereto, that is
4 not in conflict with the law or the Governing Documents, shall bind the
5 parties and shall be judicially enforceable as provided in *Civil Code*
6 section 5910.

7
8 14.16.3 Alternative Dispute Resolution May Also Apply. If (a) the subject
9 matter of the dispute (including, among other things, enforcement of
10 applicable provisions of the *Corporations Code* and enforcement of the
11 Governing Documents) and the remedy sought (including certain kinds
12 of declaratory, injunctive, or writ relief, which may be in conjunction
13 with certain limited monetary relief, but excluding small claims actions
14 and excluding Assessment disputes) are subject to *Civil Code* sections
15 5925 through 5965 and (b) the Association and the affected Member
16 do not agree on a resolution through the foregoing internal dispute
17 resolution process provided for in Section 14.16.1 (“Fair, Reasonable,
18 and Expedient Procedure”), then no party to the dispute may pursue
19 a civil remedy that is subject to *Civil Code* sections 5925 through 5965,
20 without first complying with the “alternative dispute resolution”
21 (hereinafter, “ADR”) procedures set forth in that statute and referenced
22 in Section 14.17 (“Alternative Dispute Resolution Before Initiating
23 Lawsuit”).

24
25 14.16.4 Annual Description of Internal Dispute Resolution Process. The
26 Association shall annually provide the Members with a description of
27 the internal dispute resolution process required by *Civil Code* section
28 5920 as part of the annual policy statement prepared pursuant to *Civil*
29 *Code* section 5310. Such description may consist of a copy of Article 7
30 (“Architectural Approval”) and Section 14.9 (“Investigation of
31 Complaints”) through this Section 14.16 (“Internal Dispute Resolution”).

32
33 14.17 Alternative Dispute Resolution Before Initiating Lawsuit.

34
35 14.17.1 Annual Disclosure of ADR Process. As provided in *Civil Code* section
36 5965, the Association shall annually provide to its Members a
37 summary of the provisions concerning ADR contained in *Civil Code*
38 sections 5925 through 5965 as part of the annual policy statement
39 prepared pursuant to *Civil Code* section 5310. Such summary may
40 consist of a copy of this Section 14.17. Such summary shall include
41 the following language:

42
43 “Failure of a member of the association to comply with the alternative
44 dispute resolution requirements of Section 5930 of the *Civil Code* may
45 result in the loss of the member’s right to sue the association or
46 another member of the association regarding enforcement of the
47 governing documents or the applicable law.”

1
2 14.17.2 When ADR Applies. The requirements of this **Section 14.17** apply to
3 civil action or proceedings as defined in *Civil Code* section 5925(b)
4 when the remedy sought is solely for declaratory, injunctive, or writ
5 relief or if for the foregoing relief in conjunction with monetary damages
6 not in excess of the jurisdictional amount for a small claims action as
7 stated in *California Code of Civil Procedure* sections 116.220 and
8 116.221, all as provided in *Civil Code* section 5930(b). *Civil Code*
9 sections 5925 through 5965 apply to disputes between Members as
10 well as to disputes between the Association and a Member. The ADR
11 requirements of this **Section 14.17** do not apply to Assessment
12 disputes or to an action in small claims court.
13

14 14.17.3 Statutory ADR Process. In accordance with *Civil Code* sections 5925
15 through 5965, the Association or a Member may not file an
16 “enforcement action” as defined in the statute unless the parties have
17 endeavored to submit their dispute to “alternative dispute resolution” as
18 the term is defined in *Civil Code* section 5925(a) and as the process is
19 specified in *Civil Code* sections 5935, 5940, and 5945.
20

21 14.18 Non-waiver of Enforcement. Failure to enforce any provision of the Governing
22 Documents at any time shall not be deemed a waiver of the right to do so
23 thereafter with respect to the same or any other violation of any provision of the
24 Governing Documents.
25

26 14.19 Costs and Attorney Fees. In an action to enforce the Governing Documents, the
27 prevailing party shall, to the fullest extent permitted by law, including *Civil Code*
28 section 5975, be entitled to recover the full amount of all costs including attorney
29 fees incurred in responding to and/or in enforcing any Governing Document
30 provision. Without limiting the generality of the foregoing, in the event an Owner
31 pursuant to *Civil Code* section 4605 brings a civil action for violation of *Civil Code*
32 section 4600 (concerning the granting of exclusive use of a portion of the
33 Common Area to a Member) or pursuant to *Civil Code* section 4955, a civil action
34 for violation of the Common Interest Open Meeting Act (*Civil Code* sections 4900
35 through 4955) if the Association shall prevail in any such action, the Association
36 shall be entitled to recover reasonable attorney fees except to the extent
37 prohibited by law. The remedies of the prevailing party to recover the amount of
38 such costs, expenses, and attorney fees shall include, but shall not necessarily
39 be limited to, the imposition of a Reimbursement Assessment.
40

41 **ARTICLE 15** **AMENDMENT**

42
43
44 15.1 Required Approval. Subject to **Section 15.2** (“Review and Optional Veto By
45 City”), this Declaration may be amended by the affirmative vote of Members
46 representing at least a majority of the Total Voting Power of the Association;

1 *provided, however,* that, upon advice of legal counsel licensed to practice law in
2 the State of California including the drafting by legal counsel of appropriate
3 amendatory provisions, the Board shall have the authority without the
4 requirement of Member approval to amend any provision of the Declaration (i) to
5 resolve any conflict between the Declaration and applicable law which may arise
6 due to the enactment or amendment of a statute or due to a development in
7 applicable case law or (ii) to conform the provisions of the Declaration to changes
8 in applicable statutory law that impose requirements that are non-discretionary in
9 nature. Notwithstanding the foregoing, the percentage of the voting power
10 necessary to amend a specific provision shall not be less than the prescribed
11 percentage of affirmative votes required for action to be taken under that
12 provision.
13

14 15.2 Review and Optional Veto by City. In accordance with City Code Chapter 18.54
15 entitled “Regulations for PD – Planned Development and Combined Zoning
16 Districts,” and more particularly as set forth in Section 18.54.080(c), or any future
17 City ordinances or amendments related thereto, the City, at its option, has the
18 right and authority to veto any amendment to the organizational documents that
19 would adversely affect the long-term maintenance of the Development’s
20 structures or the Common Area. To enable the City to exercise said optional
21 veto, and pursuant to the aforementioned ordinance, any amendment to this
22 Declaration shall not become effective until sixty (60) days after notice of such
23 proposed action is filed with the City Council and the Council has not vetoed the
24 amendment.
25

26 15.3 Amendment Must Be Recorded. Any amendment of the Declaration shall be
27 signed and acknowledged by the duly-authorized officer(s) of the Association and
28 recorded in the Office of the County Recorder.
29

30 15.4 Presumption of Validity. There will be a presumption subsequent to the
31 recording of an amendment to this Declaration pursuant to Section 15.3
32 (“Amendment Must Be Recorded”) that all votes and consents required to pass
33 the same pursuant to Section 15.1 (“Required Approval”) were duly obtained in
34 accordance with the Governing Documents and applicable law. Such
35 presumption may be rebutted by an action commenced within one (1) year from
36 the date the amendment is recorded. In the absence of any such action, such
37 presumption shall thereafter become conclusive.
38
39

40 **ARTICLE 16 GENERAL PROVISIONS**

41
42 16.1 Headings. The headings used in this Declaration are for convenience only and
43 are not to be used in interpreting the meaning of any of the provisions of this
44 Declaration, or otherwise.
45

- 1 16.2 Severability. The provisions of this Declaration shall be deemed independent
2 and severable, and the invalidity or partial invalidity or unenforceability of any
3 provision hereof shall not invalidate any other provisions hereof.
4
- 5 16.3 Liberal Construction. The provisions of this Declaration shall be liberally
6 construed to effectuate its purpose of fostering a plan of community ownership
7 and occupancy and of management of the Development for the benefit of the
8 community.
9
- 10 16.4 Amendment to Referenced Statutes; Time for Performance. References in the
11 Declaration to particular statutes, including sections of the *Civil Code* or the
12 *Corporations Code*, shall be deemed to include any successor statute and any
13 amendments to existing or successor statutes. Whenever this Declaration states
14 a time for the performance of any act by the Association which by law (as it may
15 exist from time to time) must be performed at or within a specified time, the time
16 for the performance of such act shall be deemed to be the widest timeframe
17 permitted under then-applicable law.
18
- 19 16.5 Number; Gender. The singular shall include the plural and the plural the singular
20 unless the context requires the contrary, and the masculine, feminine, and neuter
21 shall each include the masculine, feminine, or neuter, as the context requires.
22
- 23 16.6 Exhibits. All exhibits attached to this Declaration are incorporated by this
24 reference as though fully set forth herein.
25
- 26 16.7 Power of Attorney. To the extent necessary to carry out and enforce the
27 provisions of this Declaration, an irrevocable power of attorney coupled with an
28 interest is granted to the Association by the Owners and each of them.
29
- 30 16.8 Term. The covenants, conditions, restrictions, limitations, reservations, grants of
31 easement, rights, rights-of-way, liens, charges, and equitable servitudes
32 contained in this Declaration shall run with and shall benefit and burden all of the
33 real property subject to this Declaration, including without limitation the Lots and
34 Common Areas, and shall inure to the benefit of and be binding upon the
35 Owners, the Association, its Board of Directors and officers, and their respective
36 agents and successors in interest, for a term of twenty (20) years from the date
37 of recordation of this Declaration and thereafter the term shall be automatically
38 extended for successive periods of ten (10) years each, unless within the six (6)
39 months prior to the expiration of the initial twenty-year term or that date or within
40 six months prior to the expiration of any ten-year extension period a written
41 instrument, approved by Owners entitled to vote and holding at least a majority of
42 the Total Voting Power of the Association, terminating the effectiveness of this
43 Declaration shall be recorded in the Office of the County Recorder of Santa Clara
44 County, State of California.
45
46

1 IN WITNESS WHEREOF, we, the Members of CASA DEL REY HOA OF SANTA
2 CLARA, pursuant to the requisite approval, and by means of the signatures of
3 the President and the Secretary, do hereby affirm, approve, and adopt the
4 foregoing Amended and Restated Declaration of Covenants, Conditions and
5 Restrictions of Casa del Rey HOA of Santa Clara, which Amended and Restated
6 Declaration of Covenants, Conditions and Restrictions shall be recorded with the
7 County Recorder of Santa Clara County, State of California.

8
9 DATED: _____

CASA DEL REY HOA OF SANTA
CLARA, a California nonprofit mutual
benefit corporation

10
11
12
13
14 _____
15 President

16
17
18 _____
19 Secretary
20
21

1
2 **EXHIBIT A**
3

4 **(Recital Paragraphs A & B)**
5

6 **List of Recorded Documents Superseded by**
7 **This Amended and Restated Declaration**
8

- 9
- 10 1. DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS, dated
11 January 4, 1978, and recorded on January 13, 1978, in Book D404, at Page 359,
12 as Document No. 5900662, Official Records of Santa Clara County, State of
13 California;
 - 14 2. FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS, AND
15 RESTRICTIONS, dated August 18, 1980, and recorded on October 27, 1980, in
16 Book F687, at Page 152, as Document No. 6882768, Official Records of Santa
17 Clara County, State of California; and
 - 18 3. SECOND AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS
19 AND RESTRICTIONS, dated May 3, 1982, and recorded on June 2, 1982, in Book
20 G820, at Page 627, as Document No. 7379860, Official Records of Santa Clara
21 County, State of California.
22
23