

**BOARDMEMBER DRAFT 8/22/20182/10/2021**

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.

CASA DEL REY HOA  
OF SANTA CLARA

**BOARD DRAFT 8/22/2018**

AMENDED AND RESTATED  
DECLARATION

© 2018 Berding & Weil LLP • 2175 N California Blvd Suite 500 • Walnut Creek, California 94596 • 925/838-2090  
All rights reserved. No part of this document may be reproduced without prior written consent of Berding & Weil LLP, except for use by Casa del Rey  
HOA of Santa Clara for Association purposes. All other uses are expressly prohibited.

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

		Page Number
RECITALS OF BACKGROUND FACTS, DECLARATIONS.....		11
ARTICLE 1	DEFINITIONS .....	22
1.1	Additional Charges .....	22
1.2	Annual Assessment .....	22
1.3	Architectural Committee.....	22
1.4	Articles <u>of Incorporation</u> .....	33
1.5	Assessments .....	33
1.6	Association .....	33
1.7	Board of Directors.....	33
1.8	Bylaws .....	33
1.9	City.....	33
1.10	Civil Code .....	33
1.11	Common Area.....	33
1.12	Contract Purchaser / Contract Seller .....	33
1.13	Corporations Code.....	44
1.14	County .....	44
1.15	Declaration.....	44
1.16	Development.....	44
1.17	Dwelling .....	44
1.18	Enforcement Assessment.....	44
1.19	Exclusive Use Common Area .....	44
1.19.1	Private Driveway.....	44
1.20	First Mortgage / First Mortgagee.....	44
1.21	Governing Documents .....	44
1.22	Individual Delivery / Individual Notice.....	55
1.23	Lot .....	55
1.24	Maintenance .....	55
1.25	Member.....	55
1.26	Member in Good Standing .....	55
1.27	Mortgage / Mortgagee.....	66
1.28	Owner .....	66
1.29	Party Fence .....	66

1.30	Party Wall .....	66
1.31	Reimbursement Assessment .....	66
1.32	Repair .....	66
1.33	Replacement.....	66
1.34	Resident.....	66
1.35	Rules.....	66
1.36	Special Assessment.....	66
1.37	Subdivision Map .....	77
1.38	Total Voting Power .....	7
<b>ARTICLE 2</b>	<b>HOMEOWNERS ASSOCIATION.....</b>	<b>7</b>
2.1	Management and Operation; Bylaws .....	7
2.2	Legal Standing.....	7
2.3	Membership .....	8
2.4	Voting.....	8
2.5	Association Rules .....	8
<b>ARTICLE 3</b>	<b>PROPERTY SUBJECT TO THIS DECLARATION.....</b>	<b>8</b>
3.1	Legal Description .....	8
3.2	Classification of Property .....	8
3.3	Ownership Interest; No Separate Conveyance.....	8
3.4	Undivided Interests Cannot Be Changed.....	8
3.5	Limitation on Partition of Common Area .....	9
3.6	Mergers, Consolidations and Annexations.....	99
3.7	Capital Improvements .....	99
3.8	Borrow; Mortgage Common Area .....	99
3.9	Dedication, Sale or Transfer of Common Area to Public Agencies/Utilities .....	99
<b>ARTICLE 4</b>	<b>MECHANIC'S LIENS; EASEMENTS .....</b>	<b>1010</b>
4.1	Mechanic's Lien Against Common Area .....	1010
4.2	Easements in General .....	1010
4.3	Exclusive Use Common Area Easements .....	1010
4.4	Owner's Non-exclusive Easements of Enjoyment .....	1111
4.5	Easement for Vehicular Ingress and Egress.....	12
4.6	Party Wall and Party Fence Easements .....	12
4.7	Easements of Encroachment.....	12
4.8	Easements in Case of Partial or Total Destruction of Lot.....	12
4.9	Utility Easements .....	13
4.10	Easements of the Association to Enter Lots .....	1313
4.11	Board's Power to Grant Non-exclusive Easements and Licenses to Owners .....	1313

4.12	Board's Power to Assign Exclusive Use Parking Spaces .....	1313
4.13	Board's Power to Grant Exclusive Easements to Owners .....	1414
ARTICLE 5	USE RESTRICTIONS .....	1414
5.1	Use of Common Area Generally .....	1414
5.2	No Alteration of Common Area .....	1414
5.3	No Obstruction of Common Area .....	1414
5.4	No Smoking in Common Area .....	1414
5.5	Delegation of Use .....	1515
5.6	Residential Use.....	1515
5.7	Number of Occupants.....	1515
5.8	Restriction on Businesses.....	1515
5.8.1	Types of Businesses Allowed .....	1515
5.8.2	Indemnification Regarding Business Activity .....	1616
5.9	Compliance with Laws .....	1616
5.10	Unlawful Conduct; Nuisances; Noise.....	1616
5.11	Conditions Affecting Insurance .....	1616
5.12	Outbuildings.....	1717
5.13	Requirement of Architectural Approval .....	1717
5.14	Animals.....	1717
5.14.1	No Commercial Purposes.....	1717
5.14.2	Number of Pets.....	1717
5.14.3	Control of <b>PetsDogs</b> .....	1717
5.14.4	Responsibility for Pets .....	1717
5.14.5	Indemnification Regarding Pets.....	1717
5.14.6	Removal of Nuisance Pets.....	1818
5.14.7	Pet Rules .....	1818
5.15	Trash Disposal.....	1818
5.16	Signs, Banners, Flags.....	1818
5.17	Vehicles and Parking.....	1919
5.17.1	Parking Generally .....	1919
5.17.2	Resident Parking: Garage and Private Driveway.....	1919
5.17.3	Guest Parking: Common Area Parking Spaces.....	1919
5.17.4	Prohibited and Restricted Vehicles .....	2020
5.17.5	Vehicle Repairs in the Development.....	2020
5.17.6	Other Parking Space Use Restrictions; Storage Pods .....	2020
5.17.7	Parking Rules .....	2020
5.17.8	Parking Enforcement and Towing.....	2020

ARTICLE 6	RENTING OR LEASING .....	2121
6.1	Requirements for Renting .....	2121
6.1.1	Written Lease.....	2121
6.1.2	No Subletting .....	2121
6.1.3	Copy of Lease.....	2121
6.1.4	Provide Governing Documents to Tenants .....	2121
6.1.5	Affidavit of Tenants .....	2222
6.1.6	House Sitters .....	2222
6.1.7	Owner's Contact Information .....	2222
6.2	Notice of Non-Owner Occupants .....	2222
6.3	No Transient Rentals .....	2222
6.4	Rental of Entire Lot .....	2323
6.5	No Vacation Clubs; No Time Share Arrangements.....	23
6.6	Private Exchanges Permitted.....	23
6.7	Implementation .....	24
6.8	Association As Third Party Beneficiary .....	24
6.9	Indemnification Regarding Tenant's Actions.....	2424
ARTICLE 7	ARCHITECTURAL APPROVAL.....	2525
7.1	Prior Architectural Approval Required.....	2525
7.2	Some Common Architectural Concerns.....	2525
7.2.1	Air Conditioner Units.....	2626
7.2.2	Disproportionate Burden on Common Utility Service; Separate Metering .....	2626
7.2.3	Exterior Lighting.....	2626
7.2.4	Exterior Wiring .....	2626
7.2.5	Mailboxes.....	2626
7.2.6	Masts, Poles, Towers, Other Projections .....	2626
7.2.7	No Installations on Roof.....	2626
7.2.8	Satellite Dishes and Antennas .....	2727
7.2.9	Skylights .....	2727
7.2.10	Solar Energy Systems .....	2727
7.2.11	Sports Apparatus .....	2727
7.2.12	Storage Units; Temporary Structures .....	2727
7.2.13	Structural Integrity of Dwellings; Floors, Walls, Ceilings, or Utility Systems .....	27
7.2.14	Window Replacement.....	2828

7.3	Architectural Rules.....	2828
7.3.1	In General.....	28
7.3.2	Solar Energy Systems .....	28
7.4	Preliminary Consultation Prior to Submitting Application .....	29
7.5	Written Request for Board’s Approval.....	2929
7.6	Fees; Professional Consultants .....	2929
7.7	Meetings .....	2929
7.8	Basis for Decisions; Good Faith.....	2929
7.9	Decisions in Writing; Timely Decision; Reasonable Conditions.....	3030
7.10	Variances.....	3030
7.11	Failure of Board to Make Timely Decision .....	3131
7.12	Failure to Obtain Required Approval.....	3131
7.13	Compliance with Governmental Requirements.....	31
7.14	Commencement of Approved Work.....	32
7.15	Notice to Association Before Commencement of Work; Bond .....	32
7.16	Completion; Extension of Deadline.....	3232
7.17	Notice of Completion; Inspection of Completed Work.....	3333
7.18	Notice of Non-conformity .....	3333
7.19	Failure to Remedy Non-conformity .....	3333
7.20	Non-waiver.....	3333
7.21	Disclaimer of Liability .....	3434
ARTICLE 8	ASSESSMENTS AND LIENS .....	3434
8.1	Covenant of Owner.....	3434
8.1.1	Association’s Power to Collect.....	34
8.1.2	Assessments Are a Personal Obligation.....	34
8.1.3	Obligation Runs with the Land.....	34
8.1.4	Owner’s Liability After Transfer.....	35
8.2	Creation of Lien .....	35
8.2.1	Lien Is Continuing.....	35
8.2.2	Priority of Association’s Assessment Liens.....	3535
8.3	Purpose of Assessments .....	3535
8.4	Funds to Be Held in Association’s Name .....	3636
8.5	Funds Held in Trust for Owners .....	3636
8.6	Authority of the Board to Levy Assessments .....	3636

8.7	Annual Assessment .....	3636
8.7.1	Calculation of Estimated Requirement.....	36
8.7.2	Allocation of Annual Assessment.....	36
8.7.3	Payment of Annual Assessment.....	37
8.7.4	Notice of Annual Assessment.....	37
8.7.5	Permitted Increase in Annual Assessment .....	37
8.7.6	Revised Annual Assessment .....	3737
8.7.7	Failure to Fix Annual Assessment .....	3838
8.8	Special Assessments.....	3838
8.8.1	Purpose of Special Assessments .....	3838
8.8.2	Permitted Amount of Special Assessments.....	3838
8.8.3	Allocation of Special Assessments .....	3838
8.8.4	Notice of Special Assessment .....	3939
8.8.5	Payment of Special Assessments; Cost of Payment Plans.....	3939
8.9	Application of Surplus Funds (IRS Resolution) .....	3939
8.10	Reimbursement Assessments .....	3939
8.11	Enforcement Assessments .....	4040
8.12	No Offsets.....	4040
8.13	Bad Checks .....	40
8.14	Delinquent Assessments; Acceleration in the Event of Delinquency .....	40
8.15	Enforcement by Action at Law or Foreclosure .....	41
8.15.1	Pre-lien Notice .....	41
8.15.2	Prior to Recording a Lien .....	41
8.15.3	Owner's Right to Discuss Payment Plan .....	41
8.15.4	Notice of Delinquent Assessment.....	4242
8.15.5	Delinquent Assessments of Less Than \$1,800.....	4242
8.15.6	Initiating Foreclosure .....	4242
8.15.7	Amount Due and Payable.....	4242
8.15.8	Notice of Initiating Foreclosure .....	4242
8.16	Power of Sale .....	4343
8.17	Right of Redemption .....	4343
8.18	Assignment of Rents As Security for Payment .....	4343
8.19	Remedies Are Cumulative .....	4444
8.20	Partial Payments.....	4444
8.21	Certificate of Satisfaction and Release of Lien .....	4444
8.22	Subordination to Lien of First Mortgage .....	4444

8.23	Waiver of Exemptions .....	4444
8.24	Property Exempt from Assessments.....	4545
ARTICLE 9	MAINTENANCE OF PROPERTY .....	4545
9.1	Association’s Responsibility for Common Area Generally .....	4545
9.1.1	Landscaping; Janitorial; Painting in Common Area .....	4545
9.1.2	Common Area Utilities and Services .....	4646
9.1.3	Common Area Perimeter Fences .....	4646
9.1.4	Shared Fences .....	4646
9.1.5	Employees or Independent Contractors .....	4646
9.2	Association’s Responsibility for Lots and Exclusive Use Common Area.....	4646
9.2.1	Painting.....	4646
9.2.2	Exterior Building Surfaces .....	4747
9.2.3	Roof Coverings.....	4747
9.2.4	Front Balconies.....	4848
9.2.5	Gutters and Downspouts .....	4848
9.2.6	Skylights and Roof-mounted Appliances; Obligation Runs with the Land .....	4848
9.2.7	Landscaping .....	4949
9.2.8	Private Driveways .....	4949
9.2.9	Certain Portions of Utility Laterals in Lots .....	4949
9.2.10	Limitation of Association’s Responsibility in Case of Termites.....	5050
9.2.11	No Other Responsibility of Association.....	5050
9.3	Owner’s Responsibility for <u>Maintenance</u> .....	<u>50</u> <u>Lots</u> 50
9.3.1	Owner’s Responsibility for <u>Improvements on</u> Lots .....	5050
9.3.2	Patios.....	5050
9.3.3	Owner’s Responsibility for Party Walls and Party Fences.....	5050
9.3.4	Utility Lateral Lines .....	5151
9.3.5	Owner-installed Skylights, Solar Systems, Other Roof-mounted Appliances .....	51
9.3.6	Owner’s Responsibility for Upkeep of Private Driveway .....	5151
9.3.7	Owner’s Cooperation .....	5151
9.3.8	Compliance with Architectural Provisions .....	5252
9.4	Concealed Damage .....	5252



9.5	Wood Destroying Organisms .....	5252
9.6	Authority for Entry of Lot or Exclusive Use Common Area.....	5252
9.7	Acceptance of Condition of Lot .....	5353
9.8	Board's Discretion to Require Maintenance.....	5353
9.9	Limitation of Association's Liability.....	5353
9.10	Owner's Liability to Association for Negligent Damage.....	5353
9.11	Owner's Liability to Other Lot Owners or Residents .....	5454
ARTICLE 10	PARTY WALLS AND PARTY FENCES .....	5454
10.1	Party Wall and Party Fence Defined.....	5454
10.2	General Rules of Law to Apply .....	5454
10.3	Changes, Impairments, or Permanent Structural Attachments .....	5454
10.4	Sharing of Maintenance, Repair, and Replacement Costs .....	5454
10.5	Weatherproofing .....	5555
10.6	Right to Contribution Runs with Land .....	5555
10.7	Party Wall or Party Fence Disputes .....	5555
ARTICLE 11	INSURANCE .....	5555
11.1	Insurance Coverage to Be Maintained by Association.....	5555
11.2	Master Hazard Insurance to Be Maintained by Association.....	5555
11.2.1	Scope of Coverage .....	5555
11.2.2	Policy Endorsements .....	5656
11.2.3	General Policy Provisions .....	5757
11.2.4	Earthquake Insurance.....	5757
11.3	General Liability Insurance to Be Maintained by Association.....	5858
11.3.1	Scope of Coverage .....	5858
11.3.2	Other Provisions .....	5858
11.4	Other Insurance to Be Maintained by Association .....	5959
11.4.1	Directors' and Officers' Insurance.....	5959
11.4.2	Workers' Compensation Insurance.....	5959
11.4.3	Fidelity Bond .....	5959
11.4.4	Other Insurance .....	6060
11.5	Insurance to Be Maintained by Owner .....	6060
11.5.1	HO6 Owner's Policy.....	60
11.5.2	No Overlapping Coverage .....	60

11.5.3	Other Owner-maintained Insurance.....	61
11.5.4	Evidence of Insurance; No Obligation of Association .....	6161
11.6	Insurance Proceeds.....	6161
11.7	Responsibility for Payment of Deductible.....	6161
11.7.1	Damage to Common Area .....	6161
11.7.2	Damage to Lot .....	6262
11.7.3	Allocation of Deductible .....	6262
11.7.4	Tort Damages.....	6262
11.8	Owner's Liability for Conditions Affecting Insurance.....	6262
11.9	Insurance Carriers .....	6262
11.10	Annual Review of Policies.....	6262
11.11	Coverage Not Available; Disclaimer .....	6262
11.12	Copies of Policies .....	6363
11.13	Adjustment of Losses.....	6363
11.14	Premiums.....	6363
ARTICLE 12	DAMAGE OR DESTRUCTION; CONDEMNATION .....	6464
12.1	Emergency Repairs .....	6464
12.2	Damage to Common Area .....	6464
12.2.1	Amount of Insurance Proceeds.....	64
12.2.2	Bids.....	64
12.2.3	Sufficient Proceeds.....	64
12.2.4	Excess Insurance Proceeds .....	64
12.2.5	Insufficient Proceeds; Decision Not to Repair.....	64
12.2.6	Alternative Repair Plan .....	65
12.3	Damage to a Single Lot .....	6565
12.3.1	Owner to Repair.....	6565
12.3.2	Commencement and Completion of Repair.....	6565
12.3.3	Insufficient Insurance Proceeds.....	6565
12.3.4	Failure to Timely Restore.....	6565
12.4	Damage to Two or More Lots .....	6666
12.4.1	Restoration by Association .....	6666
12.4.2	Insufficient Insurance Proceeds.....	66
12.4.3	No Obligation of Association to Advance Funds.....	66
12.4.4	Excess Insurance Funds .....	66

12.5	Condemnation of Common Area .....	67
12.5.1	Association to Represent Owners.....	67
12.5.2	Condemnation Award .....	67
12.6	Condemnation of Lots.....	6767
12.6.1	Total Condemnation of Lot .....	6767
12.6.2	Partial Condemnation of Lot .....	6767
12.6.3	Rights of Association .....	6767
12.7	Revision of Documents .....	6767
ARTICLE 13	RIGHTS OF MORTGAGEES.....	6868
13.1	Mortgages Permitted.....	6868
13.2	Intention to Conform to Mortgagees' Requirements .....	6868
13.3	Subordination of Assessment Lien .....	6868
13.4	Notice of Mortgage Default .....	6868
13.5	Mortgage Protection .....	6868
ARTICLE 14	ENFORCEMENT; NOTICE; HEARINGS .....	6969
14.1	Violations As Nuisance .....	6969
14.2	Violation of Law Is a Violation of the Declaration .....	69
14.3	Owner's Responsibility for Conduct and Damages.....	69
14.4	No Avoidance .....	69
14.5	Enforcement Rights Are Cumulative.....	70
14.6	Injunctions.....	70
14.7	Limitation on Association's Disciplinary Rights .....	7070
14.8	Imposing Sanctions .....	7070
14.8.1	Loss of Good Standing .....	7171
14.8.2	Suspension of Other Rights.....	7171
14.8.3	Monetary Penalties (Fines).....	7171
14.8.4	Monthly Sanctions for Continuing Violations.....	7171
14.8.5	Reimbursement Assessment Not a Sanction.....	7171
14.9	Investigation of Complaints.....	7272
14.10	Written Notice of Violation.....	7272
14.11	Notices: Content, Delivery .....	7272
14.11.1	Content of Notice of Violation .....	7272
14.11.2	Delivery of Notice.....	7272
14.11.3	Owner's Address for Notice .....	7272

14.11.4	Notice to Co-Owners or Occupants .....	7373
14.12	Hearing Called by the Board; Executive Session; Open Meeting .....	7373
14.13	Owner's Request for Hearing .....	7373
14.14	Notice of Hearing Decisions .....	7474
14.15	Enforcement by Association in Emergency Situations .....	7474
14.15.1	Definition of Emergency Situation .....	7474
14.15.2	Immediate Corrective Action .....	7474
14.16	Internal Dispute Resolution .....	7575
14.16.1	Fair, Reasonable, and Expedious Procedure .....	7575
14.16.2	Statutory Default Procedures .....	7575
14.16.3	Alternative Dispute Resolution May Also Apply .....	75
14.16.4	Annual Description of Internal Dispute Resolution Process .....	76
14.17	Alternative Dispute Resolution Before Initiating Lawsuit .....	76
14.17.1	Annual Disclosure of ADR Process .....	76
14.17.2	When ADR Applies .....	76
14.17.3	Statutory ADR Process .....	7676
14.18	Non-waiver of Enforcement .....	7777
14.19	Costs and Attorney Fees .....	7777
ARTICLE 15	AMENDMENT .....	7777
15.1	Required Approval .....	7777
15.2	Review and Optional Veto by City .....	7777
15.3	Amendment Must Be Recorded .....	7878
15.4	Presumption of Validity .....	7878
ARTICLE 16	GENERAL PROVISIONS .....	7878
16.1	Headings .....	7878
16.2	Severability .....	78
16.3	Liberal Construction .....	78
16.4	Amendment to Referenced Statutes; Time for Performance .....	78
16.5	Number; Gender .....	79
16.6	Exhibits .....	79
16.7	Power of Attorney .....	79
16.8	Term .....	7979

EXHIBIT A

List of Recorded Documents Superseded by This  
Amended and Restated Declaration ..... 81

MEMBER DRAFT 2/10/2021

2  
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

- 1 D. THE MEMBERS, constituting at least fifty-one percent (51%) of the Total Voting  
2 Power of the Association, desire to amend, modify, and otherwise change the  
3 Original Declaration pursuant to Section 7.03 of the Original Declaration, and DO  
4 HEREBY DECLARE that the Original Declaration, as amended, shall be, and is  
5 hereby, AMENDED AND RESTATED IN ITS ENTIRETY as set forth in the within  
6 AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS  
7 AND RESTRICTIONS OF CASA DEL REY HOA OF SANTA CLARA.  
8
- 9 E. IT IS FURTHER HEREBY DECLARED that all of the real property described in  
10 Recital Paragraph C, constitutes a planned development within the meaning of  
11 Section 4175 of the California *Civil Code*.  
12
- 13 F. IT IS FURTHER HEREBY DECLARED that all of the real property described in  
14 Recital Paragraph C, above, is and shall be held, owned, operated, managed,  
15 conveyed, hypothecated, encumbered, leased, used, occupied, and improved  
16 subject to the following covenants, conditions, and restrictions set forth herein, all  
17 of which are declared and agreed to be in furtherance of a plan and purpose of  
18 protecting, preserving, and enhancing the value, desirability, and attractiveness  
19 of the said real property and every part thereof, and of fostering the development,  
20 management, improvement, enjoyment, and sale of the said real property and  
21 any part thereof.  
22
- 23 G. IT IS FURTHER HEREBY DECLARED that all of the covenants, conditions, and  
24 restrictions set forth herein shall constitute enforceable equitable servitudes as  
25 provided in *Civil Code* section 5975, shall constitute covenants that shall run with  
26 the said real property, and shall be binding upon and inure to the benefit of each  
27 Owner of any portion of the said real property or the owner or holder of any  
28 interest or estate therein and their heirs, successors, and assigns.  
29  
30

## 31 **ARTICLE 1**      **DEFINITIONS**

---

- 32
- 33 1.1 Additional Charges. “Additional Charges” shall mean all costs, fees, charges,  
34 and expenditures including, but not limited to, interest, late charges, attorney  
35 fees, recording and filing fees, and all other costs actually incurred by the  
36 Association in collecting and/or enforcing payment of Assessments.  
37
- 38 1.2 Annual Assessment. “Annual Assessment” shall have the meaning set forth in  
39 Section 8.7.  
40
- 41 1.3 Architectural Committee. “Architectural Committee” shall mean the committee, if  
42 any, appointed pursuant to Article 7 (“Architectural Approval”).  
43

- 1 1.4 Articles of Incorporation. “Articles of Incorporation” shall mean the Amended and  
2 Restated Articles of Incorporation of Casa del Rey HOA of Santa Clara, as they  
3 may be amended from time to time, and as filed with the Office of the Secretary  
4 of State of California.  
5
- 6 1.5 Assessments. “Assessments” shall mean any or all of the following: Annual  
7 Assessments, Special Assessments, Reimbursement Assessments, and  
8 Enforcement Assessments.  
9
- 10 1.6 Association. “Association” shall mean Casa del Rey HOA of Santa Clara, a  
11 California nonprofit mutual benefit corporation, its successors and assigns.  
12
- 13 1.7 Board of Directors. “Board of Directors” or “Board” shall mean the governing  
14 body of the Association.  
15
- 16 1.8 Bylaws. “Bylaws” shall mean the Amended and Restated Bylaws of the  
17 Association as they shall be duly adopted by the Board of Directors and the  
18 Members and any duly-adopted amendments thereof.  
19
- 20 1.9 City. “City” shall mean the City of Santa Clara.  
21
- 22 1.10 Civil Code. “Civil Code” shall mean the California *Civil Code* as amended from  
23 time to time.  
24
- 25 1.11 Common Area. “Common Area” shall mean all real property, together with all  
26 improvements and appurtenances thereon, owned or held by the Association  
27 from time to time for the common use and enjoyment of the Owners and  
28 Residents of the Development. The Common Area consists of Lot 41 as shown  
29 on the Subdivision Map of the Development. The Common Area consists of  
30 private streets, curbs, gutters and storm drainage system, visitor parking spaces,  
31 signs, private driveways serving individual Dwellings, open space, landscaping,  
32 including trees, plants and grass, fences, gates, walls, utility boxes, sidewalks,  
33 trash service area, fire sprinklers for dumpster area, the clubhouse recreation  
34 building and meeting rooms, the swimming pool and related equipment, the  
35 gated pool area and poolside restrooms. The Common Area also includes the  
36 storm drainage easement and system located within Lots 2 through 6, 14, 15, 18  
37 through 30 and 38 as shown on the Subdivision Map. Some portions of the  
38 Common Area constitute “Exclusive Use Common Area” as defined in **Section**  
39 **1.19** (“Exclusive Use Common Area”).  
40
- 41 1.12 Contract Purchaser / Contract Seller. “Contract Purchaser” and “Contract Seller”  
42 shall mean the purchaser and the seller, respectively, under an installment land  
43 contract in which title to the property is transferred after the final installment  
44 payment is made.



- 1  
2 1.13 Corporations Code. “Corporations Code” shall mean the California *Corporations*  
3 *Code* as amended from time to time.  
4  
5 1.14 County. “County” shall mean the County of Santa Clara.  
6  
7 1.15 Declaration. “Declaration” shall mean this Amended and Restated Declaration of  
8 Covenants, Conditions and Restrictions of Casa del Rey HOA of Santa Clara,  
9 recorded in the Office of the County Recorder of Santa Clara County, State of  
10 California, and any duly-recorded amendments thereof.  
11  
12 1.16 Development. “Development” shall mean all the real property described in this  
13 Declaration comprising the Casa del Rey planned development and any  
14 additional real property as may hereafter be brought within the jurisdiction of the  
15 Association.  
16  
17 1.17 Dwelling. “Dwelling” shall mean a structure designed for human residential use  
18 and occupancy and all improvements thereto which is located upon a Lot.  
19  
20 1.18 Enforcement Assessment. “Enforcement Assessment” shall have the meaning  
21 set forth in Section 8.11.  
22  
23 1.19 Exclusive Use Common Area. “Exclusive Use Common Area” shall mean any  
24 portion of the Common Area the exclusive use of which is set aside, allocated,  
25 assigned, and restricted to the exclusive use or possession of the Owners and  
26 Residents of one (1) or more but less than all of the Lots and which is  
27 appurtenant to a Lot or Lots. An exclusive easement to such Exclusive Use  
28 Common Area may be specifically granted in each individual grant deed  
29 conveying a Lot or may be granted by this Declaration. The Exclusive Use  
30 Common Area appurtenant to each Lot consists of the following and no other  
31 portions of the Development constitute Exclusive Use Common Area:  
32  
33 1.19.1 Private Driveway. “Private Driveway” shall mean the driveway located  
34 upon the Common Area between the private street and the front of the  
35 garage of a Dwelling.  
36  
37 1.20 First Mortgage / First Mortgagee. “First Mortgage” shall mean a Mortgage that  
38 has first priority over all other Mortgages. “First Mortgagee” shall mean the  
39 beneficiary under a First Mortgage.  
40  
41 1.21 Governing Documents. “Governing Documents” shall mean the Articles of  
42 Incorporation, Bylaws, Declaration, and Rules.  
43

1 1.22 Individual Delivery / Individual Notice. “Individual Delivery” or “Individual Notice”  
2 shall mean delivery to a Member or Members by one (1) of the following  
3 methods, as provided in *Civil Code* section 4040:  
4

5 (a) By first-class mail with postage prepaid, registered or certified mail,  
6 express mail, or overnight delivery by an express service carrier,  
7 addressed to the recipient at such recipient’s address last shown on the  
8 books of the Association; or  
9

10 (b) By email, facsimile, or other electronic means if the recipient has  
11 consented in writing or by email to that method of delivery. The consent  
12 may be revoked, in writing or by email, by the recipient. Delivery by  
13 electronic transmission must also comply with *Corporations Code* sections  
14 20 and 21. Among other things, Section 20 of the *Corporations Code*  
15 requires the Association to obtain consent from the person to whom the  
16 document is transmitted to receive it by means of electronic transmission  
17 as well as other technical requirements.  
18

19 1.23 Lot. “Lot” shall mean any plot of land shown upon any recorded Subdivision Map  
20 of the Development upon which a Dwelling has been constructed, but excluding  
21 the Common Area. There are forty (40) Lots in the Development.  
22

23 1.24 Maintenance. “Maintenance” or to “maintain” (whether the term is capitalized or  
24 not) shall mean the act of caring for property and keeping it in its existing state,  
25 preserving it from failure or deterioration, including painting, caulking, cleaning,  
26 and minor, non-structural upkeep. In the case of landscaping, “maintenance” or  
27 to “maintain” shall mean regular fertilizing, irrigation, pruning, and other garden  
28 management practices necessary to promote healthy plant growth free of weeds  
29 or dead or dying plants.  
30

31 1.25 Member. “Member” shall mean an Owner.  
32

33 1.26 Member in Good Standing. “Member in Good Standing” shall mean a Member of  
34 the Association who is current in the payment of all Annual Assessments and  
35 Additional Charges/Special Assessments imposed in accordance with the  
36 Governing Documents, and who is in compliance with all of the provisions of the  
37 Governing Documents. A Member shall be deemed to be in Good Standing  
38 unless, after notice and an opportunity for hearing, pursuant to Article 14  
39 (“Enforcement; Notice; Hearings”), the Board has found the Member to be not in  
40 Good Standing and has so notified the Member in accordance with *Civil Code*  
41 section 5855.  
42

- 1 1.27 Mortgage / Mortgagee. “Mortgage” shall mean a duly-recorded deed of trust or  
2 mortgage in the conventional sense encumbering a Lot. “Mortgagee” shall mean  
3 a beneficiary under a Mortgage.  
4
- 5 1.28 Owner. “Owner” shall mean the record owner, whether one (1) or more persons  
6 or entities, of the fee simple title to any Lot, including Contract Sellers but  
7 excluding Contract Purchasers, and excluding those persons having such  
8 interest merely as security for the performance of an obligation.  
9
- 10 1.29 Party Fence. See **Section 10.1** (“Party Wall and Party Fence Defined”).  
11
- 12 1.30 Party Wall. See **Section 10.1** (“Party Wall and Party Fence Defined”).  
13
- 14 1.31 Reimbursement Assessment. “Reimbursement Assessment” shall have the  
15 meaning set forth in **Section 8.10**.  
16
- 17 1.32 Repair. “Repair” (whether the term is capitalized or not) shall mean the minor  
18 restoration of property that is torn, broken, or otherwise damaged, or has  
19 sustained wear, tear, or deterioration such that minor restoration is necessary.  
20
- 21 1.33 Replacement. “Replacement” or to “replace” (whether the term is capitalized or  
22 not) shall mean substantial reconstruction, restoration, or substitution of the  
23 whole or a substantial part of property that has deteriorated or has been  
24 damaged or destroyed through usage or through hazard or catastrophe such that  
25 it is no longer useable or serviceable in its current condition. In the case of  
26 landscaping, “replacement” or to “replace” shall mean the removal and replanting  
27 of trees, shrubs, lawns, and other plants that are dead or dying or otherwise not  
28 serviceable or the substitution of plants for hardscape or substitution of  
29 hardscape for plants.  
30
- 31 1.34 Resident. “Resident” shall mean any person who lawfully resides on a Lot within  
32 the Development whether or not such person is an Owner.  
33
- 34 1.35 Rules. “Rules” shall mean the policies, rules, and regulations governing the  
35 administration, management, operation, use, and occupancy of the  
36 Development, including the use of the Common Area and facilities, the personal  
37 conduct of Owners and Residents, members of their household, pets, tenants,  
38 invitees, and guests within the Development, enforcement of the Governing  
39 Documents, and any other matter that is within the jurisdiction of the Association,  
40 as adopted, published, or amended by the Board from time to time and subject to  
41 applicable law including *Civil Code* section 4340 and following.  
42
- 43 1.36 Special Assessment. “Special Assessment” shall have the meaning set forth in  
44 **Section 8.8**.

1  
2 1.37 Subdivision Map. “Subdivision Map” shall mean that certain map entitled  
3 “Amended Tract No. 6046” filed for record on January 4, 1978, in Book 410 of  
4 Maps, Pages 40 and 41, in the Office of the County Recorder of Santa Clara  
5 County, which amended that certain map entitled “Tract No. 6046” filed for record  
6 on May 18, 1977, in Book 397 of Maps, Pages 4 and 5.

7  
8 1.38 Total Voting Power. “Total Voting Power” shall mean the total number of votes of  
9 all Members entitled to vote at a particular time, calculated on the basis of one  
10 (1) vote for each Lot, ~~excluding any Lots as to which an Owner is not then a~~  
11 ~~Member in Good Standing.~~

## 14 **ARTICLE 2 HOMEOWNERS ASSOCIATION**

---

15  
16 2.1 Management and Operation; Bylaws. The Association is an “association” as  
17 defined in *Civil Code* section 4080 and as such shall have the power and the  
18 authority to manage and operate the Development in accordance with the  
19 Governing Documents and the provisions of applicable law. The Association  
20 shall have all of the powers set forth in the Governing Documents together with  
21 general power to do any and all things that a nonprofit mutual benefit corporation  
22 may lawfully do under the laws of the State of California, subject only to the  
23 limitations upon the exercise of such powers as are expressly set forth in the  
24 Governing Documents. Provisions concerning the operation of the Association  
25 as a nonprofit mutual benefit corporation are set forth in the Bylaws.

26  
27 2.2 Legal Standing. To the fullest extent permitted by law, including *Civil Code*  
28 section 5980, the Association shall have standing to institute, defend, settle, or  
29 intervene in litigation, arbitration, mediation, or administrative proceedings in its  
30 own name as a real party in interest, and without joining with it the Owners, in  
31 matters pertaining to the following:

- 32  
33 (a) Enforcement of the Governing Documents,  
34  
35 (b) Damage to the Common Area,  
36  
37 (c) Damage to the separate interests that the Association is obligated to  
38 maintain, repair, or replace,  
39  
40 (d) Damage to a separate interest that arises out of, or is integrally related to,  
41 damage to the Common Area or separate interests that the Association is  
42 obligated to maintain, repair, or replace.  
43

- 1 2.3 Membership. Every Owner of a Lot shall be a Member of the Association and  
2 shall remain a Member thereof until such time as his or her ownership of such  
3 Lot ceases for any reason. Fee ownership of a Lot shall be the sole qualification  
4 for membership in the Association. Membership shall be appurtenant to and may  
5 not be separated from ownership of a Lot and shall not be transferred,  
6 encumbered, pledged, alienated, or otherwise hypothecated in any way, except  
7 in connection with the sale or encumbrance of the Lot to which it is appurtenant.  
8
- 9 2.4 Voting. Only Members ~~in Good Standing~~ shall be entitled to vote, and only one  
10 (1) vote shall be cast for each Lot, as more particularly set forth in the Bylaws.  
11
- 12 2.5 Association Rules. Subject to applicable law including *Civil Code* section 4340  
13 and following, regarding notice and procedures, the Board shall have the power  
14 and the authority to establish, promulgate, amend, repeal, and enforce Rules.  
15  
16

### 17 **ARTICLE 3 PROPERTY SUBJECT TO THIS DECLARATION**

---

- 18
- 19 3.1 Legal Description. The property subject to this Declaration and to the jurisdiction  
20 of the Association is described in Recital Paragraph C, above.  
21
- 22 3.2 Classification of Property. The property subject to this Declaration is a planned  
23 development. All of the property subject to the Declaration is divided into the  
24 following categories:  
25
- 26 (a) Common Area,
  - 27
  - 28 (b) Exclusive Use Common Area, and
  - 29
  - 30 (c) Lots.
  - 31
- 32 3.3 Ownership Interest; No Separate Conveyance. The ownership interest of each  
33 Lot Owner shall include: (i) a designated Lot, (ii) a Membership in the  
34 Association, and (iii) any exclusive easements or easements appurtenant to such  
35 Lot upon the Exclusive Use Common Area and such other easements as are  
36 applicable, all as described in the Declaration or in the deed to the Lot.  
37 Membership, and each Owner's undivided interest in the Common Area, and any  
38 such easements shall be appurtenant to and may not be separated from  
39 ownership of a Lot and shall not be transferred, encumbered, pledged, alienated,  
40 or otherwise hypothecated in any way, except in connection with the sale or  
41 encumbrance of the Lot to which it is appurtenant.  
42
- 43 3.4 Undivided Interests Cannot Be Changed. The undivided interests in the  
44 Common Area established in the Declaration cannot be changed except with the

1 approval of one hundred percent (100%) of the Owners or as provided in **Section**  
2 **12.7** ("Revision of Documents") following condemnation of a portion of the  
3 Development.  
4

5 3.5 Limitation on Partition of Common Area. There shall be no subdivision or  
6 partition of the Common Area, nor shall any Owner seek any partition or  
7 subdivision of the Common Area. Notwithstanding any provision to the contrary  
8 contained in this Declaration and in order to provide for a means of terminating  
9 the Development if this should become necessary or desirable, two-thirds (2/3) of  
10 the Owners of Lots shall have the right to petition the Superior Court having  
11 jurisdiction to alter or vacate the Subdivision Map under California *Government*  
12 *Code* section 66499.21 and following, or any comparable provisions of law, and  
13 to vest title to the Common Area in the Owners as tenants in common and order  
14 an equitable partition of the Common Area in accordance with the laws of the  
15 State of California. If any Lot shall be owned by two (2) or more co-tenants as  
16 tenants in common or as joint tenants, nothing contained in this Declaration shall  
17 be deemed to prevent a judicial partition by sale as between such co-tenants.  
18

19 3.6 Mergers, Consolidations and Annexations. Upon approval of at least two-thirds  
20 (2/3) of the Members, the Board of Directors, acting on behalf of the Association,  
21 shall have the power to participate in mergers and consolidations with other  
22 nonprofit organizations organized for the same purposes as this Association, or  
23 annex additional residential property and Common Area.  
24

25 3.7 Capital Improvements. The Board of Directors shall have the power and  
26 authority to provide for the construction, installation, or acquisition of capital  
27 improvements upon the Common Area, provided that in any fiscal year  
28 expenditures for such capital improvements shall not exceed five percent (5%) of  
29 the budgeted gross expenses of the Association for that fiscal year without the  
30 approval of a majority of the Total Voting Power of the Association.  
31

32 3.8 Borrow; Mortgage Common Area. The Board of Directors, acting on behalf of the  
33 Association, shall have the power to borrow money and, upon approval of at  
34 least two-thirds (2/3) of the Members, mortgage, pledge, deed in trust, or  
35 otherwise hypothecate the Common Area and facilities thereon as security for  
36 money borrowed by the Association; *provided, however,* that such approval shall  
37 not be required in the case of the sale by the Association of a Lot acquired by the  
38 Association as the result of foreclosure of the Association's lien.  
39

40 3.9 Dedication, Sale or Transfer of Common Area to Public Agencies/Utilities. Upon  
41 approval of at least two-thirds (2/3) of the Members, the Board acting on behalf of  
42 the Association shall have the power and authority to dedicate, sell, or transfer  
43 any interest in or to all or any part of the Common Area to any public agency,

1 authority, or utility, to be used for such purposes and subject to such conditions  
2 as may be agreed to by the Members.  
3  
4

#### 5 **ARTICLE 4 MECHANIC'S LIENS; EASEMENTS**

---

6  
7 4.1 Mechanic's Lien Against Common Area. In the event there shall be filed against  
8 the Common Area a notice of mechanic's lien for, or purporting to be for, labor or  
9 materials alleged to have been furnished or delivered for any Owner within the  
10 Development or his or her Lot, such Owner shall forthwith cause such lien to be  
11 discharged by payment, bond, or otherwise. If the Owner fails to cause the lien  
12 to be discharged, the Board may send written notice to the Owner specifying that  
13 unless the Owner causes the lien to be discharged within five (5) days from the  
14 date of such notice, the Board may cause the lien to be discharged. Within such  
15 five (5) day period, and notwithstanding any other provisions of the Governing  
16 Documents concerning notice or hearing, the Owner shall be permitted a hearing  
17 before the Board regarding the validity of such lien and any offsets or defenses  
18 thereto. At that time, the Board shall determine whether the lien adversely and  
19 improperly affects and encumbers the rights and interests of the Association or  
20 the other Owners. If the Board of Directors determines that the lien does  
21 adversely and improperly affect and encumber such rights and interests and that  
22 adequate protection of such rights and interests has not been provided, the  
23 Board may cause the lien to be discharged by payment, bond, or otherwise. The  
24 Board shall have the right to levy a Reimbursement Assessment against the  
25 Owner responsible for causing the lien to be discharged in an amount equal to all  
26 amounts paid by the Association together with interest thereon at the legal rate  
27 and all costs and expenses paid or incurred in connection therewith, including  
28 reasonable attorney fees.  
29

30 4.2 Easements in General. In addition to all easements reserved and granted on the  
31 Subdivision Map, there are hereby specifically reserved and granted for the  
32 benefit of the Lots and Lot Owners in common and for each Lot and Lot Owner  
33 severally, and for the Association, as their respective interests shall obtain, the  
34 easements, reciprocal negative easements, secondary easements, and rights-of-  
35 way as particularly identified in this **Article 4**.  
36

37 4.3 Exclusive Use Common Area Easements. "Exclusive Use Common Areas" are  
38 enumerated in **Section 1.19**. Exclusive Use Common Areas, if any, are subject,  
39 as the servient tenements, to exclusive easements in favor of the Lots to which  
40 they are attached or assigned, as the dominant tenements, and such exclusive  
41 easements shall be appurtenant to those designated Lots. An exclusive  
42 easement to such Exclusive Use Common Area may be specifically granted in  
43 each individual grant deed conveying a Lot; however, the failure of any such

1 deed to set forth such grant of easement shall not invalidate the exclusive  
2 easement granted in this Declaration.

3  
4 4.4 Owner's Non-exclusive Easements of Enjoyment. Every Owner of a Lot shall  
5 have a non-exclusive easement of use of and enjoyment in, to, and throughout  
6 the Common Area of the Development; *provided, however,* such non-exclusive  
7 easements shall be subordinate to, and shall not interfere in any way with the  
8 exclusive easements, if any, appurtenant to Lots over Exclusive Use Common  
9 Area. Each such non-exclusive easement shall be appurtenant to and pass with  
10 the title to every Lot, subject to the following rights and restrictions:

- 11  
12 (a) The right of the Board to establish and enforce Rules governing the use of  
13 the Common Area and facilities thereon;  
14  
15 (b) The right of the Board to charge reasonable admission and other fees for  
16 the use of any facilities situated upon the Common Area;  
17  
18 (c) The right of the Board to suspend an Owner's right to use the recreational  
19 facilities as provided in **Section 14.8** ("Imposing Sanctions");  
20  
21 (d) The right of the Board, as set forth in **Section 3.8** ("Borrow; Mortgage  
22 Common Area"), to mortgage, pledge, encumber, or otherwise  
23 hypothecate the Common Area and facilities thereon as security for  
24 money borrowed by the Association;  
25  
26 (e) The right of the Board, as set forth in **Section 3.9** ("Dedication, Sale or  
27 Transfer of Common Area to Public Agencies/Utilities"), to sell or transfer  
28 personal property owned by the Association;  
29  
30 (f) The right of the Association or its authorized agents, to enter any Lot when  
31 reasonably necessary as set forth in **Section 4.10** ("Easements of the  
32 Association to Enter Lots");  
33  
34 (g) The right of the Board, as set forth in **Section 4.11** ("Board's Power to  
35 Grant Non-exclusive Easements and Licenses to Owners"), to grant  
36 easements, licenses, and rights-of-way upon the Common Area to  
37 Owners;  
38  
39 (h) The right of the Association to establish Annual Assessments or charges  
40 and to collect same for the use of any Common Area facility or of any  
41 private streets or driveways situated upon the Common Area;  
42  
43 (i) The right of the Association to suspend the right to use of any of the  
44 Common Area recreational facilities by an Owner or Resident as set forth



1 in Section 14.8 (“Imposing Sanctions”) for any period during which any  
2 assessment against his Lot remains unpaid, or for any infraction of its  
3 published Rules; but only after notice and a hearing before the Board as  
4 set forth in Article 14 (“Enforcement; Notice; Hearings”); and  
5

6 (j) The right of the Association or its authorized agents, as provided in this  
7 Declaration, to perform its obligations under this Declaration, including  
8 obligations with respect to construction, maintenance, repair, or  
9 replacement for the benefit of the Common Area or the Owners in  
10 common.  
11

12 4.5 Easement for Vehicular Ingress and Egress. An easement for vehicular ingress  
13 and egress to and from each Dwelling over the private roads and driveways in  
14 the Common Area is reserved for the non-exclusive use of each Lot.  
15

16 4.6 Party Wall and Party Fence Easements. There shall be an easement for  
17 reasonable repairs over the areas immediately adjacent to each side of all such  
18 walls and fences for the benefit of all persons having an interest therein; *provided*  
19 *however*, that such easement shall allow entry only at reasonable times and shall  
20 in no event be deemed to permit entry into the interior portions of any residence.  
21 Any damage resulting from use of the easement shall be repaired at the expense  
22 of the Owner causing the same.  
23

24 4.7 Easements of Encroachment. If any portion of any way or other part of an  
25 improvement as originally constructed upon the Properties, including without  
26 limitation eaves or other overhangs of a structure, encroaches upon any part of  
27 the Common Area or upon the Lot or Lots used or designated for use by another  
28 Owner, an easement for the encroachment and for the maintenance, repair and  
29 replacement of the same is granted to and for the benefit of the Owners of such  
30 encroaching structure. No such easement shall exist, however, in respect to an  
31 encroachment caused by construction of any improvement on any Lot after  
32 completion of construction of the original improvements thereon by the Declarant,  
33 its successor and assigns.  
34

35 4.8 Easements in Case of Partial or Total Destruction of Lot. In the event a Dwelling  
36 constructed on a Lot becomes partially or totally destroyed or in need of repair or  
37 replacement, and in full compliance with the provisions within Article 12  
38 (“Damage or Destruction; Condemnation”), mutual and reciprocal easements are  
39 granted to the Owner of the Lot upon which the damaged or destroyed Dwelling  
40 is located, the Owner of the abutting Lots and the Association to the extent  
41 reasonably necessary to make repairs and replacement to the damaged or  
42 destroyed property and protecting the structure on the Lot adjacent thereto. Any  
43 dispute as to the extent of such easement shall be submitted to the Board of  
44 Directors for arbitration pursuant to Article 14 (“Enforcement; Notice; Hearings”)

- 1  
2 4.9 Utility Easements. There are reserved and there shall exist easements over and  
3 under the Development or any portion thereof for the purpose of constructing,  
4 erecting, operating, or maintaining thereon, therein, or thereunder overhead or  
5 underground lines, cables, wires, conduits, or other devices for electricity, cable  
6 television, power, telephone and other purposes, public sewers, storm water  
7 drains and pipes, water systems, sprinkling systems, water, heating and gas  
8 lines or pipes, and any similar public or quasi-public improvements or facilities,  
9 and for any other purposes deemed by the Board to be appropriate and not  
10 inconsistent with the purposes and interests of the Association, together with the  
11 Association's right and authority to grant and transfer the same to serve the  
12 Development. Each purchaser and Owner of a Lot, in accepting a deed to a Lot,  
13 expressly consents thereto; *provided, however*, that no such easement or rights-  
14 of-way may be granted or transferred if it would unreasonably interfere with the  
15 use, occupancy, or enjoyment by an Owner or Resident of any Lot and any  
16 existing exclusive easements over Common Area appurtenant thereto, if any,  
17 without the consent of the Owner(s) affected.  
18
- 19 4.10 Easements of the Association to Enter Lots. The Association or its agents may  
20 enter any Lot when reasonably necessary for the purpose of carrying out any  
21 maintenance, repair, improvement or replacement which the Association is  
22 permitted or required to carry out, and the Association shall have and is hereby  
23 granted an easement and right of entry for such purpose. Prior to entry, the  
24 Association shall give to the Owner twenty-four (24) hours' notice except in case  
25 of an emergency. Such entry shall be made with as little inconvenience to the  
26 Owner as practicable, and any damage caused thereby shall be the responsibility  
27 of the Association.  
28
- 29 4.11 Board's Power to Grant Non-exclusive Easements and Licenses to Owners.  
30 Notwithstanding any other provisions of the Governing Documents, the Board  
31 shall have the power in its discretion without approval vote of the Members to  
32 grant and convey licenses for use, rights-of-way, and non-exclusive easements  
33 in, over, or under the Common Area or any portion thereof to Owners, for such  
34 purposes as the Board deems to be appropriate and not inconsistent with the  
35 purposes and interests of the Association.  
36
- 37 4.12 Board's Power to Assign Exclusive Use Parking Spaces. The Association, acting  
38 through the Board, shall have the right to assign each Lot the exclusive use of  
39 not more than two (2) automobile parking spaces within the Common Area,  
40 which parking spaces shall be located upon the Private Driveway nearest and  
41 adjacent to the Dwelling located on the Lot. The Association shall have no power  
42 to reassign a Private Driveway parking space without the express written consent  
43 of all affected Owners. All other Common Area parking spaces are for guest  
44 parking only.

1  
2 4.13 Board's Power to Grant Exclusive Easements to Owners. Notwithstanding any  
3 other provisions of the Governing Documents, including but not limited to the  
4 provisions in Section 4.12 ("Board's Power To Assign Parking Spaces") or  
5 described in *Civil Code* section 4600(b), upon approval of a majority of the Total  
6 Voting Power of the Association, the Board shall have the power in its discretion  
7 to grant and convey exclusive easements in, over, or under the Common Area or  
8 any portion thereof to Owners; *provided, however*, that such grant shall not  
9 unreasonably interfere with the use, occupancy, or enjoyment by an Owner or  
10 Resident of any Lot and any existing exclusive easements over Common Area  
11 appurtenant thereto, if any, without the consent of the Owner(s) affected.  
12

## 13 **ARTICLE 5**                    **USE RESTRICTIONS**

---

15  
16 5.1 Use of Common Area Generally. All use of Common Area is subject to the  
17 Governing Documents. Subject to the provisions of the Governing Documents,  
18 the Common Area shall be held, maintained, and used to meet the common  
19 interests of the Owners and the Residents, members of their household, tenants,  
20 and guests.  
21

22 5.2 No Alteration of Common Area. Except as may be authorized by the Board, no  
23 person or entity other than the Association or its duly-authorized agents shall (i)  
24 construct, reconstruct, refinish, alter, or maintain any improvement upon the  
25 Common Area, (ii) make or create any excavation or fill upon the Common Area,  
26 (iii) change the natural or existing drainage of the Common Area, or (iv) plant,  
27 remove, or destroy any seed, plant material, tree, shrub, or other vegetation upon  
28 the Common Area.  
29

30 5.3 No Obstruction of Common Area. The Common Area shall be kept free of  
31 rubbish, debris, and other unsightly or unsanitary materials. There shall be no  
32 obstruction of any part of the Common Area nor shall anything impair access to  
33 the Common Area. Each Owner shall avoid causing any damage to the  
34 Common Area.  
35

36 5.4 No Smoking in Common Area. For the safety of the property and for the health,  
37 safety, and security of all Residents of the Development, no smoking of  
38 cigarettes, electronic cigarettes or "e-cigarettes," personal vaporizers, electronic  
39 nicotine delivery systems, cigars, pipes, or any other tobacco product, marijuana,  
40 legal or illegal substance shall be permitted anywhere in the Common Area,  
41 whether indoors or outdoors, including Exclusive Use Common Area. "Smoking"  
42 shall include the inhaling, exhaling, burning, or carrying of any lighted or  
43 electronic cigarettes, cigars, pipe, personal vaporizers, electronic nicotine  
44 delivery systems, or any other tobacco product, marijuana, or legal or illegal

substance, and shall include smoke or vapor from any such activity drifting from a Lot into the Common Area. Specifically, smoking is not allowed in the outdoor pool area, or anywhere within the clubhouse recreational building including the meeting rooms located in the Common Area. The Board may adopt and enforce smoking Rules in addition to the provisions of this **Section 5.4**.

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

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

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

5.8 **Restriction on Businesses.**

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

1 governmental ordinances; and the activity is merely incidental to the  
2 use of the Lot for residential purposes and (ii) certain care facilities  
3 that, by law, cannot be prohibited within the Development.  
4

5 5.8.2 Indemnification Regarding Business Activity. To the fullest extent  
6 permitted by law, every Owner or Resident who conducts or engages  
7 in any business, commercial endeavor, or profession within the  
8 Development, or whose tenant does so, agrees to and shall indemnify  
9 and defend the Association, its officers, directors, employees, and  
10 agents and shall hold them harmless from and against any cost, loss,  
11 claim, or damages of any kind, arising out of the conduct or presence  
12 of such activity, including but not limited to attorney fees, any claims for  
13 consequential damages, and any claims arising or alleged to arise out  
14 of the enforcement or nonenforcement by the Association of the  
15 Governing Documents, including but not limited to the restriction on  
16 business contained in this **Section 5.8**. Any amounts owed pursuant to  
17 this **Section 5.8.2** may be assessed as a Reimbursement Assessment.  
18

19 5.9 Compliance with Laws. Each Owner and Resident shall comply with all  
20 requirements of all federal, state, and local governmental authorities and all laws,  
21 ordinances, rules and regulations applicable to his or her Lot and Dwelling and  
22 the Common Area.  
23

24 5.10 Unlawful Conduct; Nuisances; Noise. No noxious, illegal or offensive activities  
25 shall be carried on, in or upon any Lot, or any part of the Development, nor shall  
26 anything be done thereon, through noise or otherwise, which may be or may  
27 become an annoyance or a nuisance to or which may in any way interfere with  
28 the quiet enjoyment of any Residents of their respective Lots or Dwellings. The  
29 Association shall not be obligated to enforce this **Section 5.10** when a dispute  
30 under the Declaration is solely between neighbors, does not involve Common  
31 Area, or is not an emergency. In any violation or dispute involving neighbors,  
32 Residents shall take reasonable steps to work with each other to resolve their  
33 differences before reporting a violation or dispute to the Association. Resident's  
34 complaints to the Association about neighbors shall: (a) be in writing; (b) give as  
35 much detail as possible concerning the dispute; (c) provide specific information  
36 about what informal efforts to resolve the matter were undertaken by the  
37 complaining Resident(s); and (d) provide the name, address, phone numbers,  
38 and email address of the complaining Resident(s).  
39

40 5.11 Conditions Affecting Insurance. Nothing shall be done, placed, or kept within the  
41 Development that will increase the rate of insurance or result in the cancellation  
42 of insurance under any insurance policy maintained by the Association, or which  
43 will be in violation of any governmental statute, ordinance, rule, or regulation. If  
44 any Owner or Resident, member of their household, tenant, invitee, or guest shall

1 violate this **Section 5.11**, the Lot Owner shall be liable to the Association for any  
2 resulting increase in insurance premiums and any other damages, which may be  
3 assessed against the responsible Owner as a Reimbursement Assessment.  
4

5 5.12 Outbuildings. In no event shall any outbuilding, shed, **garagetent** or similar  
6 structure be used for human occupancy, either temporarily or permanently.  
7

8 5.13 Requirement of Architectural Approval. As addressed in **Article 7** (“Architectural  
9 Approval”), construction, installation, modification, or alteration of buildings,  
10 outdoor structures, landscaping, and outdoor lighting are subject to prior  
11 architectural approval.  
12

13 5.14 Animals.

14  
15 5.14.1 No Commercial Purposes. No animals shall be kept, bred, or  
16 maintained within the Development for any commercial purpose.  
17

18 5.14.2 Number of Pets. The number of pets per Lot shall be as provided in  
19 the applicable City code. Unless otherwise provided in the Rules, a  
20 “reasonable number” of dogs and/or cats kept in a Lot shall be deemed  
21 to be no more than three (3), in any combination (for example, two (2)  
22 dogs and one (1) cat, two cats and one dog, or three cats or three  
23 dogs).  
24

25 5.14.3 Control of **PetsDogs**. While in Common Areas, each dog must be  
26 restrained as required by applicable City code.  
27

28 5.14.4 Responsibility for Pets. The owner of each pet shall be responsible for  
29 immediately removing and disposing of any waste introduced to any  
30 portion of the Development by such pet. Owners, Residents, their  
31 tenants, and guests shall prevent their pets from soiling any portion of  
32 the Common Area and shall immediately clean up any mess left by  
33 their pet.  
34

35 5.14.5 Indemnification Regarding Pets. Each Owner, Resident, and any  
36 person bringing or keeping an animal within the Development shall be  
37 absolutely liable to the Association and all other persons for any injury  
38 or damage to persons or property caused by the animal brought upon  
39 or kept upon the Development by such person or by members of his or  
40 her household, tenants, invitees, or guests. To the fullest extent  
41 permitted by law, each Owner agrees to and shall indemnify and  
42 defend the Association, its officers, directors, employees, and agents  
43 and shall hold them harmless from and against any cost, loss, claim, or  
44 damages of any kind, arising out of or resulting from the presence or

1 conduct of any animal brought upon or kept within the Development by  
2 the Owner, members of his or her household, tenants, invitees, or  
3 guests including but not limited to attorney fees, any claims for  
4 consequential damages, and any claims arising or alleged to arise out  
5 of the enforcement or nonenforcement by the Association of the  
6 Governing Documents, including but not limited to the restrictions on  
7 animals contained in this Section 5.14. Any amounts owed pursuant to  
8 this Section 5.14.5 may be assessed as a Reimbursement  
9 Assessment.

10  
11 5.14.6 Removal of Nuisance Pets. The Association shall have the right to  
12 prohibit the keeping of any animal which, after the responsible Owner  
13 or Resident has an opportunity for a hearing called by the Board  
14 pursuant to Section 14.12 ("Hearing Called by the Board; Executive  
15 Session; Open Meeting"), is found by the Board to be a nuisance.

16  
17 5.14.7 Pet Rules. The Board may adopt and enforce pet Rules in addition to  
18 the provisions of this Section 5.14.

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

32  
33 5.16 Signs, Banners, Flags. Only the following types of signs, posters, banners, or  
34 flags shall be displayed to the public view from any portion of the Development:

35  
36 (a) Signs required by legal proceedings;

37  
38 (b) A noncommercial sign or poster no larger than nine (9) square feet in size  
39 or a noncommercial flag or banner no larger than fifteen (15) square feet  
40 in size, displayed upon a Lot or Dwelling, and limited to the fullest extent  
41 permitted by *Civil Code* section 4710;

42  
43 (c) A single sign of customary and reasonable dimension and design,  
44 complying with the provisions of any applicable ordinance and the

1 Architectural Rules, if any, and reasonably located on a Lot advertising a  
2 Lot for sale or rent;

- 3
- 4 (d) Other signs which by law cannot be prohibited;
- 5
- 6 (e) A flag of the United States, subject to the City or County restrictions as to  
7 size and as to time, place, and manner of display, as provided in *Civil*  
8 *Code* section 4705;
- 9
- 10 (f) Garage sale signs located temporarily on an Owner's Lot on the day of the  
11 garage sale and to be removed within twenty-four (24) hours after the end  
12 of the garage sale. Garage sale signs shall comply with **clause (b)** of this  
13 **Section 5.16**;
- 14
- 15 (g) A single identification sign which has been approved by **the Board** located  
16 on a Lot identifying the number or address of the Lot and/or the names of  
17 the occupants;
- 18
- 19 (h) Signs approved by the Board as required for traffic control and regulation  
20 of streets or open areas within the Development; and
- 21
- 22 (i) Signs on the Common Area as approved by the Board for a purpose  
23 reasonably related to the affairs of the Association, including signs located  
24 at or near any entrance to the Development identifying the Development.
- 25

26 **5.17 Vehicles and Parking.**

27

28 5.17.1 Parking Generally. Vehicles shall not be parked anywhere within the  
29 Development except wholly within a garage, a Private Driveway, or in a  
30 designated parking space. Parking is not allowed at any time on  
31 private Common Area streets.

32

33 5.17.2 Resident Parking: Garage and Private Driveway. The parking facilities  
34 for Residents are the garage of the Dwelling on the Resident's Lot, and  
35 the Private Driveway appurtenant to, and designated for, such Lot.

36

37 5.17.3 Guest Parking: Common Area Parking Spaces. The Development  
38 contains eight (8) Common Area parking spaces which shall remain  
39 unassigned and shall only be for the use of guests of  
40 Owners/Residents; *provided, however,* that if an Association  
41 maintenance project temporarily prevents normal use of Residents'  
42 parking facilities, such Residents may use the Common Area parking  
43 spaces. No vehicle shall be parked continuously in the Common Area  
44 parking spaces for longer than seventy-two (72) hours, or as needed if



1 an Association maintenance project temporarily prevents normal use of  
2 Residents' parking facilities. Boats, trailers, and campers shall not be  
3 parked, stored or maintained within the unassigned Common Area  
4 parking spaces without the approval of the Board and subject to any  
5 related the Rules of the Association.  
6

7 5.17.4 Prohibited and Restricted Vehicles. Unreasonably noisy or foul  
8 smelling vehicles are prohibited vehicles. Prohibited vehicles may not  
9 be operated in or brought into the Development. Dilapidated or  
10 inoperable vehicles and unregistered vehicles are restricted vehicles.  
11 Restricted vehicles shall not be kept or parked within the Development  
12 other than inside a garage.  
13

14 5.17.5 Vehicle Repairs in the Development. No motor vehicles or boats shall  
15 be constructed, reconstructed, repaired, or serviced within the  
16 Development (other than minor emergency repairs to the extent  
17 necessary to move the vehicle to a repair facility) except within the  
18 garage of a Dwelling or in a Private Driveway but not for more than  
19 seventy-two (72) hours.  
20

21 5.17.6 Other Parking Space Use Restrictions; Storage Pods. The Board may,  
22 in its discretion, briefly permit storage pods or other such non-vehicular  
23 conveyances to be placed in the parking spaces within the Common  
24 Area, including the Private Driveways, if preapproved by the Board  
25 pursuant to Article 7 ("Architectural Approval), and as more specifically  
26 noted in Section 7.2.12 ("Storage Units; Temporary Structures").  
27

28 5.17.7 Parking Rules. In addition to the provisions of this Section 5.17, the  
29 Board shall have the power and authority to adopt, promulgate, and  
30 enforce Parking Rules and shall have the power to impose fines and  
31 other sanctions for violations of provisions of the Governing  
32 Documents relating to vehicles and parking.  
33

34 5.17.8 Parking Enforcement and Towing. The provisions of this Section 5.17  
35 apply to all vehicles within the Development, including vehicles of  
36 guests and invitees. Subject to the provisions of applicable law,  
37 including California *Vehicle Code* section 22658, the Board shall have  
38 the power and authority to cause the towing, at the vehicle owner's  
39 expense, of vehicles that are parked within the Development in  
40 violation of any of the provisions of the Governing Documents. Costs  
41 incurred by the Association relating to the towing and/or storage of any  
42 vehicle parked in violation of any provision of the Governing  
43 Documents shall be assessed as a Reimbursement Assessment  
44 against the Owner responsible or whose household member, Contract

Purchaser, tenant, invitee, or guest is responsible for the presence of such vehicle.

## ARTICLE 6 RENTING OR LEASING

---

### 6.1 Requirements for Renting.

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

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

6.1.2 No Subletting. No subletting shall be permitted.

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

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

1  
2 6.1.5 Affidavit of Tenants. Upon request by the Association, or anytime a  
3 lease or rental agreement is executed, updated or otherwise amended,  
4 the Owner shall cause all tenants and occupants to execute and  
5 submit to the Association an affidavit or certificate in a form prescribed  
6 by the Association, which includes the following and such other  
7 matters as are reasonably required by the Association: (i) that  
8 he/she/they understand, (ii) that he/she/they have received copies of  
9 the Governing Documents, or have been provided with online access  
10 thereto, as described in **Section 6.1.4** ("Provide Governing Documents  
11 to Tenants"), (iii) that he/she/they understand that the lease is  
12 expressly subject to all the provisions of the Governing Documents,  
13 and (iv) that he/she/they understand that the breach of any provision of  
14 the Governing Documents shall constitute a default under the lease.  
15

16 6.1.6 House Sitters. The provisions of **Section 6.1.4** ("Provide Governing  
17 Documents to Tenants") and **Section 6.1.5** ("Affidavit of Tenants") shall  
18 apply with respect to any person occupying a Lot as a guest of the  
19 Owner, as a paid or unpaid house sitter, or in a similar capacity when  
20 no Owner is in residence.  
21

22 6.1.7 Owner's Contact Information. An Owner renting his or her Lot shall  
23 provide the Association with contact information for the Owner or a  
24 representative of the Owner with authority to act on behalf of the  
25 Owner with respect to the Lot and the tenants, including telephone  
26 number, email address, mailing address, and such other contact  
27 information as the Association may require.  
28

29 6.2 Notice of Non-Owner Occupants. Without limiting the generality of the provisions  
30 contained in **Section 6.1** ("Requirements for Renting"), each Owner shall notify  
31 the Board and the Association's manager of the names of (i) any tenants or any  
32 Contract Purchasers occupying such Owner's Lot, and (ii) any guest, house  
33 sitter, or other person occupying the Lot when no Owner is in residence (whether  
34 or not such person is paying rent or is being compensated by the Owner). If  
35 requested by the Board, each Owner, tenant, or Contract Purchaser shall also  
36 notify the Board or the Association's manager of the names of all members of his  
37 or her household to whom such Owner, tenant, or Contract Purchaser has  
38 delegated any rights of enjoyment in the Development as provided herein and  
39 the relationship each such person bears to such Owner, tenant, or Contract  
40 Purchaser.  
41

42 6.3 No Transient Rentals. No Owner shall be permitted to lease, rent, or otherwise  
43 operate his or her Lot for transient or hotel purposes, which shall include, but is  
44 not limited to, rental for any period less than thirty (30) days or any rental (even if

1 the term is longer than thirty days) where the occupant of a Dwelling is provided  
2 customary hotel services such as room service for food and beverage, maid  
3 service, periodic furnishing of clean bed linen and towels, laundry service, or  
4 bellboy services. This **Section 6.3** shall not be deemed to permit an initial lease  
5 or rental term shorter than one hundred eighty (180) days as provided in **Section**  
6 **6.1.1(i)** ("Written Lease").

7  
8 6.4 **Rental of Entire Lot.** No Owner shall rent or lease less than the entire Lot. ~~No  
9 garage, except that an accessory building, or other facility shall dwelling unit as  
10 defined in California Government Code sections 65852.2 and 65852.22 may be  
11 rented, leased, or hired to anyone who does not have the right of possession of  
12 the entirety of separately from the principal building Dwelling on the Lot. The  
13 preceding sentence is intended to prohibit the operation of a rooming house or  
14 similar operation within the Development.~~ This **Section 6.4** is not intended to  
15 prohibit a resident Owner from sharing his or her Lot or Dwelling with a  
16 roommate or other person(s) with whom the Owner maintains a common  
17 household.

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

35  
36 6.6 **Private Exchanges Permitted.** **Section 6.5** ("No Vacation Clubs; No Time Share  
37 Arrangements") shall not be deemed to prohibit an Owner from entering into a  
38 private exchange arrangement with another person whereby the Owner will  
39 occupy the dwelling of the other party to the exchange for a defined temporary  
40 period and that other person will occupy the Owner's Dwelling during the same  
41 period; provided that the exchange period shall not exceed ninety (90)  
42 consecutive days and only one (1) such exchange shall be permitted in any  
43 calendar year. Each Owner who enters into a private exchange arrangement  
44 shall provide written notice to the Board in advance of arrival of the guest(s),

1 which notice shall include the guest(s) name(s) and such other information as the  
2 Board shall require.

3  
4 6.7 Implementation. Upon request from the Board, each Owner then renting or  
5 leasing a Lot shall provide to the Board such information as the Board may  
6 reasonably require in order to implement the provisions of this **Article 6** including  
7 but not limited to the names of the tenants and the members of the tenant's  
8 household and the duration of the lease and/or a copy of the signed lease. Any  
9 rental or leasing of a Lot commencing after this Declaration is recorded and the  
10 renewal of a tenancy in effect on the date this Declaration is recorded shall be  
11 pursuant to a written lease or rental agreement in accordance with **Section 6.1**  
12 ("Requirements for Renting").

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

31  
32 6.9 Indemnification Regarding Tenant's Actions. Each Owner leasing or renting a  
33 Lot shall be strictly responsible and liable to the Association for the actions of  
34 such Owner's tenant(s) in or about all Dwellings, Lots, and Common Area and for  
35 each tenant's compliance with the provisions of the Governing Documents. No  
36 provision of any lease or rental agreement shall relieve the Lot Owner of his or  
37 her obligations pursuant to the Governing Documents. To the fullest extent  
38 permitted by law, every Owner of a Lot that is occupied by persons other than the  
39 Owner pursuant to a rental agreement or lease or otherwise, agrees to and shall  
40 indemnify and defend the Association, its officers, directors, employees, and  
41 agents and shall hold them harmless from and against any cost, loss, claim, or  
42 damages of any kind, arising out of the conduct or presence of the occupants of  
43 the Lot upon the Development, including but not limited to attorney fees  
44 (including attorney fees incurred to enforce the provisions of this **Article 6** against

1 the Owner of the Lot or any guest, tenant or other occupant of the Lot), any  
2 claims for consequential damages, and any claims arising or alleged to arise out  
3 of the enforcement or nonenforcement by the Association of the Governing  
4 Documents with respect to such occupants. Any amounts owed pursuant to this  
5 **Section 6.9** may be assessed as a Reimbursement Assessment against the  
6 responsible Owner and his or her Lot.  
7  
8

## 9 **ARTICLE 7 ARCHITECTURAL APPROVAL**

---

10  
11 7.1 **Prior Architectural Approval Required.** Prior architectural approval in accordance  
12 with this **Article 7** must be obtained before making any exterior addition or  
13 change or alteration of any kind to a Dwelling, within a Lot or within the  
14 Development. The foregoing includes but is not limited to:

- 15  
16 (a) Installing, altering or adding any building, **accessory dwelling unit**, fence,  
17 wall, hedge, or similar barrier, balcony, screen, skylight, window, patio  
18 cover, carport cover, tent, awning, improvement or other structure of any  
19 kind, screen, exterior lighting, exterior wiring, mast, pole, tower, antenna,  
20 receiver, satellite dish or transmitter to the extent restricted by **Section**  
21 **7.2.8** ("Satellite Dishes and Antennas"), or attaching any of the foregoing  
22 to the exterior of any building, balcony or fence;  
23  
24 (b) Exterior painting;  
25  
26 (c) Plumbing or electrical work modifications;  
27  
28 (d) Installing, moving, or removing landscaping.

29  
30 No such modification, alteration or addition shall be commenced, erected,  
31 painted, or installed within the Development, nor shall any exterior addition or  
32 change or alteration be made, until the plans and specifications showing the  
33 nature, kind, shape, color, height, size, materials, and location of the same have  
34 been submitted to and approved in writing by the Board. The requirement of  
35 architectural approval shall not apply to improvements made or constructed by or  
36 on behalf of the Association.  
37

38 7.2 **Some Common Architectural Concerns.** This **Section 7.2** enumerates some  
39 common areas of architectural concern. These are examples only and do not  
40 represent an exhaustive list of changes that require prior architectural approval.  
41 Nothing in this **Section 7.2** shall be deemed to limit the generality of **Section 7.1**  
42 ("Prior Architectural Approval Required").  
43

- 1 7.2.1 Air Conditioner Units. Prior architectural approval is required for any  
2 exterior installation of an air conditioner or heat pump, including  
3 installation in a window or door.  
4
- 5 7.2.2 Disproportionate Burden on Common Utility Service; Separate  
6 Metering. If an Owner-installed or tenant-installed alteration or addition  
7 will increase the electrical, water, or other utility usage for the Owner's  
8 Lot, the Board may require that separate metering facilities be installed  
9 at the Lot Owner's sole cost and expense or, if that is not feasible, the  
10 Board may allocate such utility costs in a manner the Board  
11 determines is reasonable and equitable as provided in Section 8.7.2  
12 ("Allocation of Annual Assessment").  
13
- 14 7.2.3 Exterior Lighting. Exterior lights may be not be installed upon any  
15 structure, and existing lighting devices shall not be altered (other than  
16 light bulb replacement), without prior architectural approval.  
17
- 18 7.2.4 Exterior Wiring. No telephone, cable television, or other wiring shall be  
19 routed along the building exterior unless prior architectural approval  
20 has been obtained. If an Owner cannot provide a copy of a bona fide  
21 written approval from the Association for any such installation, it shall  
22 be presumed to be non-approved.  
23
- 24 7.2.5 Mailboxes. Mailboxes shall comply with all applicable postal  
25 regulations and Association Rules, if any. There shall be no free-  
26 standing exterior mailboxes or newspaper tubes.  
27
- 28 7.2.6 Masts, Poles, Towers, Other Projections. No outside mast, pole,  
29 tower, or projection of any type attached to any structure that extends  
30 above the roof of the structure (with the exception of chimneys and  
31 vent stacks) and no outside mast or pole shall be placed or permitted  
32 to remain without prior architectural approval.  
33
- 34 7.2.7 No Installations on Roof. Absolutely no installation of any kind,  
35 including but not limited to skylights, antennas, or air-conditioning  
36 equipment, shall be placed or installed upon any roof without obtaining  
37 prior architectural approval; and such approval shall be subject to such  
38 conditions as the Board may determine, including but not limited to  
39 insurance requirements, release of the Association from liability and  
40 indemnification of the Association by the Owner concerning damage to  
41 property or injury to persons in connection with the installation or  
42 presence of the skylight, antennas, or air-conditioning equipment and  
43 obligation of the Lot Owner to pay for incremental costs of  
44 maintenance, repair, or replacement of the roof on account of the

1 installation or presence of the skylight, antennas, or air-conditioning  
2 equipment.

3  
4 7.2.8 Satellite Dishes and Antennas. No outside radio or television aerial,  
5 antenna, dish, wire, or other receiving or transmitting device shall be  
6 erected, constructed, or maintained on any Lot, except (i) those  
7 expressly approved by the Board or (ii) those that, by law, cannot be  
8 prohibited. It is the intention of this Section 7.2.8 to restrict outside  
9 radio or television aerials, antennas, dishes, wires, and other receiving  
10 or transmitting devices in the Development to the fullest extent  
11 permitted by law and to authorize the Board to adopt and implement  
12 Rules regarding the same.

13  
14 7.2.9 Skylights. No skylight shall be installed without prior architectural  
15 approval and such approval shall be subject to such conditions as the  
16 Board may determine, including but not limited to insurance  
17 requirements, release of the Association from liability and  
18 indemnification of the Association by the Owner concerning damage to  
19 property or injury to persons in connection with the installation or  
20 presence of the skylight, and obligation of the Owner to pay for  
21 incremental costs of maintenance, repair, or replacement of the roof on  
22 account of the installation or presence of the skylight.

23  
24 7.2.10 Solar Energy Systems. Solar energy systems as defined in *Civil Code*  
25 section 801.5(a)(1) and (2) are subject to prior architectural approval  
26 pursuant to this Article 7. Nothing in this Declaration shall be deemed  
27 to authorize or permit any Owner to install any solar energy system  
28 upon any portion of the Common Area.

29  
30 7.2.11 Sports Apparatus. No basketball standards (excluding portable,  
31 nonattached basketball standards) or fixed sports apparatus shall be  
32 placed upon or attached to any Lot or Dwelling without prior written  
33 approval of the Architectural Committee.

34  
35 7.2.12 Storage Units; Temporary Structures. No shed, tent, temporary  
36 structure, cargo container, temporary storage container ("PODS") shall  
37 be erected, maintained, kept, or used anywhere within the  
38 Development without the prior architectural approval pursuant to this  
39 Article 7. Any approved temporary building shall be used only for  
40 purposes incidental to approved construction and shall be removed  
41 promptly upon completion of the work.

42  
43 7.2.13 Structural Integrity of Dwellings; Floors, Walls, Ceilings, or Utility  
44 Systems. Prior architectural approval shall be required for (i) any



change that may affect the structural integrity of any Dwelling or Lot or of the Common Area, including but not limited to removing, moving, changing, or creating any opening in a wall, floor, or ceiling within a Dwelling or (ii) any change in the plumbing, electrical wiring, heating and ventilating ducts, or any other system that may affect neighboring Dwellings, Lots or the Common Area.

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

### 7.3 Architectural Rules.

7.3.1 In General. Subject to the requirements of *Civil Code* section 4340 and following, the Board may from time to time adopt, amend, and repeal rules and regulations to be known as "Architectural Rules." Architectural Rules shall set forth the standards for architectural review and guidelines for architectural design, placement of buildings and other structures, outdoor lighting, and landscaping, color schemes, exterior finishes and materials, and similar features which are recommended for use in the Development and may include restrictions on satellite dishes and solar energy systems consistent with applicable law; *provided, however,* that Architectural Rules shall not be in derogation of any minimum standards required by this Declaration.

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

- 1  
2 7.4 Preliminary Consultation Prior to Submitting Application. Any Owner considering  
3 performing any work requiring prior approval may apply to the Board for  
4 preliminary consultation by submitting preliminary plans or drawings of the  
5 contemplated work. The purpose of the preliminary consultation procedure is to  
6 allow an Owner considering making substantial improvements an opportunity to  
7 obtain guidance concerning design considerations before expending substantial  
8 sums for plans and other exhibits required to apply for actual approval. Within  
9 sixty (60) days after receiving a request for a preliminary consultation, the Board  
10 shall consider the preliminary information submitted and shall respond in writing  
11 to the Owner. The Board's response shall give the requesting Owner such  
12 direction concerning the form and substance of an approval application for the  
13 contemplated work as the Board deems proper or desirable for the guidance of  
14 the Owner. The issuance of a preliminary consultation response by the Board  
15 shall not under any circumstances be deemed approval of any contemplated  
16 work; nor, once an Owner submits a request for approval, shall it preclude the  
17 Board from requesting additional information about the proposed work based on  
18 the actual application.  
19
- 20 7.5 Written Request for Board's Approval. Any Owner proposing to perform any  
21 work that requires prior approval pursuant to this Article 7, shall submit to the  
22 Board (or the committee if one is appointed) a written request setting forth the  
23 nature of the proposed work and furnishing such information and documentation  
24 as the Board may require depending on the nature and size of the proposed  
25 work. Such information and documentation may include but is not limited to: (i)  
26 floor plans, (ii) color samples of exterior materials, (iii) specifications, (iv) building  
27 plans, (v) wall sections, (vi) exterior elevations, (vii) roof plans, (viii) landscaping  
28 plans, (ix) graphics and exterior furnishings, and (x) the Owner's proposed  
29 construction schedule.  
30
- 31 7.6 Fees; Professional Consultants. The Board may charge a reasonable fee or fees  
32 for review of architectural or landscaping applications, drawings, plans, and  
33 specifications which may include the cost of retaining outside consultants  
34 including but not limited to architects, engineers, soils experts, or contractors.  
35
- 36 7.7 Meetings. To the extent required by *Civil Code* section 4765 and as provided in  
37 *Civil Code* section 4900, an Owner's request for approval shall be considered by  
38 the Board in an open Board meeting. The Owner and, in the Board's discretion,  
39 other interested persons, may present information relevant to the requested  
40 approval.  
41
- 42 7.8 Basis for Decisions; Good Faith. The Board's decisions shall be made in good  
43 faith and shall not be unreasonable, arbitrary, or capricious. It is recognized and  
44 intended that the Board will employ subjective criteria and judgments in its review

1 of and determination concerning plans and proposals submitted to it. The Board  
2 shall make its decisions from the perspective of the interest of the Development  
3 as a whole in the fostering of the coherence, value, attractiveness and aesthetic  
4 compatibility of all architectural designs and features in the Development, after  
5 consideration of such factors the Board reasonably determines to be relevant  
6 and after reasonable investigation consistent with the scope and circumstances  
7 of the proposal submitted to the Board. The Board shall grant the requested  
8 approval only if:

- 9
- 10 (a) The Owner has submitted a complete application;
- 11
- 12 (b) The Board finds that the plans and specifications conform to this  
13 Declaration and to the Architectural Rules in effect at the time such plans  
14 were submitted to the Board;
- 15
- 16 (c) The Board finds that the proposed work will, if approved, be consistent  
17 and compatible with the architectural and aesthetic standards prevailing  
18 within the Development and will be in harmony with the external design  
19 and appearance of other existing structures and improvements within the  
20 Development, and as to location with respect to topography and finished  
21 grade elevations; and
- 22
- 23 (d) The Board determines that the proposed work would be consistent with  
24 the standards of the Development and the purposes of this Declaration as  
25 to quality of workmanship and materials.

26

27 7.9 Decisions in Writing; Timely Decision; Reasonable Conditions. All approvals and  
28 rejections of requests for approval shall be in writing and shall be issued by the  
29 Board within forty-five (45) days from the date of submission of a complete  
30 application to the Board. Any approval may include such reasonable conditions  
31 as the Board may determine. If a request is rejected, the decision shall include  
32 an explanation of the Board's decision.

33

34 7.10 Variations. The Board may, but is not obligated to, grant variances or  
35 adjustments in its discretion if necessary to overcome practical difficulties due to  
36 topography or other conditions unique to a particular Lot, avoid unnecessary  
37 expense, or prevent unnecessary hardship in the application of the provisions of  
38 the Declaration; *provided, however,* that such variance or adjustment does not  
39 violate the purpose or purposes intended to be served by the standard or criteria  
40 being waived in each instance and is in conformity with the intent and purposes  
41 of the Declaration; and, *provided further,* that no such variance shall constitute a  
42 waiver of such provision with respect to any future application whether for the  
43 same Lot or any other Lot. Any variance granted by the Board shall be noted in

1 the written approval of the proposed work and may be required by the Board to  
2 be recorded in the County records.

3  
4 7.11 Failure of Board to Make Timely Decision. If the Board fails to act on a request  
5 for approval within the time specified in Section 7.9 (“Decisions in Writing; Timely  
6 Decision; Reasonable Conditions”), the Owner shall be entitled to invoke internal  
7 dispute resolution pursuant to *Civil Code* section 5910, discussed in Section  
8 14.16 (“Internal Dispute Resolution”); *except that*, (i) in the case of an application  
9 for installation or use of a solar energy system subject to *Civil Code* section 714,  
10 any application that is not denied by the Board within forty-five (45) days from  
11 receipt of a complete application shall be deemed approved; and (ii) in the case  
12 of an application for installation of an electric vehicle charging station subject to  
13 *Civil Code* section 4745, any application that is not denied by the Board within  
14 sixty (60) days from receipt of a complete application shall be deemed approved.  
15 Nevertheless, as provided in Section 7.2.10 (“Solar Energy Systems”), nothing in  
16 this Declaration shall be deemed to authorize or permit any Owner to install any  
17 solar energy system upon any portion of the Common Area or Exclusive Use  
18 Common Area.

19  
20 7.12 Failure to Obtain Required Approval. If any work that requires prior approval  
21 pursuant to this Article 7 is performed without such approval having been  
22 obtained, the Board shall be entitled to proceed in accordance with the provisions  
23 of Section 7.19 (“Failure to Remedy Non-conformity”) and as though the Board  
24 had given written notice of non-conformity with approved plans per Section 7.18  
25 (“Notice of Non-conformity”).  
26

27 7.13 Compliance with Governmental Requirements. The Owner of the Lot is required  
28 to obtain all permits and governmental authorizations, if any, required for any  
29 work done upon such Owner’s Lot and such Owner must comply with all  
30 applicable zoning and building codes as well as other applicable laws and  
31 ordinances. The Owner of each Lot is solely responsible for complying with any  
32 applicable building permit process or other governmental requirements with  
33 respect to any work done upon the Owner’s Lot. Submission of a request for  
34 approval by the Board and the review and approval of any proposals, plans, or  
35 other submittals shall in no way be deemed to be satisfaction of or compliance  
36 with any building permit process or any other governmental requirements, nor  
37 shall it constitute the assumption of any responsibility by or impose any liability  
38 on the Association, the Board, or its or their members as to the accuracy,  
39 efficacy, or sufficiency thereof. When Architectural approval standards of the  
40 Association are more stringent than applicable governmental standards, the  
41 more stringent standards of the Association shall apply, notwithstanding the fact  
42 that governmental approval may have been obtained based on governmental  
43 standards that are less stringent than those of the Association.  
44

1 7.14 Commencement of Approved Work. Upon receipt of written approval, the Owner  
2 shall, as soon as practicable, satisfy all conditions of the approval and diligently  
3 proceed with the commencement and completion of all approved work.  
4 Commencement of the approved work shall occur, in all cases, within six (6)  
5 months from the date of such approval. If the Owner fails to comply with this  
6 paragraph, any approval previously given shall be deemed revoked unless the  
7 Board, upon written request of the Owner made prior to the expiration of the time  
8 for commencement of the approved work, extends the time for such  
9 commencement. The Board shall not grant an extension of time for  
10 commencement of the work if the Board finds that there has been a material  
11 change in the circumstances upon which the original approval was granted.  
12

13 7.15 Notice to Association Before Commencement of Work; Bond. The Board, in its  
14 discretion, may require an Owner to give the Association and any other Owner  
15 whose Lot will be affected by the work up to thirty (30) days' prior written notice  
16 before commencing approved work so that the Association or other Owner may  
17 record a notice of non-responsibility or take other appropriate action. The Board  
18 may require from the Owner performing work a bond or other assurance (such as  
19 disbursement through a voucher system of payments directly to materialmen,  
20 contractors, and subcontractors) to protect against mechanic's or materialmen's  
21 liens arising against the Common Area or other Lots.  
22

23 7.16 Completion; Extension of Deadline. The Owner shall complete all approved work  
24 within one (1) year after commencement thereof; except that in the case of  
25 reconstruction after substantially total destruction of the improvements on a Lot,  
26 the construction or reconstruction shall be completed within eighteen (18) months  
27 after commencement thereof. In the case of projects under construction when  
28 this Declaration is recorded, the construction or reconstruction shall be  
29 completed by the completion date specified in the project approval or, if no such  
30 completion date was specified, within one year (or in the case of original  
31 construction on a vacant Lot or reconstruction after substantially total destruction  
32 of the improvements on a Lot within eighteen months), after the date of  
33 recordation. The date for completion may be extended as long as such  
34 completion is rendered impossible or would result in great hardship to the Owner  
35 due to strikes, fires, national emergencies, natural calamities, or other  
36 supervening forces beyond the control of the Owner or his or her agents,  
37 provided the Owner notifies the Board of such occurrence within a reasonable  
38 time after becoming aware of it. If an Owner fails to comply with this **Section**  
39 **7.16**, the Board shall be entitled to proceed in accordance with the provisions of  
40 **Section 7.19** ("Failure to Remedy Non-conformity") and as though the Board has  
41 given written notice of non-conformity with approved plans per **Section 7.18**  
42 ("Notice of Non-conformity").  
43

1 7.17 Notice of Completion; Inspection of Completed Work. Upon the completion of  
2 any work for which approval is required under this Article 7, the Owner shall give  
3 written notice of completion to the Board. The written notice shall include copies  
4 of all applicable permits, job cards, and building permit inspections. Within sixty  
5 (60) days after receiving notice of completion from the Owner, the Board or its  
6 duly-authorized representative may inspect such work to determine if it  
7 substantially complies with the granted approval and Owner shall cooperate with  
8 the Board to conduct such inspection. If the Board fails to notify the Owner of  
9 any non-conformity within such sixty (60) day period, the work shall be deemed  
10 to be in accordance with the granted approval. If the Owner fails to give notice of  
11 completion, the Board shall be entitled to proceed in accordance with the  
12 provisions of Section 7.19 (“Failure to Remedy Non-conformity”) and as though  
13 the Board had given written notice of non-conformity with approved plans per  
14 Section 7.18 (“Notice of Non-conformity”).  
15

16 7.18 Notice of Non-conformity. If the Board finds that the work was not done in  
17 substantial conformity with the granted approval, it shall notify the Owner in  
18 writing before the end of such sixty (60) day period set forth in Section 7.17  
19 (“Notice of Completion; Inspection of Completed Work”) specifying particulars of  
20 non-conformity and requiring the Owner to remedy the same within thirty (30)  
21 days from the date of the notice from the Board or such longer time as the Board  
22 may designate in the notice.  
23

24 7.19 Failure to Remedy Non-conformity. If the Owner fails to remedy such non-  
25 conformity within the time specified in the notice of non-conformity, the Board  
26 shall then, pursuant to the procedures set forth in Section 14.12 (“Hearing Called  
27 by the Board; Executive Session; Open Meeting”), set a date on which a hearing  
28 before the Board shall be held regarding the alleged non-conformity. If the Board  
29 finds at such hearing that a substantial non-conformity exists, the Board may, in  
30 addition to any other remedy available under the Governing Documents or  
31 applicable law, order the Owner to remedy or remove such non-conformity. If the  
32 Owner thereafter fails to do so within the time specified by the Board, the Board  
33 may, in addition to any other remedy available under the Governing Documents  
34 or applicable law, remove or remedy the non-conformity and, in that event, all  
35 expenses incurred by the Association in connection therewith shall be assessed  
36 against the Owner as a Reimbursement Assessment.  
37

38 7.20 Non-waiver. The approval by the Board of any plans, drawings, or specifications  
39 for any work done or proposed, or for any other matter requiring approval under  
40 this Article 7, shall not be deemed to constitute a waiver of the right to withhold  
41 approval of any similar plan, drawing, specification, or matter subsequently  
42 submitted for approval with respect to the same Lot or any other Lot.  
43

1 7.21 Disclaimer of Liability. Neither the Board, nor any committee, nor any member  
2 thereof shall be liable to the Association, to any Owner, or to any person deriving  
3 an interest through an Owner for any damage, loss, or prejudice suffered or  
4 claimed on account of: (i) the approval or disapproval of any plans, drawings,  
5 and specifications, whether or not defective; (ii) the construction or performance  
6 of any work, whether or not pursuant to approved plans, drawings, and  
7 specifications; or (iii) the development of any property within the Development;  
8 *provided, however,* that the Board, committee, or such member has acted in  
9 good faith on the basis of such information as may be possessed by it or him or  
10 her. Without limiting the generality of the foregoing, the Board or any committee  
11 may, but is not required to, consult with or hear the views of the Association or  
12 any Owner with respect to any plans, drawings, specifications, or any other  
13 proposal submitted for approval pursuant to this **Article 7**. Every purchaser, by  
14 acquiring title to a Lot or portion thereof agrees not to bring any action or suit  
15 against the Board, the committee, or its or their members seeking to recover any  
16 such damages.  
17  
18

## 19 **ARTICLE 8 ASSESSMENTS AND LIENS**

---

20  
21 8.1 Covenant of Owner. Each Owner of a Lot within the Development, by  
22 acceptance of a deed or other conveyance thereof, whether or not it shall be so  
23 expressed in such deed or conveyance, shall be deemed to have covenanted  
24 and agreed to pay to the Association all: (i) Annual Assessments, (ii) Special  
25 Assessments, (iii) Reimbursement Assessments, and (iv) Enforcement  
26 Assessments levied by the Association as hereinafter provided, together with all  
27 Additional Charges.  
28

29 8.1.1 Association's Power to Collect. Such deed or conveyance shall be  
30 deemed to vest in the Association the right and power to initiate all  
31 actions and procedures as the Board shall deem necessary or  
32 appropriate for the collection of such Assessments and Additional  
33 Charges and for the enforcement of the liens hereinafter provided for.  
34

35 8.1.2 Assessments Are a Personal Obligation. Assessments levied by the  
36 Association pursuant to this Declaration, together with all Additional  
37 Charges, shall be a personal debt and obligation of the Owner against  
38 whom they are assessed, and shall bind his or her heirs, devisees,  
39 personal representatives, successors, and assigns.  
40

41 8.1.3 Obligation Runs with the Land. The obligation to pay Assessments  
42 and Additional Charges and the right and power of the Association to  
43 initiate all actions and procedures for collection shall run with the land,  
44 so that each successive Owner or Owners of any Lot shall, in turn,

1 become liable to pay all such Assessments and Additional Charges  
2 assessed that become due and payable during the time he or she is  
3 Owner of such Lot.  
4

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

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

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

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

40 8.3 Purpose of Assessments. The Assessments levied by the Board shall be used  
41 exclusively to pay for the costs of management and operation of the  
42 Development, of conducting the business and affairs of the Association, to  
43 promote the recreation, health, safety, welfare, benefit, and interests of the  
44 Owners and Residents in the Development, and for the improvement and



1 maintenance, repair, and replacement of the Common Area and, to the extent  
2 provided for in the Governing Documents or by law, of the Lots situated within  
3 the Development or which, in the opinion of the Board, shall be deemed to be  
4 necessary or proper for the management of the Development or of the affairs of  
5 the Association, or the benefit of the Owners, or for the enforcement of the  
6 Governing Documents.

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

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

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

28  
29 8.7 Annual Assessment.

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

42  
43 8.7.2 Allocation of Annual Assessment. The Board shall allocate and assess  
44 the Annual Assessment equally among the Lots by dividing the amount

1 by the number of Lots within the Development. Notwithstanding the  
2 foregoing, if the Annual Assessment includes charges for commonly  
3 metered utilities supplied to the Lots and any Owner-installed or  
4 tenant-installed alteration to a Lot or any business use conducted upon  
5 a Lot results in disproportionate electrical, water, or other utility usage  
6 for that Lot, the Board may allocate such commonly metered utility  
7 costs as the Board determines is reasonable and equitable.

8  
9 8.7.3 Payment of Annual Assessment. Unless the Board shall designate  
10 otherwise, Annual Assessments shall be levied on an annual basis and  
11 shall be paid in twelve (12) equal monthly installments during the fiscal  
12 year, and each installment shall be due and payable on the first day of  
13 each month.

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

24  
25 8.7.5 Permitted Increase in Annual Assessment. Pursuant to *Civil Code*  
26 section 5605(b), except as otherwise provided by law, the Board shall  
27 not increase the Annual Assessment for any fiscal year above the  
28 amount of the Annual Assessment for the preceding fiscal year by  
29 more than twenty percent (20%) (or such other limitation on the  
30 increase as may be imposed by law), except upon the affirmative vote  
31 of a majority of Members voting on any such increase in the Annual  
32 Assessment, provided that a quorum is established. For purposes of  
33 the preceding sentence and to the extent required pursuant to *Civil*  
34 *Code* section 5605(c), a quorum shall mean more than fifty percent  
35 (50%) of the Members of the Association, notwithstanding any lower  
36 quorum requirement which may be set forth in the Bylaws.

37  
38 8.7.6 Revised Annual Assessment. Subject to the provisions of Section  
39 8.7.5 ("Permitted Increase in Annual Assessment") or as otherwise  
40 permitted by law, if at any time during the course of any fiscal year, the  
41 Board determines the amount of the Annual Assessment to be  
42 inadequate, by reason of a revision of its estimate of either expenses  
43 or income or otherwise, the Board shall have the right, at a regular or  
44 special meeting of the Board, to revise the Annual Assessment for the

1 balance of the fiscal year. To the extent required by *Civil Code* section  
2 5615, notice of any such increase shall be given to the Members by  
3 Individual Delivery and such revised Annual Assessment shall become  
4 effective on the first day of the next month that is at least thirty (30)  
5 days and not more than sixty (60) days after the date of such notice.  
6

7 8.7.7 Failure to Fix Annual Assessment. The failure or omission by the  
8 Board to fix or levy any Annual Assessment before the expiration of  
9 any fiscal year, for that fiscal year or the next fiscal year, shall not be  
10 deemed either a waiver or a modification in any respect of the  
11 provisions of this Declaration, or a release of any Owner from the  
12 obligation to pay Assessments or any installment thereof for that or any  
13 subsequent year, but the amount of the Annual Assessment fixed for  
14 the preceding fiscal year shall be the amount of the Annual  
15 Assessment for the ensuing fiscal year until a new Annual Assessment  
16 is levied.  
17

18 8.8 Special Assessments.

19  
20 8.8.1 Purpose of Special Assessments. If at any time during any fiscal year  
21 the Annual Assessment proves inadequate for any reason, including  
22 nonpayment of any Owner's share thereof or the unexpected repair,  
23 replacement, or reconstruction of improvements located in the  
24 Development, or if funds are otherwise required for any authorized  
25 activity of the Association, the Board may levy a Special Assessment  
26 in the amount of such actual or estimated inadequacy or cost.  
27

28 8.8.2 Permitted Amount of Special Assessments. Except in the case of an  
29 emergency situation as defined in *Civil Code* section 5610, in any fiscal  
30 year the Board may not levy Special Assessments which, in the  
31 aggregate, exceed five percent (5%) of the budgeted gross expenses  
32 of the Association for that fiscal year (or such other limitation on the  
33 amount as may be imposed by law), except upon the affirmative vote  
34 of a majority of the Members voting on any such Special Assessment,  
35 provided that a quorum is established. For purposes of the preceding  
36 sentence and to the extent required pursuant to *Civil Code* section  
37 5605(c), a quorum shall mean more than fifty percent (50%) of the  
38 Members of the Association, notwithstanding any lower quorum  
39 requirement which may be set forth in the Bylaws.  
40

41 8.8.3 Allocation of Special Assessments. Special Assessments shall be  
42 allocated and assessed among the Lots in the same manner as Annual  
43 Assessments.  
44

1 8.8.4 Notice of Special Assessment. Upon the imposition of a Special  
2 Assessment or an increase in a Special Assessment, in compliance  
3 with *Civil Code* section 5615, notice thereof shall be given to each  
4 Owner by Individual Delivery, not less than thirty (30) days and not  
5 more than sixty (60) days prior to the due date of the Special  
6 Assessment.

7  
8 8.8.5 Payment of Special Assessments; Cost of Payment Plans. Special  
9 Assessments shall be payable in a lump sum or in installments as may  
10 be determined by the Board with regard to each Special Assessment  
11 when it is imposed. If the Association incurs additional expenses  
12 because of a payment method selected by an Owner (for example, but  
13 not limited to, paying a Special Assessment in installments instead of  
14 in a lump sum), the Association may charge such expense to the  
15 Owner as an Additional Charge or as a Reimbursement Assessment.  
16 Nothing in this **Section 8.8** shall be deemed to obligate the Association  
17 to offer or permit alternate payment plans.  
18

19 8.9 Application of Surplus Funds (IRS Resolution). If, as of the end of any fiscal  
20 year, there is an excess of membership income over membership expenses as  
21 defined in Internal Revenue Code section 277 for the year ended, the Board shall  
22 determine, without the need for a Member vote, whether such excess shall be  
23 applied to reserves and deposited in the Association's reserve account or shall  
24 be applied against the subsequent tax year's Member Assessments as provided  
25 in Internal Revenue Service Revenue Ruling 70-604. If the Board does not  
26 determine to so apply such excess membership income to reserves or to the  
27 subsequent year's Member Assessments, any other lawful disposition of such  
28 excess income shall be as determined by the vote of the Members.  
29

30 8.10 Reimbursement Assessments. The Board, after notice and a hearing as  
31 provided for in **Section 14.11** ("Notices: Content, Delivery") and **Section 14.12**  
32 ("Hearing Called by the Board; Executive Session; Open Meeting"), may levy a  
33 Reimbursement Assessment against an Owner and his or her Lot:  
34

35 (a) To reimburse the Association for costs incurred to maintain, repair, or  
36 replace property (including property within a Lot) when such damage is  
37 due to the act or neglect of such Owner, his or her Contract Purchaser, or  
38 member of his or her household, pet, tenant, invitee, or guest, or as  
39 otherwise provided in the Governing Documents;

40  
41 (b) If the failure of such Owner, his or her Contract Purchaser, or member of  
42 his or her household, pet, tenant, invitee, or guest to comply with any  
43 provision of the Governing Documents has necessitated or resulted in an

1 expenditure of funds by the Association to deal with such lack of  
2 compliance or to bring such person or the Lot into compliance;

- 3  
4 (c) To reimburse the Association for any costs of collecting from an Owner  
5 any amount the Owner is obligated to pay the Association.  
6

7 Without limiting the generality of the foregoing, and to the fullest extent  
8 permitted by law, all costs including attorney fees, incurred by the  
9 Association to enforce **Section 5.8** ("Restriction on Businesses"), **Section**  
10 **5.14** ("Animals"), **Section 6.8** ("Association As Third Party Beneficiary"),  
11 **Section 6.9** ("Indemnification Regarding Tenant's Actions"), **Section 8.18**  
12 ("Assignment of Rents As Security for Payment"), and **Section 14.6**  
13 ("Injunctions"), or to defend any claim arising or alleged to arise from any  
14 of the foregoing sections, shall be reimbursed to the Association as a  
15 Reimbursement Assessment. Any Reimbursement Assessment shall be  
16 due and payable to the Association when levied.  
17

- 18 8.11 Enforcement Assessments. Subject to the requirements set forth in **Section 14.8**  
19 ("Imposing Sanctions"), the Board may levy an Enforcement Assessment (and  
20 any fine or monetary penalty imposed by the Board in accordance with the  
21 provisions of the Governing Documents shall be deemed to be such an  
22 Enforcement Assessment), for violation of any of the provisions of the Governing  
23 Documents. Any Enforcement Assessment shall be due and payable to the  
24 Association when levied.  
25

- 26 8.12 No Offsets. All Assessments levied by the Board shall be payable in the full  
27 amount specified, including any Additional Charges imposed as provided by the  
28 terms of this Declaration, and no offsets against any such amounts shall be  
29 permitted for any reason whatsoever, including without limitation a claim that the  
30 Association has failed to properly exercise its duties of maintenance or  
31 enforcement.  
32

- 33 8.13 Bad Checks. An Owner who writes a check to the Association on insufficient  
34 funds may be charged a service fee in the amount permitted by *Civil Code*  
35 section 1719 and may be liable for damages to the Association in an amount  
36 equal to three (3) times the amount of the bad check, as provided by statute.  
37

- 38 8.14 Delinquent Assessments; Acceleration in the Event of Delinquency. Any  
39 installment or other portion of an Assessment not received within fifteen (15)  
40 days after its due date shall be delinquent and, to the fullest extent permitted by  
41 law including *Civil Code* section 5650(b), shall be subject to a late charge and,  
42 thirty (30) days after the due date, interest not to exceed the maximum rate  
43 permitted by law, as well as all other Additional Charges. If any monthly  
44 installment of the Annual Assessment or any installment of a Special

1 Assessment that has been levied or is permitted to be paid on an installment  
2 basis is delinquent for a period of sixty (60) days, the Association may, but shall  
3 not be obligated to, declare the entire balance of the Annual Assessment or the  
4 Special Assessment immediately due and payable together with all other  
5 delinquent amounts.  
6

7 8.15 Enforcement by Action at Law or Foreclosure. The Board, on behalf of the  
8 Association, may enforce the payment of any delinquent Assessment plus  
9 Additional Charges by bringing an action at law against any Owner personally  
10 obligated to pay the same, or by foreclosing the lien against the Owner's Lot by  
11 judicial or non-judicial foreclosure, to the fullest extent permitted by law. To the  
12 extent prohibited by *Civil Code* section 5725(b), the amount of an Enforcement  
13 Assessment may not become a lien that is enforceable by non-judicial  
14 foreclosure.  
15

16 8.15.1 Pre-lien Notice. At least thirty (30) days prior to recording a notice of  
17 delinquent assessment against a Lot to collect a debt that is past due,  
18 the Association shall provide written notice to the Owner(s) of the Lot,  
19 as required by *Civil Code* section 5660 ("Pre-lien Notice").  
20

21 8.15.2 Prior to Recording a Lien. Prior to recording a notice of delinquent  
22 assessment, the Association shall comply with all applicable  
23 requirements imposed by law, including offering to participate in  
24 internal dispute resolution (**Section 14.16** "Internal Dispute Resolution")  
25 or alternative dispute resolution (**Section 14.17** "Alternative Dispute  
26 Resolution Before Initiating Lawsuit") to the extent required pursuant to  
27 *Civil Code* section 5670 and making the decision to record a lien for  
28 delinquent Assessments at an open meeting of the Board, to the extent  
29 required pursuant to *Civil Code* section 5673.  
30

31 8.15.3 Owner's Right to Discuss Payment Plan. To the extent provided in  
32 *Civil Code* section 5665, an Owner may submit to the Board a written  
33 request to discuss a payment plan for a debt noticed in a pre-lien  
34 notice. If the Owner's written request is mailed to the Board (as  
35 evidenced by a postmark or receipt of mailing) within fifteen (15) days  
36 after the postmark on the pre-lien notice, the Board shall meet with the  
37 Owner within forty-five (45) days of the postmark date of the Owner's  
38 written request, unless there is not a regularly scheduled Board  
39 meeting within the period, in which case the Board, in its discretion,  
40 may hold a special meeting in executive session to meet with the  
41 Owner or may designate a committee of one (1) or more Board  
42 members to meet with the Owner.  
43

- 1 8.15.4 Notice of Delinquent Assessment. The amount of the past due debt  
2 noticed in the pre-lien notice shall be a lien from and after the  
3 recording of a notice of delinquent assessment. No later than ten (10)  
4 days after recordation, a copy of the notice of delinquent assessment  
5 shall be mailed by certified mail in compliance with *Civil Code* section  
6 5675 to every person whose name is shown as an Owner of the Lot in  
7 the Association records or in such manner and to such persons as may  
8 be required by applicable law.  
9
- 10 8.15.5 Delinquent Assessments of Less Than \$1,800. To the extent provided  
11 in *Civil Code* section 5720(b), delinquent Assessments totaling less  
12 than One Thousand Eight Hundred Dollars (\$1,800) that are less than  
13 twelve (12) months delinquent may not be collected by judicial or non-  
14 judicial foreclosure, but may be collected in any other manner provided  
15 by law including a civil action in small claims court to the extent  
16 provided in *Civil Code* section 5720(b)(1) or recording a lien as  
17 provided in *Civil Code* section 5720(b)(2). Prior to recording such a  
18 lien the Association shall offer to participate in internal dispute  
19 resolution (**Section 14.16** "Internal Dispute Resolution") to the extent  
20 required by *Civil Code* section 5720(b)(2).  
21
- 22 8.15.6 Initiating Foreclosure. As provided in *Civil Code* section 5700(a), no  
23 procedures shall be initiated to foreclose the lien securing any noticed  
24 past due debt under this **Article 8** until after the expiration of thirty (30)  
25 days following the recording of a notice of delinquent assessment. To  
26 the extent required pursuant to *Civil Code* section 5705(b), the  
27 Association shall offer to participate in internal dispute resolution  
28 (**Section 14.16** "Internal Dispute Resolution") or alternative dispute  
29 resolution (**Section 14.17** "Alternative Dispute Resolution Before  
30 Initiating Lawsuit"). To the extent required by *Civil Code* section  
31 5705(c), a decision to initiate foreclosure shall be made only by the  
32 Board in an executive session meeting.  
33
- 34 8.15.7 Amount Due and Payable. Except with respect to the amount of any  
35 Enforcement Assessment, upon the recording of the notice of  
36 delinquent assessment referred to above, the Association may, at its  
37 option, declare the entire balance of all sums then due or to become  
38 due from the Owner, immediately due and payable, which total sum  
39 may then be included in any suit, action, or other procedure initiated to  
40 collect said sums, including all Additional Charges.  
41
- 42 8.15.8 Notice of Initiating Foreclosure. To the extent required pursuant to  
43 *Civil Code* section 5705(d), the Association shall provide written notice

of initiating foreclosure to the record Owner of the Lot, including notice by personal service to any resident Owner.

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

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

8.18 Assignment of Rents As Security for Payment. As security for the payment of all liens provided for under this Declaration, each Owner hereby gives to and confers upon the Association the right, power, and authority during the continuance of such ownership to collect the rents, issues, and profits of the Owner's Lot, reserving unto the Owner the right, prior to any default by such Owner in performance of that Owner's obligations under the Governing Documents in payment of any indebtedness to the Association, to collect and retain such rents, issues, and profits as they become due and payable. Upon any such default, the Association may (i) instruct the tenant to pay rent to the Association as and when such rents become due or (ii) at any time upon ten (10) days' written notice to such Owner (either in person, by agent, or by a receiver to be appointed by a court, and without regard to the adequacy of any security for such indebtedness) in its own name sue for or otherwise collect such rents, issues, and profits, including those past due and unpaid, and in either event apply the same, less costs and expenses of operation and collection, including reasonable attorney fees, upon any such indebtedness, and in such order as the Association may determine or as required by applicable law. Owner waives the giving of any and all notices required by the laws of the State of California in order for the Association to exercise the rights provided by this **Section 8.18**. The collection of such rents, issues, and profits, and the application thereof as aforesaid, shall not cure or waive any default under the Governing Documents or invalidate any act done pursuant to this Declaration. The assignment of rents and powers described in this **Section 8.18** shall not affect, but shall in all respects be subordinate to, the rights and power of the holder of any First Mortgage on any Lot, or any part thereof, to do the same or similar acts.



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

7  
8 8.20 Partial Payments. The Association's acceptance of a partial payment, whether  
9 involuntary or voluntary, shall not prevent the Association from pursuing any or  
10 all of its available collection remedies.

11  
12 8.21 Certificate of Satisfaction and Release of Lien. Upon payment in full of a  
13 delinquent Assessment, including any Additional Charges, or the satisfaction  
14 thereof, the Board shall cause to be recorded, in the same manner as the notice  
15 of delinquent assessment, a further certificate stating the satisfaction thereof and  
16 the release of the lien.

17  
18 8.22 Subordination to Lien of First Mortgage. Except as otherwise expressly provided  
19 by law, the lien securing each of the Assessments provided for under this  
20 Declaration shall have priority as of the date of recordation of the notice of  
21 delinquent assessment as provided in Section 8.15.4 over all other liens and  
22 encumbrances applicable to the Lots; *provided, however*, that such Assessment  
23 lien shall be subordinate to the lien of any First Mortgage recorded against the  
24 Lot prior to the date the notice of delinquent assessment was recorded; and  
25 *provided, further*, that such subordination shall apply only to the Assessments  
26 which have become due and payable prior to the sale of such property pursuant  
27 to a decree of foreclosure of any such First Mortgage, or pursuant to a power of  
28 sale contained in any such First Mortgage. Such foreclosure sale shall not  
29 relieve such property from liability for any Assessments and Additional Charges  
30 becoming due after the sale of such property pursuant to a decree of foreclosure  
31 of any such First Mortgage, or pursuant to a power of sale contained in any such  
32 First Mortgage, nor from the lien of any subsequent Assessment, including  
33 Assessments levied against all Lots proportionately to compensate for the unpaid  
34 Assessments and Additional Charges, which shall constitute a lien upon the  
35 purchased Lot in accordance with this Article 8.

36  
37 8.23 Waiver of Exemptions. Each Owner, to the extent permitted by law, does hereby  
38 waive, to the extent of any liens created pursuant to this Declaration, the benefit  
39 of any homestead or exemption laws of the State of California in effect at the  
40 time any Assessment or installment thereof becomes delinquent or any lien is  
41 imposed pursuant to the terms of this Declaration.  
42

1 8.24 Property Exempt from Assessments. The following property subject to this  
2 Declaration shall be exempt from the Assessments, Additional Charges, and  
3 liens created herein:  
4

- 5 (a) All property dedicated to and accepted by the City or County or other local  
6 public authority and devoted to public use;  
7  
8 (b) Any Lot which is owned by the Association as a result of the Association  
9 having acquired such Lot through foreclosure; *provided, however,* that  
10 such exemption shall apply only during the period in which the Association  
11 is record owner of such Lot; and  
12  
13 (c) All Common Area.  
14

15  
16 **ARTICLE 9 MAINTENANCE OF PROPERTY**  
17

---

18 9.1 Association's Responsibility for Common Area Generally. The Association shall  
19 provide maintenance, repair, and replacement of the Common Area and all  
20 facilities, improvements, and landscaping thereon, including but not limited to  
21 private streets, curbs, gutters and storm drainage system, visitor parking spaces,  
22 signs, Private Driveways, open space, landscaping, including trees, plants and  
23 grass, fences, utility boxes, sidewalks, trash service area, fire sprinklers for  
24 dumpster area, the clubhouse recreation building and meeting rooms, the  
25 swimming pool and related equipment, the gated pool area and poolside  
26 restrooms the storm drainage system in the storm drainage easement as shown  
27 on the Subdivision Map, and all other real and/or personal property that may be  
28 acquired by the Association, keeping such property in good condition and repair;  
29 *provided, however,* that the Association shall not be responsible for maintenance,  
30 repair, or replacement of Exclusive Use Common Area portions of the Common  
31 Area to the extent the responsibility therefor is expressly assigned to one (1) or  
32 more Owners, as set forth in **Section 9.3.6** ("Owner's Responsibility for Upkeep  
33 of Private Driveway"). Without limiting the generality of the foregoing:  
34

35 9.1.1 Landscaping; Janitorial; Painting in Common Area. The Association  
36 shall specifically be responsible for providing lighting, landscaping,  
37 gardening (including periodic replacement, as the Board deems  
38 necessary, of trees, shrubs, and other plants upon the Common Area),  
39 and janitorial services for the Common Area, as needed, and shall  
40 cause any and all other acts to be done which may be necessary to  
41 assure the maintenance of the Common Area in good condition and  
42 repair, including painting of the exterior surfaces of Common Area  
43 building(s) and such other portions of the Common Area as the Board,  
44 in its discretion, determines to be necessary.

1  
2 9.1.2 Common Area Utilities and Services. The Association shall procure  
3 and pay for water, sewage, garbage, electrical, gas, and any other  
4 utility service for the Common Area and (to the extent not separately  
5 metered or charged) for the Lots. The Association shall maintain all  
6 the aforementioned utility installations serving the Common Area  
7 *except for* those installations maintained by utility companies, public,  
8 private, or municipal. The Association shall maintain all  
9 aforementioned utility installations that serve the Lots located in the  
10 Common Area except for (i) those installations maintained by utility  
11 companies, public, private, or municipal (including, but not necessarily  
12 limited to, electrical utilities) and (ii) gas utility lateral lines that serve a  
13 single Lot exclusively.

14  
15 9.1.3 Common Area Perimeter Fences. The Association shall maintain,  
16 repair, and replace all fences upon the Common Area including but not  
17 limited to the fencing and gates surrounding the pool, and any fences  
18 situated on or approximately on the boundary line between a Lot and  
19 any portion of the Common Area, as set forth in **Section 9.1.4** (“Shared  
20 Fences”) but excluding Party Fences (described in **Article 10** (“Party  
21 Wall and Party Fences”).

22  
23 9.1.4 Shared Fences. “Shared fences” shall mean and refer to any fence  
24 situated upon or approximately upon the boundary between any Lot  
25 and any portion of the Common Area. Except for situations described  
26 in **Section 9.10** (“Owner’s Liability to Association for Negligent  
27 Damage”), the cost of maintenance, repair, and replacement of shared  
28 fences shall be borne by the Association.

29  
30 9.1.5 Employees or Independent Contractors. The Association may perform  
31 its obligations and provide such services as the Board shall determine  
32 through employees of the Association or through independent  
33 contractors. In either case, Residents or Owners shall not interfere  
34 with or attempt to instruct any of such persons in the performance of  
35 their duties.

36  
37 9.2 Association’s Responsibility for Lots and Exclusive Use Common Area. Unless  
38 otherwise stated in this Declaration, the Owners are responsible for maintaining,  
39 repairing and replacing their separate interest Lots and Dwellings. The  
40 Association shall be responsible for the following components of the separate  
41 interest Lots and Dwellings and Exclusive Use Common Area:

42  
43 9.2.1 Painting. The Association shall have the exclusive right and  
44 responsibility to periodically paint the exterior surfaces of the

1 Dwellings. For purposes of painting, exterior surfaces shall mean the  
2 surfaces covering the exterior perimeter walls as such surface may be  
3 replaced from time to time (including but not limited to siding or stucco,  
4 the exterior surfaces of the balconies and the railings, the exterior  
5 underside surface of rear and side balconies (but not the surface of  
6 such balcony floors), exterior trim pieces around doors and windows;  
7 the outside surface of front doors and front door frames, garage doors  
8 and garage door frames, and the exterior surface of all gutters,  
9 downspouts and vents). Any exterior improvements later placed upon  
10 a Dwelling that was not a part of the original improvements planned for  
11 and constructed upon the Dwellings are not a part of the “exterior  
12 surfaces” for which the Association is responsible for painting.  
13

14 The Association shall not be responsible for painting the floor surfaces  
15 of rear and side balconies, exterior doors or door frames, window  
16 frames or sashes, flashing around windows or doors, door or window  
17 handles, hardware or locks, mailboxes, or any exterior decoration,  
18 fixture or improvement placed upon any Dwelling.  
19

20 “Painting” shall include varnishing, cleaning and priming surfaces as  
21 necessary and caulking and sealing cracks as necessary to prepare  
22 the exterior surfaces for the application of paint.  
23

24 9.2.2 Exterior Building Surfaces. Other than as described in Section 9.2.1  
25 (“Painting”), the Association shall be responsible for maintaining,  
26 repairing, and replacing the exterior surfaces of Dwellings as follows:  
27 siding, stucco or other exterior covering of the perimeter walls and the  
28 moisture proof barrier below such exterior covering; trim including  
29 pieces around doors and windows, and garage doors. Such  
30 maintenance, repair, and replacement shall be periodically performed  
31 by the Association as determined by the Board.  
32

33 Other than the components noted above, the Association is not  
34 responsible for maintaining, repairing, or replacing any portion of the  
35 Dwellings, including the rear and side balconies (other than painting as  
36 described in Section 9.2.1 (“Painting”)), any glass, window frames,  
37 window sashes, doors (other than front doors and garage doors),  
38 flashing around windows or doors, door or window hardware or locks,  
39 screens, any other exterior decoration or fixture, or any structural  
40 systems to which the stucco, siding, exterior coverings and/or moisture  
41 proof barriers are attached.  
42

43 9.2.3 Roof Coverings. The Association shall have the exclusive right and  
44 responsibility to provide maintenance, repair, and replacement of the

1 roofs of the Dwellings due to normal wear and tear and exposure to the  
2 elements. "Roof" shall mean the exterior surface layers of the roofing  
3 systems covering the Dwellings as they may be replaced from time to  
4 time (including but not limited to shakes, shingles, ceramic and asphalt  
5 tile, and tar and gravel surfacing, flashing, scuppers, and building  
6 paper and felt or other secondary weatherproofing systems, the  
7 plywood substrate or similar component upon which these exterior  
8 surface coverings are attached. "Roof coverings" as used herein shall  
9 not include the trusses or any other portions of the Dwelling unless  
10 described above.

11  
12 9.2.4 Front Balconies. In addition to the exterior surface maintenance  
13 described in this Section 9.2, the Association shall have the exclusive  
14 right and responsibility to provide maintenance, repair, and  
15 replacement of the walking surface of the front balconies of the  
16 Dwellings due to normal wear and tear and exposure to the elements.  
17 This Section 9.2.4 only applies to the front balconies of those  
18 Dwellings that were originally constructed by the developer with such  
19 front balconies, and expressly excludes rear or side balconies or front  
20 balconies not part of the original construction and any Owner-installed  
21 balcony.

22  
23 9.2.5 Gutters and Downspouts. The Association shall have the exclusive  
24 right and responsibility to provide maintenance (including periodic  
25 painting as provided in Section 9.2.1 ("Painting") and periodic  
26 cleaning), repair, and replacement of the gutters and downspouts of  
27 the Dwellings. The foregoing shall not include disposal of downspout  
28 water at grade level, or maintenance, repair, or replacement of  
29 foundation drains, if any.

30  
31 9.2.6 Skylights and Roof-mounted Appliances; Obligation Runs with the  
32 Land. The Association shall not be responsible for maintenance,  
33 repair, or replacement of skylights or any roof-mounted appliances,  
34 such as air-conditioning equipment or solar devices installed by  
35 Owners. In the event that removal and reinstallation of Owner-installed  
36 skylights, roof-mounted appliances, or other personal property affixed  
37 to the roof is necessary or appropriate to facilitate the Association's  
38 maintenance, repair, or replacement of the roof, upon thirty (30) days'  
39 notice, the Owner shall be responsible for the removal and  
40 replacement of such items, including any costs incurred for such  
41 removal and replacement, as provided in Section 9.3.5 ("Owner-  
42 installed Skylights; Solar Systems; Other Roof-mounted Appliances").  
43 In the event that an Owner fails to remove such Owner-installed  
44 skylight or other roof-mounted appliance after the thirty-day notice, the

1 Association shall remove and reinstall such appliance, with the costs  
2 incurred by the Association in such work removing and reinstalling  
3 such items, charged to the Owner as a Reimbursement Assessment.  
4 The Association shall not be liable for any damage to an Owner-  
5 installed skylight or roof-mounted appliance that may result from the  
6 Association's performance of its duty to repair or replace the roof as  
7 described in Section 9.2.3 ("Roof Coverings") or such removal  
8 described in this Section 9.2.6. In addition, the Owner may be charged  
9 any additional costs incurred by the Association in the performance of  
10 its responsibility to maintain, repair, and replace the roof, resulting from  
11 the presence of such Owner-installed skylight, appliance, or device, as  
12 the case may be. Responsibility for such incremental costs shall run  
13 with the land and shall be binding upon the Owner who installed the  
14 skylight, appliance, or device and each successor Owner of the Lot,  
15 unless and until the Owner removes the skylight, appliance, or device  
16 and restores the affected portion of the roof to the then-existing  
17 Association standard as determined by the Board.  
18

19 9.2.7 Landscaping. The Association shall have the exclusive right and  
20 responsibility to provide landscaping and gardening (including  
21 maintenance and periodic replacement, as the Board deems  
22 necessary, of grass, trees, shrubs, and other plants as well as  
23 irrigation and other landscaping improvements) in the unenclosed  
24 portion of each Lot. The Association shall not be responsible for the  
25 maintenance of any item that may be planted or placed by any Owner  
26 in the unenclosed portion of each Lot.  
27

28 9.2.8 Private Driveways. Except as provided in Section 9.3.6 ("Owner's  
29 Responsibility for Upkeep of Private Driveway"), the Association shall  
30 have the exclusive right and responsibility to provide for maintenance,  
31 repair, and replacement of the Private Driveways serving the Lots up to  
32 the garage entry.  
33

34 9.2.9 Certain Portions of Utility Laterals in Lots. Except as stated in this  
35 Section 9.2.9, the Association is not responsible for utility connections  
36 to or serving the Lots, including, but not limited to, telephone lines,  
37 cable television lines, internet service, fiber optic lines, fire alarm and  
38 other security services. The Association's responsibility to maintain,  
39 repair and replace utility laterals and related components on the Lots is  
40 limited to the following:  
41

- 42 (i) Water lines. The Association is responsible for water lines up to  
43 *but not including* the exterior main shutoff valve for each Lot.  
44 Owners are responsible for the exterior main shutoff valve and

1 any water lines from the valve extending toward the Lot or  
2 Dwelling.

3  
4 (ii) Sewer lines. The Association is responsible for sewer laterals  
5 connecting the mains to the Lots up to and including the clean-  
6 out typically located near a Lot's garage door, including  
7 replacement of broken clean-out covers. Owners are  
8 responsible for the portion of the lateral extending from such  
9 clean-out toward the Lot or Dwelling.

10  
11 9.2.10 Limitation of Association's Responsibility in Case of Termites. Except  
12 for the Association's responsibility for maintenance, repair, and  
13 replacement of any of the components described in this Section 9.2,  
14 the Association shall not be responsible for maintenance, repair, and  
15 replacement of any portion of the Lot required due to the presence of  
16 wood destroying pests or organisms, including mold, decay, dry rot,  
17 and termites, as described in Section 9.5 ("Wood Destroying  
18 Organisms").

19  
20 9.2.11 No Other Responsibility of Association. Except as provided in this  
21 Section 9.2, the Association shall not otherwise be responsible for  
22 maintenance, repair, or replacement of any other portion of the Lot,  
23 erincluding the Dwelling thereon.

24  
25 9.3 ~~Owner's Responsibility for Maintenance~~.

26  
27 9.3.19.3 Owner's Responsibility for Lots.

28  
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").

1  
2 9.3.4 Utility Lateral Lines. Each Owner shall be responsible for the  
3 maintenance, repair and replacement of utility lateral lines as follows:  
4

5 (i) Water lines. Owners are responsible for the exterior main  
6 shutoff valve and any water lines from the valve extending  
7 toward the Lot or Dwelling.  
8

9 (ii) Sewer lines. Owners are responsible for the portion of the  
10 sewer lateral extending from the clean-out (e.g., the clean-out  
11 located closest to a Lot's garage door) toward the Lot or  
12 Dwelling.  
13

14 (iii) Gas. The utility company is responsible for anything up to and  
15 including the Lot meter. Owners are responsible for all gas lines  
16 from the Lot meter toward and into the Lot.  
17

18 9.3.5 Owner-installed Skylights, Solar Systems, Other Roof-mounted  
19 Appliances . Without limiting the generality of **Section 9.3.1** ("Owner's  
20 Responsibility for Lots"), in the case of an Owner-installed skylight,  
21 solar system, or any roof-mounted appliance or device that was not  
22 part of the original construction of the Dwelling or a replacement  
23 thereof, the Owner installing the same shall be responsible for  
24 maintenance, repair, and replacement (when necessary) of such  
25 skylight, appliance, or device as well as any incremental cost that may  
26 be incurred by the Association in the performance of its responsibility  
27 to maintain, repair, and replace the roof, resulting from the presence of  
28 such skylight, appliance, or device, as the case may be. Responsibility  
29 for such incremental costs shall run with the land and shall be binding  
30 upon the Owner who installed the skylight, appliance, or device and  
31 each successor Owner of the Lot, unless and until the Owner removes  
32 the skylight, appliance, or device and restores the affected portion of  
33 the roof to the then-existing Association standard as determined by the  
34 Board.  
35

36 9.3.6 Owner's Responsibility for Upkeep of Private Driveway. Each Owner  
37 shall be responsible for day-to-day upkeep of the Private Driveway  
38 appurtenant to his or her Lot, keeping the area free of debris and  
39 promptly cleaning any fluid leaks.  
40

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



1  
2 9.3.8 Compliance with Architectural Provisions. An Owner's right and  
3 responsibility for maintaining, repairing or replacing any portions of his  
4 or her Lot or Exclusive Use Common Area shall be subject to any  
5 applicable provisions of the Governing Documents relating to  
6 landscaping and architectural control, including **Article 7** ("Architectural  
7 Approval").  
8

9 9.4 Concealed Damage. If, in the course of performing maintenance, repairs, or  
10 replacement that is the Association's responsibility, the Association or its agents  
11 discover damage that is the Owner's responsibility, the responsible Owner(s)  
12 shall be promptly notified of the situation and of the time in which required repairs  
13 or replacement must be performed in order for the Association to proceed with or  
14 complete the work for which the Association is responsible. If, for any reason,  
15 the responsible Owner does not perform or arrange for timely performance of the  
16 required repairs or replacement, and the Board in its reasonable judgment  
17 determines that a delay in the performance of such work by the Owner would  
18 unreasonably delay or increase the cost of the work for which the Association is  
19 responsible, then the Association shall have the right to arrange for the  
20 performance of such repairs or replacement and charge the cost thereof to the  
21 responsible Owner as a Reimbursement Assessment. Repair or replacement  
22 performed by the Association pursuant to this **Section 9.4** may be performed on  
23 shortened notice to the Owner, notwithstanding the repair period authorized in  
24 **Section 9.8** ("Board's Discretion to Require Maintenance").  
25

26 9.5 Wood Destroying Organisms. As provided in *Civil Code* section 4780(b), each  
27 Owner is responsible for and shall perform maintenance and repair of his or her  
28 Lot and Dwelling (other than those portions thereof that are the responsibility of  
29 the Association, as provided in in **Section 9.2** (Association's Responsibility for  
30 Lots and Exclusive Use Common Area") occasioned by the presence of wood  
31 destroying pests or organisms, including responsibility for abatement. Without  
32 limiting the generality of the foregoing, every Owner and Resident shall be  
33 responsible for taking reasonable measures to prevent conditions that may cause  
34 such damage, including but not limited to use of proper spacers under planters  
35 and other objects that may trap moisture, stacking of firewood on racks, and  
36 prompt removal of leaves, dirt, and other debris and may be liable to the  
37 Association for the cost of maintenance, repair, or replacement due to damage,  
38 including the presence of mold, decay, or dry rot, as provided in **Section 9.10**  
39 ("Owner's Liability to Association for Negligent Damage") or to others as provided  
40 in **Section 9.11** ("Owner's Liability to Other Lot Owners or Residents").  
41

42 9.6 Authority for Entry of Lot or Exclusive Use Common Area. The Association or its  
43 agents shall have the right to enter any Lot or any portion of Exclusive Use  
44 Common Area whenever such entry is necessary, in the Board's discretion, for

1 purposes of inspection and/or in connection with the performance of any  
2 maintenance, repair, construction, or replacement for which the Association is  
3 responsible or for which it is authorized to perform. Such entry shall be made  
4 with as little inconvenience to the Residents as practicable and only upon  
5 reasonable advance written notice of not less than twenty-four (24) hours, except  
6 that in emergency situations notice shall be given as the situation reasonably  
7 permits.

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

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

32  
33 9.9 Limitation of Association’s Liability. In the case of damage to a Lot, any Dwelling  
34 or improvement thereon, or the contents thereof, arising or allegedly arising from  
35 the Association’s performance of its maintenance, repair, or replacement  
36 obligations, the Association shall not be responsible or liable for such damage,  
37 except to the extent arising from the willful misconduct or gross negligence of the  
38 Association, its employees, contractors, or agents.

39  
40 9.10 Owner’s Liability to Association for Negligent Damage. In the event the need for  
41 any maintenance, repair, or replacement performed by the Association is caused  
42 by the willful or negligent act or omission of an Owner or a Resident, a member  
43 of his or her household, pets, tenants, invitees, or guests, the cost of such  
44 maintenance, repair, or replacement not covered by insurance, including any

1 applicable insurance deductible and the cost of materials, labor, supplies, and  
2 services shall be charged to, and paid by, the Owner of the Lot in the form of a  
3 Reimbursement Assessment.  
4

5 9.11 Owner's Liability to Other Lot Owners or Residents. In the case of damage to a  
6 Lot or Residence or its contents arising or allegedly arising from another Lot or  
7 the conduct of the Owner or Resident of another Lot (for example and not by way  
8 of limitation, damage to a Residence resulting from water leaking from another  
9 Lot), if any affected party or their insurers should assert claims against the Owner  
10 or Resident of another Lot to recover damages, any such claims shall not alter  
11 the obligation of each Lot Owner as provided in this Declaration to maintain,  
12 repair, and replace their respective Lots and Dwellings; to carry insurance; and to  
13 perform and/or pay for repairs or reconstruction of their Lot and Residence in the  
14 event of casualty. Moreover, any such claims shall not affect the authority of the  
15 Board to enforce a Lot Owner's obligations with respect to his or her own Lot or  
16 Residence under the Declaration and shall not obligate the Association or the  
17 Board to intervene in any such claims or disputes between Lot Owners or  
18 Residents.  
19  
20

## 21 **ARTICLE 10 PARTY WALLS AND PARTY FENCES**

---

22  
23 10.1 Party Wall and Party Fence Defined. "Party Wall" or "Party Fence" shall mean  
24 each wall or fence built as part of the original construction of the Dwellings within  
25 the Development and placed on or approximately on the boundary line between  
26 the Lots. A fence that is situated on the boundary line between a Lot and  
27 Common Area is a "shared fence" and shall be maintained, repaired, or replaced  
28 pursuant to **Section 9.1.4** ("Shared Fences"), above.  
29

30 10.2 General Rules of Law to Apply. Unless and to the extent they conflict with the  
31 provisions of the Declaration, the general rules of law regarding party walls and  
32 **boundaryparty** fences and liability for property damage due to negligence or  
33 willful acts or omissions shall apply thereto, as provided in this **Article 10**.  
34

35 10.3 Changes, Impairments, or Permanent Structural Attachments. There shall be no  
36 changes in, impairments of, or permanent structural attachments made to any  
37 such wall unless expressly made in conformity with this **Article 10** and consented  
38 to by all Owners having an interest in said wall.  
39

40 10.4 Sharing of Maintenance, Repair, and Replacement Costs. The cost of  
41 maintenance, repair, and replacement of a Party Wall or Party Fence shall be  
42 shared by the Owners pursuant to the terms of any written agreement entered  
43 into between the Owners thereof for that purpose. In the absence of such a  
44 written agreement, such costs shall be shared by the Owners who make use of

1 the Party Wall or Party Fence in proportion to such use; provided that if a Party  
2 Wall or Party Fence is destroyed or damaged by fire or other casualty, any  
3 Owner who has used the Party Wall or Party Fence may restore it, and if the  
4 other Owners thereafter make use of the Party Wall or Party Fence, they shall  
5 contribute to the cost of restoration thereof in proportion to such use, without  
6 prejudice, however, to the right of any such Owners to call for a larger  
7 contribution from the others under any rule of law regarding liability for negligent  
8 or willful acts or omissions. There shall be an easement for reasonable repairs  
9 over the areas immediately adjacent to each side of all such walls and fences for  
10 the benefit of all persons having an interest therein as set forth further in **Section**  
11 **4.6** ("Party Wall and Party Fence Easements"). Notwithstanding the foregoing,  
12 the responsibility for maintenance, repair, and replacement of Party Fences may  
13 be assumed by the Association if so determined by the Board.

14  
15 10.5 Weatherproofing. Notwithstanding any other provision of this **Article 10**, an  
16 Owner who by his or her negligent or willful act causes an interior Party Wall to  
17 be exposed to the elements shall bear the whole cost of furnishing the necessary  
18 protection against such elements.

19  
20 10.6 Right to Contribution Runs with Land. The right of any Owner to contribution  
21 from any other Owner under this **Article 10** shall be appurtenant to and run with  
22 the land and shall pass to such Owner's successors in title.

23  
24 10.7 Party Wall or Party Fence Disputes. Party Walls and Party Fences are not  
25 Common Area and are not the responsibility of the Association. Any dispute  
26 concerning a Party Wall or Party Fence, or otherwise under the provisions of this  
27 **Article 10**, shall be subject to the alternative dispute resolution provisions in  
28 **Section 14.17** ("Alternative Dispute Resolution Before Initiating Lawsuit").  
29  
30

## 31 **ARTICLE 11 INSURANCE**

---

32  
33 11.1 Insurance Coverage to Be Maintained by Association. The Association shall  
34 procure and maintain, as a common expense of all Owners, the types of  
35 insurance described in **Section 11.2** ("Master Hazard Insurance to Be Maintained  
36 by Association"), **Section 11.3** ("General Liability Insurance to Be Maintained by  
37 Association"), and **Section 11.4** ("Other Insurance to Be Maintained by  
38 Association"), if and to the extent such insurance, with the coverages described  
39 below, is available at a reasonable premium cost.

40  
41 11.2 Master Hazard Insurance to Be Maintained by Association.

42  
43 11.2.1 Scope of Coverage. The Association shall maintain a blanket policy of  
44 fire and extended coverage insurance covering (i) all of the Common

1 Area and all furnishings, equipment, and personal property owned by  
2 the Association or owned in common by all of the Owners and (ii) the  
3 following real property improvements upon the Lots: (a) the building  
4 structure including any additions or extensions thereto; (b) all of the  
5 fixtures, machinery, and equipment permanently affixed to the building;  
6 windows, monuments, lighting fixtures, and exterior signs; (c) the  
7 standard fixtures installed within the structures upon the Lots at the  
8 time of original construction by the developer and any equivalent  
9 replacements and upgrades thereof, including but not limited to interior  
10 walls and doors; ceiling, floor and wall surface materials (for example,  
11 paint, wallpaper, mirrors, carpets, and hardwood floors); utility fixtures  
12 (including gas, electrical, and plumbing); cabinets, built-in appliances;  
13 heating and air-conditioning systems; water heaters installed as part of  
14 the original construction and any equivalent replacement thereof; but  
15 excluding any personal property located within a structure upon the  
16 Lot; and (d) lawns, trees, shrubs and plants upon the Lots. The limits  
17 of coverage shall be equal to one hundred percent (100%) of the full  
18 insurable replacement costs exclusive of land, foundation, excavations,  
19 and other items normally excluded from coverage. The policy may  
20 contain a reasonable deductible and the amount of the deductible shall  
21 be added to the face amount of the policy in determining whether the  
22 insurance equals the replacement cost.

23  
24 11.2.2 Policy Endorsements. The policy may include such endorsements as  
25 the Board, in its discretion, shall determine based on the character and  
26 replacement cost of the Common Area and Lot improvements from  
27 time to time, such as:

- 28  
29 (i) an agreed amount endorsement or its equivalent,  
30  
31 (ii) an increased cost of construction endorsement or a contingent  
32 liability from operation of building laws endorsement or their  
33 equivalent,  
34  
35 (iii) an extended coverage endorsement,  
36  
37 (iv) coverage for costs of demolition,  
38  
39 (v) glass coverage,  
40  
41 (vi) coverage for loss or damage as a result of theft, vandalism,  
42 malicious mischief; coverage for equipment breakdown of any  
43 equipment required to run and operate the Development; and  
44 for sprinkler leakage; windstorm, or water damage,

- 1  
2 (vii) coverage to permit cash settlement covering full value of the  
3 improvements in case of partial destruction and a decision not  
4 to rebuild,  
5  
6 (viii) coverage for demolition in the event of total or partial destruction  
7 and a decision not to rebuild, and  
8  
9 (ix) maintenance fees receivable coverage in case of damage to a  
10 Lot by a covered peril and the Board is unable, after reasonable  
11 effort, to collect assessments from the Owner of the affected  
12 Lot.  
13

14 11.2.3 General Policy Provisions. Such policy shall:

- 15  
16 (i) name the Association as the first-named insured and the  
17 Owners as named insureds with policy benefits payable to the  
18 Association as trustee for the Owners or any of them,  
19  
20 (ii) contain a standard Mortgagee clause,  
21  
22 (iii) provide a waiver of subrogation as to any and all claims against  
23 the Association, its officers and directors, the manager, and the  
24 Owners and a waiver of all defenses based upon acts of the  
25 insureds or the existence of co-insurance, and  
26  
27 (iv) ~~shall~~ require that at least thirty (30) days' prior written notice be  
28 given to the Association by the insurer before cancellation  
29 except that in the case of cancellation for nonpayment of  
30 premiums or for fraud the notice shall be given no less than ten  
31 (10) days prior to the effective date of the cancellation.  
32

33 11.2.4 Earthquake Insurance. The Association shall carry earthquake  
34 insurance with such coverage and deductibles as the Board may from  
35 time to time determine; *provided, however,* that if a Special  
36 Assessment in an amount requiring approval of the Members or an  
37 increase in the Annual Assessment in an amount requiring approval of  
38 the Members shall be required to fund the payment of the earthquake  
39 insurance premiums, and the Members shall fail to approve such  
40 Special Assessment or increase in the Annual Assessment, the  
41 Association shall not be obligated to maintain or procure earthquake  
42 insurance.  
43

1 11.3 General Liability Insurance to Be Maintained by Association. The Association  
2 shall maintain commercial general liability insurance insuring the Association, its  
3 officers and directors, its managers, and the Owners against any liability incident  
4 to ownership, maintenance, and repair of the Common Area, but excluding the  
5 liability of an Owner incident to personal bodily injury and property damage  
6 occurring within that Owner's Lot or in any other Lot or upon the Common Area  
7 resulting from the negligence of that Owner. Limits of liability shall be set by the  
8 Board but shall in no event be less than Two Million Dollars (\$2,000,000).

9  
10 11.3.1 Scope of Coverage. Such liability insurance policy shall insure against  
11 bodily injury, death, or property damage occurring in, on or about any  
12 portion of the Common Area and, if available at a reasonable cost as  
13 determined by the Board, shall include:

- 14 (i) water damage liability,  
15  
16 (ii) hired and non-owned vehicle coverage, theft and collision  
17 coverage,  
18  
19 (iii) liability for property of others,  
20  
21 (iv) off-premises employee coverage, and  
22  
23 (v) such other risks as are customarily covered in townhouse  
24 developments.  
25  
26

27 The City of Santa Clara shall be named as an additional insured in said  
28 policy.

29  
30 11.3.2 Other Provisions. If available and at a reasonable cost as determined  
31 by the Board, such liability insurance policy:

- 32 (i) shall name the Association as a first-named insured and  
33 Owners as named insureds, with policy benefits payable to the  
34 Association as trustee for the Owners or any of them;  
35  
36 (ii) shall contain a waiver of subrogation as to claims against the  
37 Association, the Board members, the Owners and members of  
38 the Owner's family who reside with such Owner, except in cases  
39 of arson or fraud;  
40  
41 (iii) shall contain a waiver of the defense of invalidity on account of  
42 the conduct of any Owner over which the Board has "no  
43 control;"  
44

- 1  
2 (iv) shall require that at least thirty (30) days' prior written notice be  
3 given to the Association by the insurer before cancellation  
4 except that in the case of cancellation for nonpayment of  
5 premiums or for fraud the notice shall be given no less than ten  
6 (10) days prior to the effective date of the cancellation;  
7  
8 (v) shall provide that in no event shall the insurance be brought into  
9 contribution with insurance purchased individually by Owners or  
10 their Mortgagees;  
11  
12 (vi) shall exclude policies obtained by the individual Owners from  
13 consideration under any "other insurance" clause; and  
14  
15 (vii) shall contain a provision requiring the insurer to defend lawsuits  
16 for which there is coverage under the policy even if the  
17 allegations are fraudulent, but authorizing the insurer to make  
18 such investigation and settlement of any claim or suit within the  
19 policy limit as it deems expedient.  
20

21 **11.4 Other Insurance to Be Maintained by Association.**

22  
23 11.4.1 Directors' and Officers' Insurance. The Association shall maintain  
24 directors' and officers' liability insurance with limits to be set by the  
25 Board but in no event less than Five Hundred Thousand Dollars  
26 (\$500,000) or any higher applicable limit set forth in *Civil Code* section  
27 5800, and containing a cross-liability endorsement and waiver of  
28 subrogation as to the Association, the officers, and the directors, and  
29 the agents and employees of any of them. Coverage for prior acts, to  
30 the extent obtainable, shall be included.  
31

32 11.4.2 Workers' Compensation Insurance. The Association shall maintain  
33 workers' compensation insurance to the extent necessary to comply  
34 with any applicable laws and may carry such insurance at any time as  
35 determined by the Board.  
36

37 11.4.3 Fidelity Bond. ~~The~~In accordance with Civil Code section 5806, the  
38 Association shall maintain a standard fidelity bond covering dishonest  
39 acts on the part of officers and directors of the Association, the  
40 manager, and any employees or volunteers who are responsible to  
41 handle funds of the Association-, including computer fraud and funds  
42 transferred fraud. Such bond shall name the Association as obligee,  
43 shall be written in an amount which shall be determined by the Board  
44 but in no event less than the combined amount of the Association's



1 reserves and total Assessments for three (3) months, and shall contain  
2 a waiver of any defense based on the exclusion of persons serving  
3 without compensation.  
4

5 11.4.4 Other Insurance. The Association may maintain at any time and from  
6 time to time any other insurance, including but not limited to flood  
7 insurance, and bonds as the Board may from time to time deem  
8 necessary or desirable.  
9

10 11.5 Insurance to Be Maintained by Owner. Owners shall have the following  
11 obligations and rights to carry individual insurance:  
12

13 11.5.1 HO6 Owner's Policy. Each Owner shall be responsible, at his or her  
14 sole expense, to carry an "HO6 Owner's Policy" or the equivalent  
15 covering the following risks which are not covered by the insurance  
16 policies carried by the Association:  
17

18 (i) the Owner's individual liability for damage to property or injury to  
19 person of others occurring within the Lot, recommended to be in  
20 an amount not less than Three Hundred Thousand Dollars  
21 (\$300,000) for each occurrence or in such other amount as the  
22 Board may establish from time to time by Rule;  
23

24 (ii) property damage to contents and personal property within the  
25 Owner's Lot in such amount as the Owner shall determine is  
26 adequate;  
27

28 (iii) loss assessment coverage (recommended to be in an amount  
29 not less than Fifty Thousand Dollars (\$50,000)); and  
30

31 (iv) insurance to pay the deductible under the blanket insurance  
32 policy carried by the Association pursuant to Section 11.2  
33 ("Master Hazard Insurance to Be Maintained by Association") in  
34 an amount not less than the deductible under that policy or such  
35 amount as the Owner shall determine is adequate.  
36

37 11.5.2 No Overlapping Coverage. No Owner shall obtain or maintain any  
38 policy of insurance that reduces the amount of coverage under any  
39 policy obtained or maintained by the Association pursuant to Section  
40 11.2 ("Master Hazard Insurance to Be Maintained by Association"),  
41 Section 11.3 ("General Liability Insurance to Be Maintained by  
42 Association"), or Section 11.4 ("Other Insurance to Be Maintained by  
43 Association"). If any Owner violates the provisions of this Section  
44 11.5.2, any diminution in insurance proceeds otherwise payable to the

1 Association that results from the existence of such other insurance will  
2 be chargeable to the Owner who acquired such other insurance and  
3 each Owner hereby assigns to the Association the proceeds of any  
4 such policy to the extent any such decrease in proceeds in fact occurs  
5 (such proceeds to be applied pursuant to the Declaration as if  
6 produced by the Association's coverage). Such Owner will be liable to  
7 the Association to the extent of any diminution and the Association  
8 shall levy a Reimbursement Assessment against such Owner in the  
9 amount of such diminution.

10  
11 11.5.3 Other Owner-maintained Insurance. Each Owner shall be responsible,  
12 at his or her sole cost and expense, to obtain such other insurance as  
13 the Owner shall determine is adequate to cover such other risks as the  
14 Owner shall determine, including but not limited to loss of use or loss  
15 of rental income.

16  
17 11.5.4 Evidence of Insurance; No Obligation of Association. Upon request  
18 from the Board, each Owner shall provide evidence of such insurance  
19 annually. If an Owner fails to obtain any insurance he or she is  
20 obligated or permitted to obtain pursuant to this Declaration, nothing in  
21 this Declaration shall be construed to impose any obligation  
22 whatsoever on the Association to insure that which the Owner does not  
23 insure. The right of the Board to request evidence of insurance that an  
24 Owner is obligated to carry pursuant to this Declaration shall not be  
25 deemed to impose a duty on the Board or the Association to request  
26 such evidence of insurance or impose on the Association any liability  
27 to any person arising or claimed to arise out of any action or inaction  
28 by the Board, the Association or anyone acting on the Association's or  
29 the Board's behalf with respect to verifying any Owner's compliance  
30 with the Owner's obligation to carry insurance.

31  
32 11.6 Insurance Proceeds. Proceeds of all insurance policies owned by the  
33 Association shall be received by the Association and shall be distributed to the  
34 Association, the Owners, and their Mortgagees subject to the provisions of the  
35 Declaration as their interest may appear; *provided, however*, that whenever  
36 repair or reconstruction is required, the proceeds of any insurance received by  
37 the Association as a result of any loss shall be applied to such repair or  
38 reconstruction except to the extent of any excess insurance proceeds as  
39 provided in **Section 12.2.4** ("Excess Insurance Proceeds").

40  
41 11.7 Responsibility for Payment of Deductible.

42  
43 11.7.1 Damage to Common Area. Subject to the provisions of **Section 9.10**  
44 ("Owner's Liability to Association for Negligent Damage"), in the event

1 of damage to the Common Area that is covered by the hazard  
2 insurance policy maintained by the Association pursuant to **Section**  
3 **11.2** ("Master Hazard Insurance to Be Maintained by Association"), the  
4 deductible shall be paid by the Association.

5  
6 11.7.2 Damage to Lot. In the event of damage to a Lot that is covered by the  
7 blanket hazard insurance policy maintained by the Association  
8 pursuant to **Section 11.2** ("Master Hazard Insurance to Be Maintained  
9 by Association"), the Owner of the damaged Lot shall pay the  
10 deductible. In the event of earthquake damage to a Lot that is covered  
11 by an earthquake insurance policy maintained by the Association for  
12 the benefit of the Lots, the deductible under such earthquake  
13 insurance policy shall be assessed as a Reimbursement Assessment  
14 equally against all Owners.

15  
16 11.7.3 Allocation of Deductible. In the event of a single casualty that results  
17 in damage to Common Area and to one (1) or more Lots which  
18 damage is covered by the hazard insurance carried by the Association  
19 pursuant to **Section 11.2** ("Master Hazard Insurance to Be Maintained  
20 by Association"), the obligation to pay the deductible shall be allocated  
21 between the Association and the affected Lot Owner(s) in proportion to  
22 the claim settlement amount received by each party.

23  
24 11.7.4 Tort Damages. Nothing in this **Section 11.7** shall be deemed to affect  
25 any person's right to recover the amount of any deductible paid by  
26 such person from any other person responsible for the loss under tort  
27 or other theories of liability.

28  
29 11.8 Owner's Liability for Conditions Affecting Insurance. As provided in **Section 5.11**  
30 ("Conditions Affecting Insurance"), the responsible Lot Owner shall be liable to  
31 the Association if anything is done, placed, or kept within the Development that  
32 increases the rate of insurance or results in the cancellation of insurance under  
33 any insurance policy maintained by the Association.

34  
35 11.9 Insurance Carriers. All insurance policies carried by the Association shall be  
36 written by companies that are not prohibited from doing business in the State of  
37 California.

38  
39 11.10 Annual Review of Policies. The limits and coverage of all insurance policies  
40 carried by the Association shall be reviewed at least annually by the Board and  
41 increased or decreased in its discretion.

42  
43 11.11 Coverage Not Available; Disclaimer. In the event any insurance policy or any  
44 endorsement listed in **Section 11.2** ("Master Hazard Insurance to Be Maintained

1 by Association”), **Section 11.3** (“General Liability Insurance to Be Maintained by  
2 Association”), and **Section 11.4** (“Other Insurance to Be Maintained by  
3 Association”), is for any reason not available, then the Association shall obtain  
4 such other or substitute policy or endorsement as may be available which  
5 provides, as nearly as possible, the coverage described above. The Association,  
6 and its directors and officers, shall have no liability to any Lot Owner or  
7 Mortgagee if, after good faith effort, it is unable to obtain or maintain the  
8 insurance required pursuant to **Section 11.2**, **Section 11.3**, and **Section 11.4**  
9 because the insurance is no longer available or, if available, can be obtained or  
10 maintained only at a cost that the Board in its sole discretion determines is  
11 unreasonable under the circumstances, or the Members fail to approve any  
12 Special Assessment or increase in the Annual Assessment needed to fund the  
13 insurance premiums. In accordance with *Civil Code* section 5810, as soon as  
14 reasonably practicable, the Association shall notify the Members by Individual  
15 Notice if any of the Association’s policies described in the Association’s annual  
16 budget report have lapsed or been canceled, and are not immediately renewed,  
17 restored, or replaced, or if there is a significant change, such as a reduction in  
18 coverage or limits or an increase in the deductible for any of those policies. If the  
19 Association receives any notice of non-renewal of an Association’s policy  
20 described in the Association’s annual budget report and replacement coverage  
21 will not be in effect by the date the existing coverage will lapse, the Association  
22 shall immediately notify the Members by Individual Notice.  
23

24 11.12 Copies of Policies. Copies of all insurance policies (or certificates of insurance)  
25 and paid invoices showing that premiums have been paid shall be retained by  
26 the Association and shall be available for inspection by Owners at any  
27 reasonable time.  
28

29 11.13 Adjustment of Losses. The Board is appointed attorney-in-fact by each Owner to  
30 file all claims and to negotiate and agree on the value and extent of any loss  
31 under any policy carried by the Association pursuant to **Section 11.2** (“Master  
32 Hazard Insurance to Be Maintained by Association”), **Section 11.3** (“General  
33 Liability Insurance to Be Maintained by Association”), and **Section 11.4** (“Other  
34 Insurance to Be Maintained by Association”). The Board is granted full right and  
35 authority to compromise and settle any claims or enforce any claim by legal  
36 action or otherwise and to execute releases in favor of any insured.  
37

38 11.14 Premiums. The costs of insurance obtained by the Association shall be a  
39 common expense of the Association, shall be included in the Annual  
40 Assessment, and shall be paid for out of the operating fund of the Association.  
41  
42

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

---

2  
3 12.1 Emergency Repairs. Without waiting to obtain insurance settlements or bids, the  
4 Board may undertake such emergency repair work after a casualty as it may  
5 deem necessary or desirable under the circumstances including but not limited to  
6 mitigating or removing dangerous conditions and other actions that may be  
7 necessary to comply with applicable laws, ordinances, and regulations; and the  
8 Board may charge the operating account for the costs thereof.

9  
10 12.2 Damage to Common Area. In the event of damage to or destruction of the  
11 Common Area including Exclusive Use Common Area, or other property of the  
12 Association or any part thereof, then the following provisions shall apply:

13  
14 12.2.1 Amount of Insurance Proceeds. The Board shall obtain a  
15 determination of the amount of available insurance proceeds that will  
16 be recovered from the Association’s insurance carrier(s).

17  
18 12.2.2 Bids. The Board shall obtain such bids from responsible licensed  
19 contractors as the Board deems appropriate to restore the damaged or  
20 destroyed property to its condition immediately prior to such damage or  
21 destruction (including compliance with current building code and  
22 ordinance requirements and any modifications approved by the Board),  
23 including provision for a completion bond.

24  
25 12.2.3 Sufficient Proceeds. If the insurance proceeds paid to the Association  
26 are sufficient to cover the costs of restoration, the Board shall contract  
27 with such contractor as the Board in its discretion shall determine and  
28 proceed to perform the restoration.

29  
30 12.2.4 Excess Insurance Proceeds. Any excess insurance funds shall be  
31 deposited in the operating account of the Association.

32  
33 12.2.5 Insufficient Proceeds; Decision Not to Repair. If the insurance  
34 proceeds, together with reserve funds, if any, allocated for replacement  
35 of the damaged or destroyed improvement, are insufficient to cover the  
36 costs of repair or replacement of the property damaged or destroyed,  
37 the Association may levy a Special Assessment against the Members  
38 of the Association up to the maximum amount permitted without a  
39 Member approval vote as provided in **Section 8.8.2** (“Permitted  
40 Amount of Special Assessments”) to cover the cost of the repair or  
41 replacement not covered by the insurance proceeds. If the sum of  
42 insurance proceeds, allocated reserve funds, and Special Assessment  
43 funds equals less than eighty-five percent (85%) of the cost of repair or  
44 replacement, the Members may elect not to cause such replacement

1 or repair by the vote of at least seventy-five percent (75%) of the Total  
2 Voting Power of the Association. In that event, the damaged Common  
3 Area shall be cleared and landscaped; *provided, however*, that there  
4 shall exist in such Common Area adequate vehicular and pedestrian  
5 rights-of-way for Owners to ensure legal access to each Owner's Lot  
6 and the costs thereof shall be paid from the insurance proceeds, any  
7 allocated reserve funds and, if necessary, the other funds of the  
8 Association. Any remaining insurance proceeds shall be used in the  
9 manner determined by the Board, provided that such use shall not be  
10 inconsistent with the purposes of the Association.

11  
12 12.2.6 Alternative Repair Plan. If a decision not to rebuild is ~~not~~ approved  
13 pursuant to **Section 12.2.5** ("Insufficient Proceeds; Decision Not to  
14 Repair"), the Board shall use such funds as are available to repair or  
15 stabilize the damaged Common Area according to such alternative  
16 plan as the Board shall deem appropriate under the circumstances.

17  
18 12.3 Damage to a Single Lot.

19  
20 12.3.1 Owner to Repair. If a single Lot is damaged or destroyed by fire or  
21 other casualty, the available insurance proceeds shall be paid to the  
22 Owner(s) of such Lot, or the Mortgagee(s) thereof, as their respective  
23 interests appear, and such Owner(s) or Mortgagee(s) shall use the  
24 same to rebuild or repair such Lot to its condition prior to the damage  
25 or destruction, or to such other condition as shall have been approved  
26 in advance by the Board pursuant to **Article 7** ("Architectural  
27 Approval").

28  
29 12.3.2 Commencement and Completion of Repair. Repair or rebuilding shall  
30 be commenced and completed within the times specified in **Section**  
31 **7.14** ("Commencement of Approved Work") and **Section 7.16**  
32 ("Completion; Extension of Deadline").

33  
34 12.3.3 Insufficient Insurance Proceeds. In the event the insurance proceeds  
35 are insufficient to complete such work, the Lot Owner shall pay such  
36 additional sums as may be necessary to complete such rebuilding and  
37 repair.

38  
39 12.3.4 Failure to Timely Restore. In the case of total or substantially total  
40 destruction of a Dwelling, if restoration is not commenced within one  
41 (1) year after the occurrence of the destruction, the Board may require  
42 that the foundation and other installations be removed and the Lot  
43 restored to a safe, orderly, and natural condition. Nothing in the  
44 preceding sentence shall be deemed to limit the right of the

1 Association to otherwise enforce the obligation of an Owner to restore  
2 or rebuild the damaged structures and restore the Lot as provided in  
3 Section 12.3.1 (“Owner to Repair”).  
4

5 12.4 Damage to Two or More Lots.  
6

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

17 12.4.2 Insufficient Insurance Proceeds. In the event the insurance proceeds,  
18 if any, together with reserve funds, if any, allocated for replacement of  
19 the damaged or destroyed improvement (for example, roof reserves  
20 allocable to the damaged Lot), are insufficient to pay all of the costs of  
21 repairing and/or rebuilding the non-earthquake damage, the Board  
22 shall levy a Reimbursement Assessment against each affected Owner  
23 in the amount of the deficiency for his or her Lot; *provided, however,*  
24 that in the event of earthquake damage that is covered by an  
25 earthquake insurance policy maintained by the Association for the  
26 benefit of the Lots, the deductible under such earthquake insurance  
27 policy shall be assessed as a Reimbursement Assessment equally  
28 against all Owners as provided in Section 11.7 (“Responsibility for  
29 Payment of Deductible”).  
30

31 12.4.3 No Obligation of Association to Advance Funds. Nothing in this  
32 Declaration shall be deemed to require the Association to contract for  
33 or perform any repair or rebuilding upon a Lot unless and until  
34 sufficient funds therefor have been remitted to the Association.  
35

36 12.4.4 Excess Insurance Funds. In the event any excess insurance proceeds  
37 other than earthquake insurance remain, such proceeds shall be  
38 distributed to the Owners of the damaged Lots and their Mortgagees  
39 as their interest shall appear. In the event of excess earthquake  
40 insurance proceeds, such proceeds shall be deposited in the  
41 Association’s operating account or reserve account, as the Board shall  
42 determine.  
43  
44

1 12.5 Condemnation of Common Area.

2  
3 12.5.1 Association to Represent Owners. If at any time all or any portion of  
4 any Common Area, or any interest therein, shall be taken for any  
5 public or quasi-public use under any statute, by right of eminent  
6 domain, or by private purchase in lieu of eminent domain, the  
7 Association shall represent the interests of all Owners in any  
8 proceedings relating to such condemnation to the extent such Owners  
9 have any interest in the Common Area.

10  
11 12.5.2 Condemnation Award. The entire compensation or award in  
12 condemnation, to the extent such award is not apportioned among the  
13 Owners by court judgment or by agreement between the condemning  
14 authority and each of the affected Owners in the Development, shall be  
15 paid to the Association and shall be used in the manner determined by  
16 the Board, provided that such use shall not be inconsistent with the  
17 purposes of the Association.

18  
19 12.6 Condemnation of Lots.

20  
21 12.6.1 Total Condemnation of Lot. If an entire Dwelling or Lot, or so much  
22 thereof as to render the remainder unfit for use as a Dwelling, is  
23 condemned or taken for a public or quasi-public use pursuant to any  
24 statute, by right of eminent domain, or by private purchase in lieu of  
25 eminent domain, the Owner’s membership in the Association shall  
26 terminate as of the last day of the month in which the condemner  
27 obtains the right to possession, or upon the Owner vacating the Lot,  
28 whichever occurs last.

29  
30 12.6.2 Partial Condemnation of Lot. If only a portion of a Dwelling or Lot is  
31 taken and the remainder is fit for use as a Dwelling, the Owner shall  
32 continue to be a Member of the Association.

33  
34 12.6.3 Rights of Association. In any condemnation action involving an  
35 Owner’s Dwelling or Lot, the Association shall have the right to seek  
36 compensation for any damages incurred by the Association.

37  
38 12.7 Revision of Documents. In the event of (i) a partial or complete condemnation of  
39 the Common Area or the taking of all or a portion of the Common Area by right of  
40 eminent domain or by private purchase in lieu of eminent domain, (ii)  
41 condemnation or taking of one (1) or more Lots, or (iii) a decision by the  
42 Association by affirmative act or failure to act, not to repair damaged Common  
43 Area, the Association shall have the power and authority to resurvey the  
44 remaining portion of the Development and to execute and record, on behalf of

© 2018 Berding & Weil LLP • 2175 N California Blvd Suite 500 • Walnut Creek, California 94596 • 925/838-2090  
All rights reserved. No part of this document may be reproduced without prior written consent of Berding & Weil LLP, except for use by Casa del Rey  
HOA of Santa Clara for Association purposes. All other uses are expressly prohibited.



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

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

- 1 14.5 Enforcement Rights Are Cumulative. To the fullest extent permitted by law,  
2 including *Civil Code* section 5975, the Association, its directors, officers, or  
3 agents, and any Owner shall have the right to enforce any and all provisions of  
4 the Governing Documents by any proceeding at law or in equity, or, with respect  
5 to action by the Association, through the use of such other remedies (including  
6 self-help remedies that do not breach the peace or otherwise violate applicable  
7 law or this Declaration) as are available and deemed appropriate by the Board.  
8 Each remedy provided is cumulative and not exclusive.  
9
- 10 14.6 Injunctions. Except for the nonpayment of any Assessment levied pursuant to  
11 the provisions of this Declaration, it is hereby declared that a remedy at law to  
12 recover damages for a default in the performance of any of the terms and  
13 provisions of any of the Governing Documents or for the breach or violation of  
14 any such provisions is inadequate and that the failure of any Owner, Contract  
15 Purchaser, member of his or her household, tenant, invitee, guest, or household  
16 pets or any other occupant or user of any of the property within the Development  
17 to comply with any provision of the Governing Documents may be enjoined in  
18 any judicial proceedings initiated by the Association, its officers or Board of  
19 Directors, or by any Owner or by their respective successors in interest.  
20
- 21 14.7 Limitation on Association's Disciplinary Rights. To the extent provided in *Civil*  
22 *Code* section 4510, the Association shall not have the power and authority to  
23 cause a forfeiture or abridgment of an Owner's right to the full use and  
24 occupancy of his or her Lot as the result of the failure by such Owner, members  
25 of his or her household, Contract Purchaser, tenants, invitees, guests or pets to  
26 comply with any provision of the Governing Documents, except where such  
27 forfeiture or abridgment is the result of the judgment of a court of competent  
28 jurisdiction, a decision arising out of an arbitration proceeding, or a foreclosure or  
29 sale under private power of sale for failure of such Owner to pay Assessments  
30 levied by the Association pursuant to this Declaration and except to the extent of  
31 the Association's rights pursuant to **Section 8.18** ("Assignment of Rents As  
32 Security for Payment"). The provisions of this **Section 14.7** shall not affect the  
33 Association's right to impose other sanctions including imposing Enforcement  
34 Assessments as provided in **Section 14.8** ("Imposing Sanctions").  
35
- 36 14.8 Imposing Sanctions. Upon an explicit finding and for reasons specified by the  
37 Board following a hearing called by the Board and conducted in accordance with  
38 this **Article 14**, the Board shall have the power to impose sanctions on a Member  
39 who is in default in the payment of any Assessment or Additional Charge levied  
40 by the Board or is found to be in violation of any provision of the Governing  
41 Documents. Sanctions may include loss of Good Standing, suspension of other  
42 rights, and/or monetary penalties (fines), as described below.  
43

1 14.8.1 Loss of Good Standing. The Board may suspend a Member's ~~Good~~  
2 ~~Standing~~good standing for so long as the Member remains in default of  
3 such payment or until the violation is remedied. When a Member is not  
4 in ~~Good Standing, his or her Association voting rights shall be~~  
5 ~~suspended and~~good standing, the Member (or in the case of a  
6 Member that is not a natural person, its representative) shall be  
7 disqualified from serving on the Board.

8  
9 14.8.2 Suspension of Other Rights. The Board may suspend a Member's or a  
10 Resident's right to use Common Area recreational facilities for so long  
11 as a Member remains in default of such payment, or for such period as  
12 may be specified by the Board if the violation involves misbehavior  
13 related to Common Area recreational facilities.

14  
15 14.8.3 Monetary Penalties (Fines). The Board may adopt a policy imposing  
16 monetary penalties or fines (which shall constitute Enforcement  
17 Assessments) pursuant to *Civil Code* section 5850. Such policy, if  
18 adopted, shall be distributed to the Members in the annual policy  
19 statement pursuant to *Civil Code* section 5310. Multiple fines may be  
20 imposed for multiple violations. The schedule of fines may be changed  
21 by the Board by a Rule change pursuant to *Civil Code* section 4360  
22 and following.

23  
24 14.8.4 Monthly Sanctions for Continuing Violations. In the case of a  
25 continuing violation, such as an uncorrected architectural violation  
26 where an Owner fails to remedy the violation after notice from the  
27 Board to do so, the Board may impose sanctions, including monetary  
28 penalties, such sanctions to remain in effect for a period of one (1)  
29 month or until the continuing violation is remedied, whichever occurs  
30 sooner. (By way of example and not limitation, a violation in the nature  
31 of parking every day in a prohibited parking space would *not* constitute  
32 a "continuing violation" but each instance would constitute a separate  
33 violation.) If the continuing violation has not been remedied within the  
34 one-month period, the Board may impose separate and successive  
35 sanctions for the continuing violation, provided the Board conducts a  
36 separate hearing, not more frequently than once a month, before  
37 imposing each successive sanction. The Board may limit the scope of  
38 such hearing to facts and circumstances occurring subsequent to the  
39 previous hearing relating to the subject continuing violation.

40  
41 14.8.5 Reimbursement Assessment Not a Sanction. The imposition of a  
42 Reimbursement Assessment pursuant to the Declaration does not  
43 constitute and shall not be deemed to be a sanction.  
44

- 1 14.9 Investigation of Complaints. Upon receipt of a written complaint from an Owner  
2 or a Resident regarding an alleged violation of the Governing Documents, the  
3 Board shall conduct an investigation of the allegations in the complaint and shall  
4 make relevant findings upon which the Board shall base a decision to pursue or  
5 not pursue the matter. If the Board decides not to pursue a matter, it shall notify  
6 the complaining party in writing stating the reason(s) for its decision.  
7
- 8 14.10 Written Notice of Violation. If the Board determines, whether on its own initiative  
9 or pursuant to a written complaint, that a violation of the Governing Documents  
10 exists or has occurred, it shall notify the responsible Owner(s) by written notice in  
11 compliance with Section 14.11 (“Notices: Content, Delivery”).  
12
- 13 14.11 Notices: Content, Delivery. Any notice of violation required or given under this  
14 Article 14 shall be in writing and shall comply with *Civil Code* section 5855 as to  
15 content and time of service and with *Civil Code* section 4040 as to method of  
16 service.  
17
- 18 14.11.1 Content of Notice of Violation. Any notice given by the Association to a  
19 Member shall comply with *Civil Code* section 5855 and shall, at a  
20 minimum, set forth a brief description of the act or omission  
21 constituting the alleged violation of the Governing Documents; a  
22 reference to the specific Governing Document provision or provisions  
23 alleged to have been violated; if applicable, a statement that the  
24 Member may request a hearing by the Board; the date, time, and  
25 location of any hearing called by the Board; and any sanction,  
26 disciplinary action, or other enforcement action being contemplated by  
27 the Board.  
28
- 29 14.11.2 Delivery of Notice. Any notice may be given by any method provided  
30 for in *Civil Code* section 4040; *provided, however*, that (i) if notice is  
31 given by mail, it shall be sent postage prepaid by United States first-  
32 class mail and/or by certified mail, return-receipt requested; and (ii) if  
33 given by the Association to a Member, it shall be sent to the most  
34 recent address for the affected Member as shown on the records of the  
35 Association. Pursuant to *Civil Code* section 4050(b), if sent by United  
36 States mail, delivery of such is deemed complete upon deposit in the  
37 United States mail, postage prepaid. Pursuant to *Civil Code* section  
38 4050(c), if such notice is sent by electronic means, delivery is deemed  
39 complete at the time of transmission.  
40
- 41 14.11.3 Owner’s Address for Notice. It shall be each Owner’s responsibility to  
42 notify the Association in writing of any change in the Owner’s address  
43 for the purpose of receiving notices from the Association. The fact that  
44 a different address appears on correspondence to the Association from

1 an Owner shall not constitute such written notice, unless it is expressly  
2 stated that such address is a change of address for the purpose of  
3 receiving notice from the Association. Upon transfer of title to a Lot,  
4 the transferee shall be responsible for notifying the Association of such  
5 transfer. The notification shall set forth the address of the Lot, the  
6 names of the transferee and the transferor, and the date of sale or  
7 other transfer. Prior to receipt of such notification, any and all  
8 communications required or permitted to be given by the Association  
9 or the Board to the Lot Owner shall be deemed to be duly made and  
10 given to the transferee if duly and timely made and given to the person  
11 shown as the Owner of the Lot and at the address in the Association's  
12 records.

13  
14 14.11.4 Notice to Co-Owners or Occupants. Unless otherwise provided by law,  
15 when a Lot is owned by two (2) or more co-Owners or is occupied by  
16 two or more occupants, notice to one (1) Owner or to one occupant  
17 shall be deemed notice to all Owners or to all occupants, as the case  
18 may be.

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

37  
38 14.13 Owner's Request for Hearing. An Owner who has received a notice of violation  
39 sent pursuant to Section 14.10 ("Written Notice of Violation") or a notice of  
40 corrective action sent pursuant to Section 14.15 ("Enforcement by Association in  
41 Emergency Situations") or as otherwise provided in the Governing Documents,  
42 may request a hearing before the Board by submitting a written request to the  
43 Board. If an Owner ~~is requesting requests~~ a meeting to discuss a payment plan  
44 for a past due debt owed to the Association, the meeting shall be scheduled and

1 conducted as provided in **Section 8.15.3** (“Owner’s Right to Discuss Payment  
2 Plan”). If the Owner is requesting a hearing concerning a notice of violation sent  
3 pursuant to **Section 14.10** or a notice of corrective action sent pursuant to  
4 **Section 14.15**, the request for hearing must be submitted within ten (10) days  
5 after the date of such notice. The Board shall schedule a hearing at its next  
6 regular meeting that is at least five (5) days after its receipt of an Owner’s  
7 request for hearing or, in the Board’s discretion, at another time agreed by the  
8 Board and the Owner. Hearings shall be conducted in executive session or at an  
9 open meeting as provided in **Section 14.12** (“Hearing Called by the Board;  
10 Executive Session; Open Meeting”).  
11

12 **14.14 Notice of Hearing Decisions.** Within fifteen (15) days after a hearing is  
13 conducted, the Board shall notify the Owner or Resident in writing as to its  
14 decision. If the Board decides to impose sanctions, the notice shall describe the  
15 sanctions imposed and, if applicable, their effective dates.  
16

17 **14.15 Enforcement by Association in Emergency Situations.**

18  
19 **14.15.1 Definition of Emergency Situation.** For purposes of this **Section 14.15**,  
20 the following shall constitute emergency situations:

- 21  
22 (i) an immediate and unreasonable infringement of or threat to the  
23 safety or peaceful enjoyment of Residents of the Development,  
24  
25 (ii) a traffic or fire hazard,  
26  
27 (iii) a threat of material damage to or destruction of the  
28 Development or any portion thereof,  
29  
30 (iv) a violation of any provision of the Governing Documents that is  
31 of such a nature that there is no material question regarding the  
32 identity of the violator or whether the violation has occurred  
33 (such as parking violations).  
34

35 **14.15.2 Immediate Corrective Action.** Notwithstanding any other provisions of  
36 the Governing Documents, under circumstances that constitute an  
37 emergency, the Board or its duly-authorized agents may undertake  
38 immediate corrective action. The Board shall promptly thereafter send  
39 written notice of corrective action to the affected Owner including  
40 notice of any Reimbursement Assessment assessed to the Owner for  
41 costs incurred by the Association in connection therewith. If the Owner  
42 requests a hearing pursuant to **Section 14.13** (“Owner’s Request for  
43 Hearing”), enforcement of any Reimbursement Assessment imposed

1 by the Board shall be held in abeyance and shall be pursued only if  
2 affirmed by the Board at the hearing.

3  
4 14.16 Internal Dispute Resolution.

5  
6 14.16.1 Fair, Reasonable, and Expeditious Procedure. The provisions of  
7 Article 7 (“Architectural Approval”) and of Section 14.9 (“Investigation  
8 of Complaints”) through Section 14.15 (“Enforcement by Association in  
9 Emergency Situations”) are intended to provide a fair, reasonable, and  
10 expeditious procedure for resolving disputes between the Association  
11 and any Member that are subject to *Civil Code* sections 5900 through  
12 5920 (which apply to, among other things, enforcement of applicable  
13 provisions of the *Corporations Code* and enforcement of the Governing  
14 Documents). The above-referenced provisions of the Declaration shall  
15 constitute the Association’s “internal dispute resolution” process as  
16 required by *Civil Code* section 5905.

17  
18 14.16.2 Statutory Default Procedures. If the Association fails to comply with  
19 the Association’s internal dispute resolution process, then the  
20 Association and the affected Member shall abide by the statutory  
21 default procedures provided in *Civil Code* section 5915, or successor  
22 statute. Any resolution so agreed upon by the parties thereto, that is  
23 not in conflict with the law or the Governing Documents, shall bind the  
24 parties and shall be judicially enforceable as provided in *Civil Code*  
25 section 5910.

26  
27 14.16.3 Alternative Dispute Resolution May Also Apply. If (a) the subject  
28 matter of the dispute (including, among other things, enforcement of  
29 applicable provisions of the *Corporations Code* and enforcement of the  
30 Governing Documents) and the remedy sought (including certain kinds  
31 of declaratory, injunctive, or writ relief, which may be in conjunction  
32 with certain limited monetary relief, but excluding small claims actions  
33 and excluding Assessment disputes) are subject to *Civil Code* sections  
34 5925 through 5965 and (b) the Association and the affected Member  
35 do not agree on a resolution through the foregoing internal dispute  
36 resolution process provided for in Section 14.16.1 (“Fair, Reasonable,  
37 and Expeditious Procedure”), then no party to the dispute may pursue  
38 a civil remedy that is subject to *Civil Code* sections 5925 through 5965,  
39 without first complying with the “alternative dispute resolution”  
40 (hereinafter, “ADR”) procedures set forth in that statute and referenced  
41 in Section 14.17 (“Alternative Dispute Resolution Before Initiating  
42 Lawsuit”).  
43



1 14.16.4 Annual Description of Internal Dispute Resolution Process. The  
2 Association shall annually provide the Members with a description of  
3 the internal dispute resolution process required by *Civil Code* section  
4 5920 as part of the annual policy statement prepared pursuant to *Civil*  
5 *Code* section 5310. Such description may consist of a copy of Article 7  
6 (“Architectural Approval”) and Section 14.9 (“Investigation of  
7 Complaints”) through this Section 14.16 (“Internal Dispute Resolution”).  
8

9 14.17 Alternative Dispute Resolution Before Initiating Lawsuit.

10  
11 14.17.1 Annual Disclosure of ADR Process. As provided in *Civil Code* section  
12 5965, the Association shall annually provide to its Members a  
13 summary of the provisions concerning ADR contained in *Civil Code*  
14 sections 5925 through 5965 as part of the annual policy statement  
15 prepared pursuant to *Civil Code* section 5310. Such summary may  
16 consist of a copy of this Section 14.17. Such summary shall include  
17 the following language:  
18

19 “Failure of a member of the association to comply with the alternative  
20 dispute resolution requirements of Section 5930 of the *Civil Code* may  
21 result in the loss of the member’s right to sue the association or  
22 another member of the association regarding enforcement of the  
23 governing documents or the applicable law.”  
24

25 14.17.2 When ADR Applies. The requirements of this Section 14.17 apply to  
26 civil action or proceedings as defined in *Civil Code* section 5925(b)  
27 when the remedy sought is solely for declaratory, injunctive, or writ  
28 relief or if for the foregoing relief in conjunction with monetary damages  
29 not in excess of the jurisdictional amount for a small claims action as  
30 stated in *California Code of Civil Procedure* sections 116.220 and  
31 116.221, all as provided in *Civil Code* section 5930(b). *Civil Code*  
32 sections 5925 through 5965 apply to disputes between Members as  
33 well as to disputes between the Association and a Member. The ADR  
34 requirements of this Section 14.17 do not apply to Assessment  
35 disputes or to an action in small claims court.  
36

37 14.17.3 Statutory ADR Process. In accordance with *Civil Code* sections 5925  
38 through 5965, the Association or a Member may not file an  
39 “enforcement action” as defined in the statute unless the parties have  
40 endeavored to submit their dispute to “alternative dispute resolution” as  
41 the term is defined in *Civil Code* section 5925(a) and as the process is  
42 specified in *Civil Code* sections 5935, 5940, and 5945.  
43

1 14.18 Non-waiver of Enforcement. Failure to enforce any provision of the Governing  
2 Documents at any time shall not be deemed a waiver of the right to do so  
3 thereafter with respect to the same or any other violation of any provision of the  
4 Governing Documents.

5  
6 14.19 Costs and Attorney Fees. In an action to enforce the Governing Documents, the  
7 prevailing party shall, to the fullest extent permitted by law, including *Civil Code*  
8 section 5975, be entitled to recover the full amount of all costs including attorney  
9 fees incurred in responding to and/or in enforcing any Governing Document  
10 provision. Without limiting the generality of the foregoing, in the event an Owner  
11 pursuant to *Civil Code* section 4605 brings a civil action for violation of *Civil Code*  
12 section 4600 (concerning the granting of exclusive use of a portion of the  
13 Common Area to a Member) or pursuant to *Civil Code* section 4955, a civil action  
14 for violation of the Common Interest Open Meeting Act (*Civil Code* sections 4900  
15 through 4955) if the Association shall prevail in any such action, the Association  
16 shall be entitled to recover reasonable attorney fees except to the extent  
17 prohibited by law. The remedies of the prevailing party to recover the amount of  
18 such costs, expenses, and attorney fees shall include, but shall not necessarily  
19 be limited to, the imposition of a Reimbursement Assessment.  
20

## 21 **ARTICLE 15**            **AMENDMENT**

---

22  
23  
24 15.1 Required Approval. Subject to **Section 15.2** (“Review and Optional Veto By  
25 City”), this Declaration may be amended by the affirmative vote of Members  
26 representing at least a majority of the Total Voting Power of the Association;  
27 *provided, however*, that, upon advice of legal counsel licensed to practice law in  
28 the State of California including the drafting by legal counsel of appropriate  
29 amendatory provisions, the Board shall have the authority without the  
30 requirement of Member approval to amend any provision of the Declaration (i) to  
31 resolve any conflict between the Declaration and applicable law which may arise  
32 due to the enactment or amendment of a statute or due to a development in  
33 applicable case law or (ii) to conform the provisions of the Declaration to changes  
34 in applicable statutory law that impose requirements that are non-discretionary in  
35 nature. Notwithstanding the foregoing, the percentage of the voting power  
36 necessary to amend a specific provision shall not be less than the prescribed  
37 percentage of affirmative votes required for action to be taken under that  
38 provision.  
39

40 15.2 Review and Optional Veto by City. In accordance with City Code Chapter 18.54  
41 entitled “Regulations for PD – Planned Development and Combined Zoning  
42 Districts,” and more particularly as set forth in Section 18.54.080(c), or any future  
43 City ordinances or amendments related thereto, the City, at its option, has the  
44 right and authority to veto any amendment to the organizational documents that

1 would adversely affect the long-term maintenance of the Development's  
2 structures or the Common Area. To enable the City to exercise said optional  
3 veto, and pursuant to the aforementioned ordinance, any amendment to this  
4 Declaration shall not become effective until sixty (60) days after notice of such  
5 proposed action is filed with the City Council and the Council has not vetoed the  
6 amendment.

7  
8 15.3 Amendment Must Be Recorded. Any amendment of the Declaration shall be  
9 signed and acknowledged by the duly-authorized officer(s) of the Association and  
10 recorded in the Office of the County Recorder.

11  
12 15.4 Presumption of Validity. There will be a presumption subsequent to the  
13 recording of an amendment to this Declaration pursuant to **Section 15.3**  
14 ("Amendment Must Be Recorded") that all votes and consents required to pass  
15 the same pursuant to **Section 15.1** ("Required Approval") were duly obtained in  
16 accordance with the Governing Documents and applicable law. Such  
17 presumption may be rebutted by an action commenced within one (1) year from  
18 the date the amendment is recorded. In the absence of any such action, such  
19 presumption shall thereafter become conclusive.

20  
21  
22 **ARTICLE 16 GENERAL PROVISIONS**

---

23  
24 16.1 Headings. The headings used in this Declaration are for convenience only and  
25 are not to be used in interpreting the meaning of any of the provisions of this  
26 Declaration, or otherwise.

27  
28 16.2 Severability. The provisions of this Declaration shall be deemed independent  
29 and severable, and the invalidity or partial invalidity or unenforceability of any  
30 provision hereof shall not invalidate any other provisions hereof.

31  
32 16.3 Liberal Construction. The provisions of this Declaration shall be liberally  
33 construed to effectuate its purpose of fostering a plan of community ownership  
34 and occupancy and of management of the Development for the benefit of the  
35 community.

36  
37 16.4 Amendment to Referenced Statutes; Time for Performance. References in the  
38 Declaration to particular statutes, including sections of the *Civil Code* or the  
39 *Corporations Code*, shall be deemed to include any successor statute and any  
40 amendments to existing or successor statutes. Whenever this Declaration states  
41 a time for the performance of any act by the Association which by law (as it may  
42 exist from time to time) must be performed at or within a specified time, the time  
43 for the performance of such act shall be deemed to be the widest timeframe  
44 permitted under then-applicable law.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44

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

16.6 Exhibits. All exhibits attached to this Declaration are incorporated by this reference as though fully set forth herein.

16.7 Power of Attorney. To the extent necessary to carry out and enforce the provisions of this Declaration, an irrevocable power of attorney coupled with an interest is granted to the Association by the Owners and each of them.

16.8 Term. The covenants, conditions, restrictions, limitations, reservations, grants of easement, rights, rights-of-way, liens, charges, and equitable servitudes contained in this Declaration shall run with and shall benefit and burden all of the real property subject to this Declaration, including without limitation the Lots and Common Areas, and shall inure to the benefit of and be binding upon the Owners, the Association, its Board of Directors and officers, and their respective agents and successors in interest, for a term of twenty (20) years from the date of recordation of this Declaration and thereafter the term shall be automatically extended for successive periods of ten (10) years each, unless within the six (6) months prior to the expiration of the initial twenty-year term or that date or within six months prior to the expiration of any ten-year extension period a written instrument, approved by Owners entitled to vote and holding at least a majority of the Total Voting Power of the Association, terminating the effectiveness of this Declaration shall be recorded in the Office of the County Recorder of Santa Clara County, State of California.

///

///

///

///

///

///

///

///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22

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

DATED: \_\_\_\_\_

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

\_\_\_\_\_  
President

\_\_\_\_\_  
Secretary

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23

**EXHIBIT A**

**(Recital Paragraphs A & B)**

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

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