

CC&Rs (Required Civil Code Sec. 4525)
Lomas Santa Fe Villa Homeowners Association

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**Amended and Restated
Declaration of
Covenants, Conditions and Restrictions**

for

**Lomas Santa Fe Villas
Homeowners Association**

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AMENDED and RESTATED
DECLARATION of COVENANTS,
CONDITIONS and RESTRICTIONS
for
LSFV HOMEOWNERS' ASSOCIATION

September 1996

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County of San Diego Tract No. 3789

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AMENDED AND RESTATED

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

LOMAS SANTA FE VILLAS CONDOMINIUMS
A Residential Condominium Development

Lot 1 of Map No. 9585
County of San Diego Tract No. 3789

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AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
LOMAS SANTA FE VILLAS CONDOMINIUMS

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS is made on the day and year hereinafter written, by LSFV Homeowners Association, a California nonprofit mutual benefit corporation ("Association"), with reference to the following Recitals.

R E C I T A L S

A. The Association is a corporation whose Members are the Owners of all the Condominium Units within that certain real property in the County of San Diego, State of California, described as follows:

LEGAL DESCRIPTION

Lot 1 of COUNTY OF SAN DIEGO TRACT NO. 3789, in the County of San Diego, State of California, according to Map thereof No. 9585 filed with the Office of the County Recorder of San Diego County, California, on February 27, 1980;

hereinafter referred to as "Property."

B. The Property was developed as a Condominium Project, as defined in Section 1351(f) of the California Civil Code, and consists of two hundred and twenty (220) Condominium Units and related Common Areas.

C. Ownership of the Property is currently subject to the covenants, conditions, restrictions, rights, reservations, easements, equitable servitudes, liens and charges set forth in:

1. The Declaration of Restrictions recorded June 3, 1980 as File/Page No. 80-178347;
2. The Restated Declaration of Restrictions recorded December 11, 1984 as File/Page No. 84-461438;
3. The First Amendment to Restated Declaration of Restrictions for Lomas Santa Fe Villas Condominiums recorded April 9, 1985 as File/Page No. 85-120958;

all recorded in the Official Records of the County Recorder of San Diego County, and hereinafter are referred to together as "Declaration," unless the context clearly indicates otherwise.

D. The Association now desires to amend and restate the Declaration and replace it in its entirety with this Restated Declaration. The Association further desires that, upon recordation of this Restated Declaration, the Property shall be subject to the covenants, conditions, restrictions, rights, reservations, easements, equitable servitudes, liens and charges contained herein, and that this Restated Declaration take the place of and relate back in time to the recording of the original Declaration.

E. The Declaration, in Section 10.3 of Article X, provides that it may be amended by the affirmative vote or written consent of seventy-five percent (75%) of the total voting power of the Association. The undersigned President and Secretary of the Association certify that, to the best of their knowledge, the affirmative vote or written consent of at least the required percentage of Association Members has been obtained.

F. Section 10.3 of the Declaration also provides that fifty-one percent (51%) of "Eligible Mortgagees," as that term is defined in the Declaration, must approve of any material amendment to the Declaration. As of the date of adoption of this Restated Declaration, no Lenders qualified as an "Eligible Mortgagee."

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

D E C L A R A T I O N

ARTICLE 1 - DEFINITIONS

1.1 "Articles" means the Articles of Incorporation of LSFV Homeowners Association, filed in the Office of the Secretary of State of the State of California on May 21, 1980 as File No.

959394, and any amendments thereto now existing or hereafter adopted.

1.2 **"Association"** means LSFV Homeowners Association, a California nonprofit mutual benefit corporation created for the purpose of managing a common interest development.

1.3 **"Board"** means the Board of Directors of the Association.

1.4 **"Borrower"** means a Person who mortgages his, her, or its property to another (i.e., the maker of a mortgage), and shall include the trustor of a deed of trust. The term "Trustor" shall be synonymous with the term "Borrower."

1.5 **"Bylaws"** means the Bylaws of the Association and any duly adopted amendments thereto, which are incorporated herein by reference.

1.6 **"Common Area"** means the entire Property except all Units as defined in this Restated Declaration and as shown on the Condominium Plan. The Common Area is owned by Owners of Units in undivided fractional one-two hundred twentieth (1/220th) interests.

1.7 **"Condominium"** means an estate in real property consisting of (1) a separate interest in a Unit, the boundaries of which are shown and described on the Condominium Plan, (2) a fractional undivided interest as a tenant-in-common in the Common Area, (3) a membership in the Association, and (4) the exclusive right to use any Exclusive Use Common Area appurtenant to each Unit as shown on the Condominium Plan or deed of conveyance.

1.8 **"Condominium Plan"** means those certain condominium plans as follows:

1.8.1 The Lomas Santa Fe Villas Condominium Plan recorded June 3, 1980 as File/Page No. 80-178384.

1.8.2 The Lomas Santa Fe First Superseding Condominium Plan recorded December 11, 1984 as File/Page No. 84-461436.

1.8.3 The Lomas Santa Fe Villas Second Superseding Condominium Plan recorded January 14, 1985 as File/Page No. 85-011420.

All of the above documents are recorded in the Official Records of the County Recorder of San Diego County. Condominium Plan shall include any amendments to the above documents.

1.9 **"Eligible Lender"** means a holder, insurer or guarantor of a First Mortgage that provides a written request to the Association stating the name and address of such holder, insurer or guarantor

and the Unit number, and requesting notice to which such Eligible Lender is due under the Governing Documents.

1.10 **"Exclusive Use Common Area"** means those portions of the Common Area designated herein for the exclusive use of one (1) or more, but fewer than all, of the Owners and which is appurtenant to a Unit or Units as shown on the Condominium Plan or deed of conveyance and pursuant to the provisions herein. "Exclusive Use Common Areas" and "Exclusive Use Areas" shall have the same meaning, and shall consist of patios, balconies and parking spaces as shown and described on the Condominium Plan, and any shutters, awnings, window boxes, doorsteps, stoops, porches, exterior doors, door frames, and hardware incident thereto, screens and windows and other fixtures, and internal and external telephone wiring designed to serve a Unit but located outside the boundaries of the Unit as provided by Section 1351(i) of the Civil Code.

1.11 **"Governing Documents"** means this Restated Declaration and any other documents such as the Articles, Bylaws, Condominium Plan or Rules and Regulations which govern the operation of the Association.

1.12 **"Lender"** means a Person to whom a Mortgage is made and includes the beneficiary of a deed of trust and any guarantor or insurer of a mortgage. "Institutional Lender" means a mortgagee that is a financial intermediary or depository, such as a bank, savings and loan, or mortgage company, that is chartered under federal or state law and that lends money on the security of real property or invests in such loans, or any insurance company or governmental agency or instrumentality, including the Federal National Mortgage Association (FNMA), the Federal Home Loan Mortgage Corporation (FHLMC), and the Government National Mortgage Association (GNMA). "First Lender" means a mortgagee that has priority over all other mortgages or holders of mortgages encumbering the same Condominium or other portions of the Project. The term "Beneficiary" shall be synonymous with the term "Lender."

1.13 **"Manual of Architectural Guidelines" or "Architectural Guidelines"** means the architectural guidelines adopted by the Board pursuant to Section 7.9 herein.

1.14 **"Member"** means every person or entity entitled to membership in the Association as provided in this Restated Declaration.

1.15 **"Mortgage"** means a mortgage or deed of trust encumbering a Condominium or any other portion of the Project. "First Mortgage" means a mortgage that has priority over all other mortgages encumbering the same Condominium or other portions of the Project.

1.16 **"Owner"** means the record holder or holders of record fee title to a Condominium, including the Association, and any contract

sellers under recorded contracts of sale. "Owner" shall not include any persons or entities who hold an interest in a Condominium merely as security for performance of an obligation.

1.17 "**Person**" means a natural individual, a corporation, or any other entity with the legal right to hold title to real property.

1.18 "**Project**" means the common interest development which is a condominium project as described herein and on the Condominium Plan, including all improvements thereon.

1.19 "**Property**" means the real property described in Recital "A," above.

1.20 "**Restated Declaration**" means this Amended and Restated Declaration of Restrictions and any amendments hereto.

1.21 "**Rules and Regulations**" means any Rules and Regulations for the Association regulating the use of the Units, Exclusive Use Common Areas, Common Areas, the Project and any facilities located thereon adopted by the Board pursuant to Subsection 3.6.2 herein.

1.22 "**Unit**" means that portion of a Condominium that consists of a separate interest. The terms "Unit" and "Living Unit" shall be synonymous. "Unit" does not include the other elements of the Project. Each Unit shall be a separate freehold estate, as separately shown, numbered, and designated on the Condominium Plan. Each Unit is an airspace, the boundaries of which are the interior surfaces of the perimeter walls, the floors and ceilings, windows and doors thereof, and includes both the portions of the building so described and the airspace so encompassed; provided, however, that the following are no part of the Unit: bearing walls, columns, floors, roofs, foundations, central heating and other central services, pipes, ducts, flues, chutes, conduits, wires and other utility installations, wherever located, except outlets thereof when located within the Unit.

ARTICLE 2 - THE PROPERTY

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

2.2 **Description of Land and Improvements; Ownership of Common Area.** The Project consists of the real property described in Recital "A," and is divided between the Common Area and the Units. Each of the Units is owned by the individual Owners as separate property. The Common Area is owned by Owners of Units as tenants-in-common, in equal one-two hundred twentieth (1/220th) fractional interests. The Owners of Units shall have appurtenant nonexclusive rights for ingress, egress and support through the Common Area

subject to the rights and restrictions contained in the Governing Documents.

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

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

2.5 Presumption Regarding Boundaries of Units. In interpreting deeds, declarations and plans, the existing physical boundaries of a Unit, including any Unit reconstructed in substantial accordance with the Condominium Plan and the original construction plans for the Project, shall be conclusively presumed to be its boundaries, rather than the description expressed in the deed, Condominium Plan, or this Restated Declaration. This presumption applies regardless of settling or lateral movement of the building and regardless of minor variances between boundaries shown on the Condominium Plan or described in the deed and those of the building as constructed or reconstructed. In the event a structure is partially or totally destroyed and then repaired or rebuilt, the Owners agree that minor encroachments over adjoining Condominiums or Common Area shall be permitted and that there shall be appropriate rights for the maintenance of said encroachments so long as they shall exist.

2.6 Prohibition Against Severance of Elements. Any conveyance, judicial sale, or other voluntary or involuntary transfer of a Unit shall include all interests and appurtenances as shown in the original deed of conveyance. Any conveyance, judicial sale, or other voluntary or involuntary transfer of the Owner's entire estate shall also include the Owner's membership interest in the Association, as provided in Article 3 herein. Any transfer that attempts to sever those component interests shall be void.

ARTICLE 3 - ASSOCIATION

3.1 Organization of the Association. The Association is incorporated as a nonprofit corporation organized under the California Nonprofit Mutual Benefit Corporation Law. The Association is created for the purpose of managing the Project and is charged with the duties and granted the powers prescribed by law and set forth in the Governing Documents.

3.2 **Board of Directors.** The affairs of the Association shall be managed and its duties and obligations performed by an elected Board of Directors, as provided in Article 3 of the Bylaws.

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

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

3.5 **Membership Meetings.** Meeting of Members shall be held in accordance with Article 2 of the Bylaws.

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

3.6.1 The power to establish, fix, levy, collect, and enforce the payment of assessments against the Owners in accordance with the procedures set forth in Article 4 herein.

3.6.2 The power to adopt reasonable Rules and Regulations governing the use of the Units, the Common Area, any common facilities and Association owned property, and the conduct at Board and Members' meetings, in accordance with the following:

(a) The Rules and Regulations may include, but are not limited to: reasonable restrictions on use by the Owners and their families, guests, employees, tenants and invitees; rules of conduct; the setting of reasonable fees, deposits and use fees for any recre-

ational facilities; and reasonable hearing procedures and a schedule of monetary penalties and fines which may be imposed for violations of any provisions of the Governing Documents, subject to Section 3.11 of the Bylaws.

- (b) A copy of the current Rules and Regulations, if any, and all modifications, revisions and updates shall be given to each Owner.
- (c) If any provision of the Rules and Regulations conflicts with any provision of this Restated Declaration, the Articles, or the Bylaws, the Restated Declaration, Articles, or Bylaws shall control to the extent of the inconsistency.

3.6.3 The right to institute, defend, settle, or intervene in litigation, arbitration, mediation, or administrative proceedings in its own name as the real party in interest and without joining with it the Owners, in matters pertaining to:

- (a) Enforcement of the Governing Documents.
- (b) Damage to the Common Area.
- (c) Damage to any Units that the Association is obligated to maintain or repair.
- (d) Damage to the Units that arises out of, or is integrally related to, damage to the Common Area or Units that the Association is obligated to maintain or repair.
- (e) Enforcement of payment of assessments in accordance with the provisions of Section 4.16 herein.
- (f) Any other matter(s) in which the Association is a party, including, but not limited to contract disputes.

3.6.4 Subject to the limitations set forth in Section 3.11 of the Bylaws, the right to discipline Owners for violation of any of the provisions of the Governing Documents by (i) suspending the Member's membership rights, including the Member's voting rights and the rights and privileges to use the Common Area and facilities appurtenant to the Members' Unit, (ii) imposing monetary fines, and (iii) recording a notice of

noncompliance in the Office of the County Recorder of San Diego County encumbering the Unit of the Owner.

- 3.6.5 The right for its agents and employees to enter any Unit when necessary in connection with any maintenance, landscaping, or construction work for which the Association is responsible. This entry shall be made only upon reasonable notice to the Owner (except in the case of an emergency) and with as little inconvenience to the Owner as is practicable. Any damage caused thereby shall be repaired by the Association at its own expense.
- 3.6.6 The power to grant permits, licenses and easements over, under and through the Common Area for roads, utilities, cable television, sewer facilities and other purposes in accordance with Section 5.2.4(h) herein, (a) to serve the Common Area or the Condominiums, or (b) where necessary or convenient to satisfy or achieve appropriate governmental purposes or requests.
- 3.6.7 Notwithstanding any nonexclusive easement rights to the Common Area granted herein or by any deed or other conveyance, the Board shall have the right to allow one or more Owners to exclusively use portions of the Common Area, provided that such portions of the Common Area are nominal in area and adjacent to the Owner's Unit, and, provided further, that such use does not unreasonably interfere with any other Owner's use or enjoyment of the Project.
- 3.6.8 The power to remove any vehicle within the Project parked in violation of this Restated Declaration or the Rules and Regulations in accordance with the provisions of California Vehicle Code Section 22658.2 and any amendments thereto.
- 3.6.9 The power to separately meter and charge owners for use of utilities by such means as may be determined in the sole discretion of the Board.

3.7 Duties of the Association. In addition to the duties of the Association, its agents and employees set forth elsewhere in the Governing Documents, the Association shall be responsible for the following:

- 3.7.1 The Association, acting through the Board, shall operate, maintain, repair, and replace those components described in Section 6.3, or contract

for the performance of that work, subject to the provisions of the Governing Documents.

3.7.2 The Association shall use the maintenance fund described in Article 4 herein to, among other things, acquire and pay for goods and services for the Project, including, but not limited to:

- (a) Water, sewer, refuse, electrical, cable, telephone, gas, and other necessary utility service for the Common Area and, to the extent not separately metered and charged, for the Units. If separately metered or charged by either the utility provider or the Association, the costs thereof shall be assessed against Owners as a utility assessment or as otherwise provided herein.
- (b) The insurance policies described herein.
- (c) The services of any personnel that the Board determines are necessary or proper for the operation of the Common Area and the Association.
- (d) Legal and accounting services necessary or proper in the operation of the Common Area and the Association or the enforcement of the Governing Documents.

3.8 *Inspection of Accounting Books and Records.* The rights of Owners and Directors to obtain and inspect the accounting books and records of the Association shall be in accordance with Article 6 of the Bylaws.

ARTICLE 4 - ASSESSMENTS AND COLLECTION PROCEDURES

4.1 *Covenant to Pay.* Each Owner by acceptance of the deed to the Owner's Condominium is deemed to covenant and agree to pay to the Association regular, special, individual and utility assessments, and all other charges duly levied by the Association pursuant to the provisions of this Restated Declaration. A regular, special, individual or utility assessment and any late charges, reasonable costs of collection, and interest, as assessed in accordance with the provisions of this Article, shall also be a personal debt of the Owner of the Condominium at the time the assessment or other sums are levied. The Owner may not waive or otherwise escape liability for these assessments by nonuse of the Common Area or abandonment of the Owner's Condominium.

4.2 *Purpose of Assessments.* Except as provided herein, the Association shall levy regular, special, individual and utility

assessments sufficient to perform its obligations. The assessments levied by the Association shall be used exclusively to promote the recreation and welfare of the Owners, and for the operation, replacement, improvement, and maintenance of the Project, and to discharge any other obligations of the Association under this Restated Declaration. All assessment payments shall be put into general operating and reserve funds to be used for the foregoing purposes.

4.3 Regular Assessments. Concurrently with preparation of the financial documents and budget as required in Section 3.10 of the Bylaws, the Board shall estimate the net charges to be paid during that next fiscal year, including a reasonable provision for contingencies, replacements and reserves, with adjustments made for any expected income and surplus from the prior year's fund. The resulting amount shall constitute the regular assessments for the budgeted year. Regular assessments shall be divided equally among all Units and allocated among, assessed against and charged to each Owner according to the ratio of the number of Units owned by the assessed Owner to the total number of Units subject to assessment. Each Unit shall bear an equal share of the total assessment. Failure of the Board to estimate the net charges within the time period stated herein shall not void any assessment imposed by the Board. Regular assessments for fractions of any month shall be prorated. Each Owner is obligated to pay assessments to the Association in equal monthly installments on or before the first day of each month unless the Board adopts an alternative method for payment.

4.4 Special Assessments. If the Board determines that the amount to be collected from regular assessments will be inadequate to defray the common expenses for the year due to the cost of any construction, unexpected repairs or replacements of capital improvements upon the Common Area, or any other reason, it shall make a special assessment for the additional amount needed, subject to any limitations imposed by law or the Governing Documents. Special assessments shall be levied and collected in the same manner as regular assessments.

4.5 Individual Assessments. Subject to the limitations of the Governing Documents and in addition to regular and special assessments, the Board may levy individual assessments against Owners and Units whenever the Association (i) performs any service or accomplishes any item of repair or maintenance which is the duty of any Owner to accomplish, but which has not been accomplished by such Owner, or (ii) incurs any costs which by law or as required by the Governing Documents must be reimbursed by an Owner. Such individual assessment shall include the cost thereof, together with any financing costs and administrative costs incurred by the Association. Prior to levying such an individual assessment, the Board shall provide the Owner with notice and a hearing in accordance with Section 3.11 of the Bylaws. The notice and hearing

regarding the levy of an individual assessment may be combined with the notice and hearing regarding the underlying violation.

4.6 Utility Assessments. In addition to any assessment levied against a Unit, each Owner shall be obligated to pay to the Association, or its agent, a utilities assessment in the event any utilities are separately submetered or charged by the Association. Such utilities assessment shall be comprised of the costs for those utilities used by each Unit which are billed to the Association. The amount of the utilities assessment levied by the Association against a Unit shall be based upon each Unit Owner's and/or tenant's actual use of the respective utilities as determined by the Board in its discretion, and may vary from month to month based upon such usage. Anything in this Restated Declaration to the contrary notwithstanding, the utilities assessment shall be separate from, and not considered a part of either regular or special assessments, and shall not be subject to the limitations on the increases or decreases thereof contained in this Declaration or in Section 1366 of the California Civil Code or any successor statute or law.

4.7 Collection of Individual and Utility Assessments. Duly levied individual and utility assessments shall be subject to the provisions in the Governing Documents regarding costs, late charges and interest for delinquent payment, and may become a lien on the Unit, in the same manner as regular and special assessments.

4.8 Monetary Penalty Assessments. The Board of Directors may levy, subject to the limitations of the Governing Documents, monetary penalties or fines against an Owner and his or her Unit. In the event the Board of Directors imposes a monetary penalty or fine, that fine shall be subject to costs, late charges and interest as described in Section 4.13 for delinquent payment, and may become a lien on the Unit, collectable by the Association as allowed by Section 4.16 herein.

4.9 Units Not Subject To Assessment. Assessments which would normally become due on Units, but which Units are owned by the Association, shall be deemed to be common expenses collectible from all of the remaining Units in the same proportion that each Unit bears to the others less the number of Units owned by the Association.

4.10 Limitations on Assessments. Except in emergency situations, the Board may not, without the approval of Owners as provided in Section 1366(b) of the Civil Code, impose a regular assessment per Unit, or levy special assessments in excess of the amounts allowed by Civil Code Section 1366(b). These limitations shall not apply to assessment increases that are necessary for emergency situations. An emergency situation is an extraordinary expense that is:

4.10.1 Required by a court order.

4.10.2 Necessary to repair or maintain the Project or any part of it for which the Association is responsible when a threat to personal safety in the Project is discovered.

4.10.3 Necessary to repair or maintain the Project or any part of it for which the Association is responsible that could not have been reasonably foreseen by the Board in preparing and distributing the pro forma operating budget. Before the Board may impose or collect an assessment in this emergency situation, it shall pass a resolution containing written findings as to the necessity of the extraordinary expense and why the expense was not or could not have been reasonably foreseen in the budgeting process, and shall distribute the resolution to the Owners with the notice of assessment.

4.11 Owner Notice of Assessments. The Association shall provide notice by first-class mail to the Owners of any increase in the regular assessments or the imposition of a special assessment not less than thirty (30) nor more than sixty (60) days prior to the increase in the regular assessment or special assessment becoming due.

4.12 Limitation on Assessment Increases. Unless the Board has complied with subdivision (a) of Section 1365 of the California Civil Code with respect to that fiscal year, the Board shall not be permitted to increase the regular assessments without first obtaining the approval of Owners, constituting a quorum, casting a majority of the votes at a meeting or election of the Association conducted in accordance with Chapter 5 (commencing with Section 7510) of Part 3 of Division 2 of Title 1 of the California Corporations Code and Section 7613 of the California Corporations Code. For the purposes of this Section, "quorum" means more than fifty percent (50%) of the Owners of the Association.

4.13 Costs, Late Charges and Interest. Late charges may be levied by the Association against an Owner for the delinquent payment of regular, special, individual and utility assessments, fines and monetary penalties. An assessment, including any installment payment, is delinquent fifteen (15) days after its due date. If an assessment is delinquent the Association may recover all of the following from the Owner:

4.13.1 Reasonable costs incurred in collecting the delinquent assessment, including actual attorneys' fees.

4.13.2 A late charge not exceeding the maximum amount allowed by law.

4.13.3 Interest on the foregoing sums, at an annual percentage rate not to exceed the maximum amount allowed by law commencing thirty (30) days after the assessment becomes due.

No late charge may be imposed more than once for the delinquency of the same payment. However, the imposition of a late charge on any delinquent payment shall not eliminate or supersede charges imposed on prior delinquent payments. The amounts delinquent, including the entire unpaid balance and any related costs described herein, may be collected by the Association as provided in Section 4.16 hereinbelow.

4.14 Priority of Payments. Payments received by the Association from Owners shall be applied towards (1) collection costs, including attorneys fees, (2) monetary penalties, (3) interest, (4) late charges, (5) individual assessments, (6) special assessments, and (7) regular assessments, in that order.

4.15 No Offsets. All assessments shall be payable in the amounts specified by the Association, and no offsets against such amount shall be permitted for any reasons, including, without limitation, a claim that the Association is not properly exercising its duties of maintenance, operation or enforcement.

4.16 Enforcement of Assessments and Late Charges. A delinquent regular, special, individual or utility assessment, fine, monetary penalty, and any related late charges, reasonable costs of collection (including actual attorneys' fees), penalties, and interest assessed in accordance with Section 4.13 herein shall become a lien upon the Condominium when a Notice of Assessment Lien is duly recorded as provided in Section 1367 of the California Civil Code or applicable statute. The Notice of Assessment Lien shall describe the amount of the delinquent assessment or installment, the related charges authorized by this Declaration, a description of the Condominium, the name of the purported Owner, and, if the lien is to be enforced by power of sale under nonjudicial foreclosure proceedings, the name and address of the trustee authorized by the Association to enforce the lien by sale. The Notice may be signed by any officer or director of the Association, or any employee or agent of the Association authorized to do so by the Board.

Unless the Board considers the immediate (without notice) recording of the Notice of Assessment Lien to be in the best interests of the Association, the Notice of Assessment Lien may not be recorded until ten (10) calendar days after the Association has mailed, via first-class mail, a written demand for payment to the delinquent Owner. If the delinquent assessment or installment and related charges are paid or otherwise satisfied in accordance with the demand for payment, the Association shall not record the Notice of Assessment Lien.

Any lien described herein may be enforced in any manner permitted by law, including judicial foreclosure or nonjudicial foreclosure. Any nonjudicial foreclosure shall be conducted by the trustee named in the Notice or by a trustee substituted pursuant to Section 2934(a) of the California Civil Code, in accordance with the provisions of Sections 2924, 2924(b), and 2924(c) of the California Civil Code.

If all sums specified in the Notice of Assessment Lien are paid before the completion of any judicial or non-judicial foreclosure, the Association shall (i) record a notice of satisfaction and release of lien, and (ii) upon receipt of a written request by the Owner, shall also record a notice of rescission of any recorded notice of default and demand for sale.

The Notice of Assessment Lien is not required to be amended by the Association or Trustee to reflect any partial payments made on the account of the delinquent Owner after its recordation, and any such partial payments received shall not be construed to invalidate the Notice of Assessment Lien and said Notice of Assessment Lien may be foreclosed upon as set forth herein even though the delinquent Owner has made one or more partial payments.

4.17 Priority of Assessment Lien. As set forth hereinbelow, the assessment lien referred to in Section 4.16 shall be superior to all other liens, except (i) all taxes, bonds and governmental assessments which, by law, would be superior thereto, and (ii) the lien or charge of any First Mortgage of record. Notwithstanding any other provision to the contrary, the following provisions shall govern the priority and obligation for payment of the assessment lien:

4.17.1 Only the judicial or non-judicial foreclosure of the First Mortgage shall operate to transfer title free of the assessment lien or obligation for any assessment lien, and then only as to payments which became due prior to the date of sale, and excluding those assessment liens recorded prior to the recording of the First Mortgage.

4.17.2 Should any person or entity other than a First Lender foreclose on a Condominium, the new Owner shall be personally liable for all unpaid assessments whether or not a lien has been recorded if such new Owner expressly assumed such personal liability. In the event the new Owner assumes such liability, the Association may elect to collect such unpaid assessments, including late charges, interest and other costs, from the new Owner, either personally or against the Condominium, upon the transfer of title.

4.17.3 Neither the transfer of a Condominium pursuant to a foreclosure of any Mortgage, nor an election by the Association to proceed against any new Owner for payment, shall serve to cancel the personal obligation of the prior Owner for payment of the delinquent assessments and charges which accrued during such Owner's period of ownership. The personal obligation of any Owner for payment of delinquent assessments and charges may only be satisfied, and therefore discharged, by payment of the entire amount of the delinquent assessments and charges, whether or not such Owner remains in possession of his or her Unit.

4.17.4 No sale or transfer of any Condominium shall relieve such Condominium or its new Owner from liability for any future assessments which accrue during such Owner's period of ownership.

4.18 *Statement of Delinquent Assessment.* The Association shall provide any Owner, upon written request, with a statement specifying the amounts of any delinquent assessments and related late charges, interest, and costs levied against the Owner's Condominium.

ARTICLE 5 - USE RESTRICTIONS AND COVENANTS

5.1 *General.* The use and enjoyment of the Project by Owners and their tenants, guests, invitees or any other person deriving rights from such Owner, shall be subject to the covenants and restrictions contained in the Governing Documents. Each such person shall comply with the provisions hereof and be subject to any enforcement actions in the event of violations. Unless otherwise stated in the Governing Documents, the Association, through the Board of Directors, shall be responsible for the enforcement of these provisions.

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

5.2.1 The Association shall have an easement in, to, and throughout the Common Area and the improvements thereon to perform its duties and exercise its powers.

5.2.2 Except as provided in this Restated Declaration, there shall be no judicial partition of the Common Area, nor shall the Association or any person acquiring an interest in all or any part of the Project seek any judicial partition.

- 5.2.3 Subject to the provisions of this Restated Declaration, each Owner has non-exclusive rights of ingress, egress, and support through the Common Area. These rights shall be appurtenant to any deed of conveyance. However, these rights shall not interfere with, and shall be subordinate to, any exclusive right to use an area.
- 5.2.4 The Owners' rights of use and enjoyment of the Common Area shall be subject to the restrictions set forth in the Governing Documents, and the right of the Association, subject to the limitations of any laws or the Governing Documents, to:
- (a) Adopt and enforce reasonable Rules and Regulations for the use of the Common Area and the Project.
 - (b) Reasonably limit the number of Persons using the Common Area.
 - (c) Charge a fee or deposit for use of any recreational facilities.
 - (d) Assign or otherwise control the use of any unassigned parking spaces within the Common Area.
 - (e) Remove any vehicle within the Project parked in violation of this Declaration or the Rules and Regulations of the Board in accordance with the provisions of California Vehicle Code Section 22658.2 and any amendments thereto.
 - (f) Suspend the voting rights of any Owner, and the rights of any Owner, and the Persons deriving rights from any Owner, to use and enjoy the Common Area for any period during which the Owner is delinquent in the payment of any assessment, fine or monetary penalty, or as otherwise provided in the Governing Documents.
 - (g) Cause the construction of additional improvements in the Common Area, or cause the alteration or removal of existing improvements on the Common Area.
 - (h) Dedicate, grant, or join in the grant or conveyance of easements, licenses or rights-of-way in, on and over the Common Area to any public agency, authority or utility as

may be determined by the Board to be in the best interests of the Association; provided that no such easement, license or right-of-way may be granted if it would unreasonably interfere with any exclusive easement, or with any Owner's use, occupancy, or enjoyment of his or her Unit.

- (i) Reasonably restrict access to roofs, maintenance facilities or areas, landscaped areas, and similar areas of the Project.
- (j) Approve any proposed alteration of or modification to the Common Area or any Unit.

5.2.5 The Board, with the approval of two-thirds (2/3) of the total voting power of the Association, may:

- (a) Dedicate, grant or join in the grant or conveyance of easements, licenses or rights-of-way in, on, and over the Common Area, other than those allowed by Section 5.2.4(h), above, (i) to third parties for purposes reasonably related to the operation of the Project, or (ii) to one or more Owners to exclusively use portions of the Common Area, subject to the Governing Documents. No such easement, license or right-of-way may be granted if it would unreasonably interfere with any exclusive easement, or with any Owner's use, occupancy, or enjoyment of his or her Unit. Each Owner, in accepting his or her deed to the Unit, expressly consents to these easements.
- (b) Mortgage or encumber the Common Area or portions thereof.

5.2.6 Notwithstanding the easement rights or other rights contained herein, an Owner who has sold his or her Condominium to a contract purchaser or who has leased or rented the Condominium shall be deemed to have assigned his or her rights to use and enjoy the Common Area to the contract purchaser or tenant who resides in the Owner's Condominium, subject to reasonable regulation by the Board. If the Owner is deemed to have assigned such rights, the Owner and the Owner's family, guests, employees, and invitees shall not be entitled to use and enjoy the Common Area for so long as the assignment remains effective.

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

5.3 *General Restrictions on Use.* In exercising the right to occupy or use a Unit or the Common Area and its improvements, the Owner and the Owner's family, guests, employees, tenants, and invitees shall not do any of the following:

- 5.3.1 Attempt to further subdivide a Unit without obtaining the prior approval of the Association.
- 5.3.2 Occupy or use a Unit, or permit all or any part of a Unit to be occupied or used without Board approval for any purpose other than as a private residence. The Board may establish guidelines in the Rules and Regulations to allow certain home occupations which (a) are consistent with the normal residential usage of the Project, (b) do not cause any external effects which are detrimental to neighboring Units or the Project, or (c) are compatible with the characteristics of residential use in the Project.
- 5.3.3 Operate power equipment, hobby shop machinery or equipment, or perform car maintenance (other than emergency work) in the Project without prior approval of the Board.
- 5.3.4 Lease a Unit in derogation of the following:
- (a) All leases must be in writing.
 - (b) All leases must be for the entire Unit, including the reserved garage, carport or parking space, and not merely parts thereof, unless the Owner remains in occupancy.
 - (c) No garage, carport or parking space may be leased to Persons other than the occupants of a Unit.
 - (d) No lease shall be for a period of less than thirty (30) days.

- (e) All leases shall be subject in all respects to the Governing Documents, and shall provide that failure to comply with the requirements of the Governing Documents shall constitute a default under the lease which may be cured by eviction of the tenant either by the Owner or the Association. The Owner who leases his or her Unit shall be responsible for providing the Association with written acknowledgment, signed by the tenant, that the tenant has received a copy of the Rules and Regulations.
- (f) Within two (2) weeks of occupancy, all Owners leasing their Unit shall notify the Association in writing of the names of all tenants and members of a tenant's family occupying such Unit, and the phone number of the Unit.
- (g) Within two (2) weeks of occupancy, all Owners leasing their Unit shall notify the Association of the address and telephone number where such Owner can be reached.
- (h) The Board may levy a fine, as determined by the Board, for failure to comply with the provisions of this Section 5.3.4.

- 5.3.5 Permit anything to obstruct the Common Area or store anything on the Common Area without the prior written consent of the Board, except as otherwise provided in the Governing Documents.
- 5.3.6 Perform any act or keep anything on or in any Unit or in the Common Area that will increase the rate of insurance on the Common Area without the Board's prior written consent. Further, no Owner shall permit anything to be done or kept in his or her Unit or in the Common Area that would result in the cancellation of insurance on any Unit or on any part of the Common Area or that would violate any law.
- 5.3.7 Disconnect, damage, tamper with or otherwise modify any protection system, including, but not limited to smoke alarms, fire alarms and breaker boxes.
- 5.3.8 Store gasoline, kerosene, cleaning solvents, or other flammable liquids or substances, or any toxic or hazardous materials on the Common Area

or in any Unit, provided, however, that reasonable amounts of these liquids, substances or materials may be placed in appropriate containers and properly stored.

5.3.9 Erect or display any sign on or from any Unit or the Common Area except as determined by the Board in the Rules and Regulations.

5.3.10 Erect or display any radio or television antenna, satellite dish or other equipment or apparatus for transmitting or receiving transmissions, masts, poles, flag poles or other tower structure. Notwithstanding the foregoing, an Owner may erect a video or television antenna, including a satellite dish, as allowed by any applicable statute or law, with Board approval. The Board may impose reasonable restrictions on its approval.

5.3.11 Raise or keep more than two (2) common household pets in any Unit or on the Project. Notwithstanding the foregoing, no Owner or other occupant of a Unit may raise or keep pets which interfere with, or have a reasonable likelihood of interfering with, the rights of any Owner or other occupant of a Unit to the peaceful and quiet enjoyment of the Unit. In the event the Board determines that any such pet(s) or other animal(s) create an unreasonable annoyance or nuisance to any Owner or other occupant of a Unit, the raising or keeping thereof shall be discontinued within a reasonable time after such determination. No pets or other animals shall be permitted in the Common Area except as specifically permitted by regulations adopted by the Board. No owners may raise or keep animals for commercial purposes. The Association, its Board, officers, employees and agents shall have no liability to any Owner, their family members, guests, invitees, tenants and contract purchasers, or any other person on the Project, for any damage or injury to persons or property caused by any pet, absent any willful or wanton negligence on the part of the Association, or its Board, officers, employees and agents.

5.3.12 Replace the window coverings in his or her Unit with other than a white or off-white backing facing the window, without the prior written approval of the Board by application pursuant to the Architectural Guidelines.

- 5.3.13 Engage in any illegal, noxious or offensive activity in any part of the Project, or do any act which unreasonably threatens the health, safety and welfare of other residents of the Project.
- 5.3.14 Allow the accumulation of rubbish, trash or garbage on any part of the Unit or the Common Area. Each Owner shall be responsible for the regular removal of the rubbish, trash and garbage generated from his or her activities within or outside the Project, so that there is no accumulation of rubbish, trash and garbage in any Unit or in the Common Area causing such area to become unsightly or unsanitary, or posing a threat to the health and safety of residents in the Project.
- 5.3.15 Alter, attach, construct, or remove anything on or from the Common Area, except upon the written consent of the Board.
- 5.3.16 Park any automobile or other motor vehicle in the Common Area or in any parking space except in a space designated for the Owner by the Board or the Governing Documents. The Board, in its discretion, may adopt reasonable rules governing the operation, maintenance, storage and parking of any vehicle, including trucks, campers, trailers, boats or commercial vehicles on the Common Area or any parking space. Any vehicles violating the rules may be removed as provided in Section 3.6.8.
- 5.3.17 Keep or maintain any fixture, personal property or other object upon any patio or balcony other than usual and customary outdoor furniture, potted plants, barbecues, bicycles and other similar items which do not interfere with the enjoyment of adjacent Units, patios or balconies, or which may be in derogation of the Governing Documents.
- 5.3.18 Erect or maintain any exterior clotheslines or laundry or dry any laundry outside of the Unit or in the Common Area.

5.4 *Damage Liability.* Each Owner shall be liable to the Association for any damage to the Common Area or to Association owned property if the damage is sustained because of the negligence, willful misconduct, or unauthorized or improper installment or maintenance of any improvement by the Owner or the Owner's family, guests, tenants, contract purchasers, or invitees. In the

case of joint ownership of a Condominium, the liability of the co-owners shall be joint and several, unless the co-owners and the Association have agreed in writing to an alternative allocation of liability.

5.5 Vacating Unit; Costs. The Association shall have the power to temporarily remove any Unit resident for such periods and at such times as may be necessary in connection with any maintenance or repair work performed by the Association. The costs of any temporary relocation during such maintenance or repair work shall be paid by the Unit owner affected. The Association shall give notice of the need to temporarily vacate a Unit to the record Owners and occupants not less than fifteen (15) days nor more than thirty (30) days prior to the date of the temporary relocation. The notice shall state the reason for the relocation, the date and time of the beginning of work, the anticipated date and time of termination of work and that the occupants will be responsible for all necessary accommodations during the relocation.

ARTICLE 6 - REPAIR AND MAINTENANCE

6.1 General. The Association and all Owners are required to fulfill the maintenance requirements imposed by the Governing Documents. For purposes of this Article "maintenance" shall include without limitation painting, weatherproofing and cleaning to keep a clean, safe and sanitary condition necessary to preserve the attractive appearance of each Condominium and the Project and protect the values thereof. The Board shall have the power to determine the standards of such maintenance.

6.2 Failure to Maintain. In the event an Owner fails to maintain the areas described herein pursuant to the standards set by the Board, the Board may notify the Owner of the work required and request that the same be done within a reasonable time from the giving of such notice. In the event the Owner fails to carry out such maintenance within said time period, the Board may, following notice and a hearing, cause such work to be done and the cost thereof shall immediately be paid by such Owner to the Association and until paid shall bear interest at a rate no greater than the maximum rate authorized by law.

6.3 Division of Responsibility. Each Owner shall be responsible for the maintenance, repair and replacement of his or her Unit, Exclusive Use Common Areas appurtenant to the Unit, and those items located anywhere within the Project which are used exclusively by that Owner, in a clean manner, consistent with the surrounding properties, and to ensure that such area does not pose a threat to the health, safety or welfare of other Owners. The replacement of exterior items shall be subject to the requirements of Article 7, herein. The Association shall be responsible for the maintenance, repair and replacement of the Common Area, excluding those items (i) for which the maintenance, repair and replacement

is allocated to the Owners by Exhibit "A" and (ii) which are used exclusively by one Owner. Attached hereto as Exhibit "A," and incorporated herein by reference, is a listing of the allocation of responsibility for various components in the Project. In the event of any inconsistency between the general provisions of this Section and the specific provisions of Exhibit "A," the provisions of Exhibit "A" shall prevail. Provided any item is not listed in Exhibit "A," the responsibility for its maintenance shall be determined in accordance with the provisions of this Section or as otherwise provided by statute or law. Except as otherwise provided in the Governing Documents, the costs of maintenance, repair and replacement shall be borne by the party responsible for the maintenance, repair and replacement.

6.4 Termite Control. The responsibility for control of wood destroying pests or organisms shall be as follows:

6.4.1 Each Owner shall be responsible for the maintenance and repair of their personal property and the interior of their Unit as required to control the presence of or damage caused by wood-destroying pests or organisms.

6.4.2 The Association shall be responsible for the maintenance and repair of the Common Area as required to control the presence of or damage caused by wood destroying pests or organisms in accordance with the provisions of Civil Code Section 1364.

6.4.3 The Association shall have the power to temporarily remove any Unit resident for such periods and at such times as may be necessary for prompt, effective treatment of such pests or organisms. The costs of any temporary relocation during such maintenance or repair shall be paid by the Unit owner affected. The Association shall give notice of the need to temporarily vacate a Unit to the record Owners and occupants not less than fifteen (15) days nor more than thirty (30) days prior to the date of the temporary relocation. The notice shall state the reason for the relocation, the date and time of the beginning of treatment, the anticipated date and time of termination of treatment and that the occupants will be responsible for all necessary accommodations during the relocation.

6.4.4 Neither the Association, the Board, officers, agents and employees shall have any liability, absent willful or wanton negligence, to any Owner, family member, guest, invitee or tenant for any damage caused by the treatment.

6.4.5 Notwithstanding anything else herein, in the event that an Owner wishes to obtain a termite clearance certificate for any purpose, the Owner shall be solely responsible for any and all costs associated with obtaining the certificate, including, without limitation, the costs of maintenance and repair of the Unit, Exclusive Use Common Area, or Common Area which may be necessary to obtain the termite clearance certificate. An Owner or group of Owners may agree, in a signed writing delivered to the Association, with such reasonable assurances as the Board may request, to agree to share the above costs.

6.5 *Damage Caused by Owner or Item Under Control of Owner.* Should any damage to the Common Area or any Unit result from the willful or negligent act or neglect of any Owner, or such Owner's tenants, guests, invitees, pets or other person or entity deriving any interest through such Owner, or from any item the maintenance, repair or replacement of which an Owner is responsible, the cost of all repairs shall be borne solely by the culpable Owner.

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

If the culpable Owner disputes or refuses to pay any repair costs incurred by the Association, the Association, after reasonable notice and hearing procedures as provided for the imposition of monetary fines or suspensions, may charge the cost of those repairs to such Owner as an individual or special assessment, with the full authority to lien on such amount in the event of non-payment. If the damage is such as may be covered by any insurance carried by the Association, the Board may, in its sole discretion, elect to submit the claim for the cost of repairs to its insurance carrier. Provided the submitted claim is covered by the Association's insurance, the culpable Owner shall be responsible for the cost of any deductible applicable to the covered claim. If the submitted claim is not covered by the Association's insurance, the Owner shall be responsible for the total cost of repair.

All repairs performed to correct any damage shall be sufficient to return the damaged property only to its condition prior to the damage, with upgrades as may be required to conform with any applicable building codes in effect at the time the damage is repaired.

ARTICLE 7 - ARCHITECTURAL AND DESIGN CONTROL

7.1 *General.* Any change or improvement to the exterior of a Unit, or to the interior which affects the exterior of Unit, or any mechanical or service systems (HVAC systems, gas, water or electrical pipes or wires, etc.), or to the structural integrity of any building, shall be governed by this Article. Changes or improvements to the Common Area by the Association do not need to comply with the requirements of this Article. The powers and duties set forth in this Article shall be vested in, and exercised by, the Board. The Board may establish an architectural committee as provided herein to assist the Board in reviewing architectural submittals, and to provide recommendations to the Board with regard to approval or disapproval of any submittal. The foregoing notwithstanding, the Board shall be solely responsible for approving or rejecting any architectural submittal.

7.2 *General Changes Requiring Prior Approval.* Nothing may be erected, placed or planted on the exterior of any Unit, or on the Common Area by any Owner, including any building, fence, wall, pool, spa, obstruction, outside or exterior wiring, balcony, screen, patio, patio cover, tent, awning, carport, carport cover, trellis, tree, grass, shrub or other landscaping, any improvement or structure of any kind without the prior written approval of the Board. Modifications to the interior of Units which have the potential to affect the Common Area walls, roofs or other areas also shall require prior approval. Additionally, and except as provided in Section 7.3 below, prior written Board approval shall be required for any alteration, modification, painting or other change or addition to any existing improvement or landscaping.

7.3 *Specific Changes.* Subject to other applicable restrictions contained in the Governing Documents, Owners may modify their Units subject to the following:

7.3.1 Modifications or alterations of the exterior of any Unit to facilitate handicapped access as provided by Section 1360 of the California Civil Code must have the prior written consent of the Board. Any approval of such handicapped access modification may be conditioned on such modification's removal, by the Owner at his or her sole expense, once the handicapped access is no longer necessary for the Unit.

7.3.2 Installation of any floor covering must have prior approval of the Board. Refer to the Architectural Guidelines for specific limitations. The Board and architectural committee review shall be limited to a review of the potential sound transfer between Units. Plans which do not adequately mitigate sound transfer in the sole discretion of the Board shall be denied. In

deciding upon floor coverings, Owners shall take all reasonable measures to choose floor coverings that mitigate sound transfer between Units. The Board shall have the power to order an Owner who has not complied with this Section to remove and replace any floor covering which does not adequately mitigate sound transfer.

- 7.3.3 No Owner may install any shutter, screen, blind, curtain, drape or other appurtenance in or on any window or door except those items which are in conformance with standards established by the Architectural Guidelines.
- 7.3.4 No Owner may enclose or modify his or her Unit's patio or balcony without the prior written consent of the Board.
- 7.3.5 Owners may decorate their patios and balconies with potted plants, furniture, sculpture and other items provided that (i) such decorations do not unreasonably interfere with the ability of other residents to enjoy their Units and Exclusive Use Common Areas, (ii) such decorations do not damage any Common Area component (e.g. sharp edges of furniture may pierce the balcony waterproof membrane, allowing water to leak through the balcony floor) and (iii) such decorations comply with the Architectural Guidelines.

7.4 Changes Not Requiring Prior Approval. Nothing contained herein shall be construed to limit the right of an Owner to paint the interior of his or her Unit any color desired, or to improve or alter any improvements within the interior of the Unit, provided such improvement or alteration does not impair or alter the Common Area, any utilities, or other systems servicing the Common Area or other Units.

7.5 Procedure for Obtaining Approval of Architectural Changes. The procedure for obtaining approval of any architectural change shall be established in the Architectural Guidelines. The Board may require in the Architectural Guidelines, the posting of deposits to be used to reimburse the Association for the cost of repairing any damage to the Common Areas or to defray, in whole or in part, the cost of any clean-up work resulting from the architectural change work.

7.6 Maintenance and Indemnity Agreement. As part of the approval process, as stated in the Architectural Guidelines, the Board will require an Owner performing architectural modifications affecting Common Area improvements to execute a maintenance and indemnity agreement on a form provided by the Board. This form may be recorded with the San Diego County Recorder against the title to

the Unit to provide notice to subsequent purchasers of the architectural modification and the requirement that the installing Owner, and his or her successors in interest, are responsible for maintaining the modification and are obligated to indemnify the Association in the event of claims relating thereto. The requesting Owner shall be responsible for all costs associated with said agreement, including the recording costs thereof.

7.7 Inspection of Work. The Board may require that final approval of an architectural submittal be conditioned upon an inspection of the completed work. Provided a final inspection is required, the Owner shall be responsible for the costs associated therewith. After such inspection, and if requested by an Owner, the Board shall provide the Owner with a certificate certifying either: (a) all improvements made and other work completed by said Owner complies with the Governing Documents, or (b) such improvements or work do not so comply, in which event the certificate shall identify the non-complying improvements or work and set forth with particularity the basis of such non-compliance. In the event the work is found not to comply with the Governing Documents, the Owner shall promptly correct such deficiency and reapply for another inspection, or shall remove the proposed improvement and return the area to its original condition.

Any purchaser from the Owner, or from anyone deriving any interest in said Unit through him or her, shall be entitled to rely on a certificate issued by the Board, with respect to the matters therein set forth, such matters being conclusive as between the Association, the Owners and such persons deriving any interest through them.

7.8 Standard of Architectural Review. An architectural submittal made by an Owner shall be reviewed for conformity with the Architectural Guidelines. Additional factors to be considered include, but are not limited to, the quality of proposed workmanship, the design and harmony of the improvement with existing structures, the location of the improvement in relation to surrounding structures, topography, and finish grade elevation, Owner and contractor insurance coverage, compliance with governmental permit requirements and contractor license status.

7.9 Architectural Guidelines. The Board may, in its sole discretion, adopt, amend and repeal, as it deems necessary and by majority vote, rules and regulations to be known as "Architectural Guidelines." Said Architectural Guidelines shall interpret and implement the provisions of this Article by setting forth the standards for review by the Board and architectural committee and guidelines for architectural design, landscaping, color schemes, exterior finishes and materials and similar features which are recommended for use in the Project, provided, however, that said Architectural Guidelines shall not be in derogation of the standards required by this Restated Declaration. The Architectural Guidelines address the information which is required to be

presented in connection with an architectural submittal and procedure for obtaining approval.

7.10 Architectural Committee. The architectural committee shall consist of at least three (3) but not more than five (5) members, formed as follows:

7.10.1 The Board shall have the right to appoint, remove and replace all of the members of the committee.

7.10.2 Members appointed to the committee by the Board shall be Members of the Association.

7.10.3 The committee shall meet as often as it deems necessary to properly carry out the obligations imposed upon it, unless otherwise directed by the Board.

7.10.4 The vote or written consent of the majority of the committee shall be required for any recommendation.

7.11 Compensation. The members of the Board and architectural committee shall receive no compensation for services rendered, other than reimbursement by the Association for expenses incurred by them in the performance of their duties hereunder.

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

7.13 Enforcement. In addition to other enforcement remedies set forth in this Restated Declaration, the Board shall have enforcement rights with respect to any matters required to be submitted to and approved by it, and may enforce such architectural control by any proceeding at law or in equity.

7.14 Non-Compliance with Laws. Neither the Association, the Board nor the architectural committee shall be responsible for any non-compliance with any governmental law, rule or regulation of any building or other structure erected, constructed, installed, placed, altered or maintained in accordance with or pursuant to any plans and specifications approved by the Board or any defect in any

conditions or requirements they may have imposed with respect thereto.

7.15 Approval by City. Prior to commencing any alteration or improvements approved by the Board, the Owner shall comply with all appropriate governmental laws and regulations. The Association shall not be obligated to enforce the provisions of this Section. Approval by the Board shall not be considered to satisfy the appropriate approvals that may be required by any governmental entity with appropriate jurisdiction, nor shall the approval of any governmental entity be considered to completely satisfy the requirement of Board approval. An Owner's failure to obtain such governmental approval may subject such Owner to certain penalties imposed by the governmental entity, notwithstanding the approval of the Board, which penalties shall be the responsibility of such Owner.

ARTICLE 8 - INSURANCE

8.1 Fire and Casualty Insurance. The Association shall obtain and maintain a policy or policies of fire and casualty insurance with an extended coverage endorsement for the full insurable replacement value of the improvements in the Common Area. The amount of any deductible shall be determined by the Board. This insurance shall be maintained for the benefit of the Association, the Owners, and their Lenders, as their interests may appear as named insured, subject, however, to any loss payment requirements set forth in this Restated Declaration. If required by any First Lender who notifies the Association of its requirement, and if economically feasible and available, such policies shall contain an agreed amount endorsement, an inflation guard endorsement, and a construction code endorsement.

8.2 General Liability Insurance. The Association shall obtain and maintain a policy or policies insuring the Association, its officers, directors, agents and employees, the Owners, and the Owners' relatives, invitees, guests, employees, and their agents against any liability for bodily injury, death, and property damage arising from the activities of the Association and its Members, with respect to the Common Area and any Units owned by the Association. Limits of liability under the insurance shall not be less than the amount required by Section 1365.9 of the California Civil Code, or any successor statute, to qualify for protection under the provisions of the Code Section covering all claims for death, personal injury, and property damage arising out of a single occurrence.

8.3 Directors and Officers Liability Insurance. The Association shall obtain and maintain one or more policies of insurance which include coverage for individual liability of officers and directors of the Association for negligent acts or omissions of those persons acting in their capacity as officers and

directors. Limits of liability under this insurance shall be determined by the Board at its sole discretion.

8.4 Fidelity Coverage. The Association shall purchase and maintain fidelity coverage for any person or entity handling funds of the Association, whether or not such persons or entities are compensated for their services. If an agent handles Association funds, such agent shall be covered by the Association's coverage, unless such agent provides similar coverage. The Association's coverage may be in the form of a separate bond, a separate policy (e.g. crime policy), or may be added by endorsement to the general policies carried by the Association. The coverage may be in an amount that is at least equal to the estimated maximum of funds, including reserve funds, in the custody of the Association or its managing agent at any given time during the term of each bond or policy. However, in no event may the aggregate amount of these bonds be less than a sum equal to three (3) months' aggregate assessments on all Units plus reserve funds. The bond or policy must contain a provision that it may not be cancelled or substantially modified without at least sixty (60) days' prior written notice to the Association.

8.5 Other Association Insurance. The Association shall purchase and maintain workers' compensation insurance to the extent necessary to comply with any applicable laws. The Association also may purchase and maintain a blanket policy of flood insurance, and demolition insurance in an amount that is sufficient to cover any demolition that occurs following the total or partial destruction of the Project and a decision not to rebuild. The Association may purchase such other insurance the Board considers necessary or advisable, including earthquake insurance coverage.

8.6 Review of Insurance; Notice of Cancellation or Modification. The limits and coverage of insurance carried by the Association shall be reviewed at least annually by the Board and increased or decreased in its discretion. Such policies shall include a provision for at least sixty (60) days' prior written notice to the Association, and to each First Lender listed as a scheduled holder of a First Mortgage in the insurance policy, of any cancellation or substantial modification by any party.

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

8.8 Failure to Acquire Insurance. The Association, and its directors and officers, shall have no liability to any Owner or Lender if, after a good faith effort, it is unable to obtain any insurance required hereunder, because the insurance is no longer available or, if available, can be obtained only at a cost that the Board in its sole discretion determines is unreasonable under the circumstances, or the Members fail to approve any assessment increase needed to fund the insurance premiums. In such event, the

Board immediately shall notify each Member and any Lender entitled to notice that the specific insurance will not be obtained or renewed.

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

8.10 *Insurance Premiums.* Insurance premiums for any insurance coverage obtained by the Association shall be included in the regular or special assessments. That portion of the assessments necessary for the required insurance premiums shall be used solely for the payment of the premiums when due.

8.11 *Insurance Policy Deductibles.* As provided in Section 8.1 above, the Board of Directors shall have the power, in its sole discretion, to determine the amount of any deductible applicable to any insurance policy carried by the Association. In the event of a loss for which Association insurance coverage is used, the responsibility for payment of any deductible shall be as follows:

8.11.1 Owners shall be responsible for the cost of any deductible if the damage or loss occurs to an item of personal property, or for which the Owner is responsible.

8.11.2 The Association shall be responsible for the cost of any deductible if the damage or loss occurs to any item owned by the Association, or for which the Association is responsible.

8.11.3 The foregoing notwithstanding, if the damage or loss is caused by the negligence or misconduct of any Owner, or resident, guest, tenant or invitee of an Owner, the responsible Owner shall be liable for the cost of the deductible.

8.12 *Owner Notification of Insurance.* In accordance with Section 1365 of the Civil Code, or any successor statute or law, the Association shall provide to Owners such disclosures regarding insurance coverage as may be required. The Association shall be required to comply with the provisions of this Section 8.12 to the extent it is required by Civil Code Section 1365 or any successor statute or law.

8.13 Individual Property Insurance. Except as provided in this Section, no Owner may separately insure his or her Unit or any part of it, against loss by fire or other casualty covered by the Association's blanket insurance carried under Section 8.1. If any Owner violates this provision, any diminution in insurance proceeds otherwise payable pursuant to the provisions of Section 8.1 that results from the existence of such other insurance shall be chargeable to the Owner who acquired such other insurance, and the Owner shall be liable to the Association to the extent of any diminution. An Owner is encouraged to insure his or her personal property, decorations, floor and wall coverings, appliances and fixtures against loss. In addition, any improvements made by an Owner shall be separately insured by the Owner, but the insurance is to be limited to the type and nature of coverage commonly known as "tenant's improvements." All such insurance that is individually carried must contain a waiver of subrogation rights by the carrier as to other Owners, the Association, and any Institutional First Lender of such Unit.

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

ARTICLE 9 - DAMAGE OR DESTRUCTION

9.1 Duty to Restore. Any portion of the Project that is damaged or destroyed must be repaired or replaced promptly by the Association unless:

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

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

9.3 Repair Plans. The Project must be repaired and restored in accordance with either (a) the original or reconstruction plans and specifications, where applicable, updated as required to reflect applicable building codes, or (b) other plans and specifications which have been approved in writing by the Board, a

majority of Owners, and at least fifty-one percent (51%) Eligible Lenders holding Mortgages on Units subject to the repair.

9.4 Replacement of Less Than Entire Project.

9.4.1 Any insurance proceeds attributable to the damaged Common Area shall be used to restore the damaged area to a condition compatible with the remainder of the Project.

9.4.2 Except to the extent that other persons or entities will be distributees:

(a) Any insurance proceeds attributable to a Unit and Exclusive Use Common Area that are not rebuilt must be distributed to the Owner of that Unit and the Owner of the Unit to which the Exclusive Use Common Area is appurtenant, or to lien holders, as their interests may appear.

(b) The remainder of any proceeds must be distributed to each Unit Owner or lien holder, as their interests may appear, in proportion to the interests of all the Units.

(c) If the Owners vote not to rebuild a Unit, the common interest portions of the Unit shall be reallocated among all other Units, and the Association shall prepare, execute and record an amendment to the Declaration reflecting the reallocations.

9.5 Minor Repair. The Board shall have the duty to repair and reconstruct all Common Areas without the consent of Members and regardless of the amount of available insurance proceeds, in all cases of partial destruction when the estimated cost of repair and reconstruction does not exceed an amount equal to five percent (5%) of the budgeted gross expenses of the Association for that fiscal year. In the case of damage to Common Areas which does not exceed that amount, all Units shall be assessed for their portion of any uninsured expense in the same proportion as regular assessments are levied, if necessary. The Board may waive this absolute duty to repair by a unanimous vote, which shall be duly noted in the minutes of the meeting at which the vote was taken, and shall be communicated to Owners.

9.6 Insurance Proceeds. An insurance trustee appointed by the Board or insurance company, or if there is no trustee, then the Board, acting by the President, shall hold any insurance proceeds in trust for the Association, Owners and lien holders as their interests may appear. Subject to the provisions of this Restated Declaration, the proceeds shall be disbursed first for the repair

or restoration of the damaged property. The Association, Owners and lien holders are not entitled to receive payment of any portion of the proceeds unless there is a surplus after the Project has been completely repaired or restored, or unless the Project is terminated.

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

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

9.8.1 Whether or not damaged or destroyed property is to be repaired or restored.

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

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

ARTICLE 10 - EMINENT DOMAIN

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

10.2 Common Area Taking. In the event of a taking or acquisition of part or all of the Common Area(s) by a condemning authority, the award or proceeds of settlement, less any fees or costs incurred in collection thereof, shall be payable to the Association, or any trustee appointed by the Association, for the use and benefit of the Owners and their Lenders as their interests may appear according to the relative values of the Condominiums

affected by the condemnation where Condominiums are not valued separately by the condemning authority or by the court.

10.3 Condominium Unit Taking. In the event of an award for the taking of any Condominium in the Project by eminent domain, the Owner of such Condominium shall be entitled to receive the award for such taking, less any fees and costs incurred in collecting such amount and only up to the fair market value of his or her Condominium, and after acceptance thereof he or she and the Lender shall be divested of all interest in the Project if such Owner shall vacate his Condominium as a result of such taking. The remaining Owners shall decide by majority vote whether to rebuild or repair the Project, or take other action. The remaining portion of the Project shall be resurveyed, if necessary, and the Declaration shall be amended to reflect such taking and to readjust proportionately the percentages of undivided interest of the remaining Owners in the Project based on the number of Units remaining in the Project.

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

ARTICLE 11 - RIGHTS OF LENDERS

11.1 General. No breach of any of the covenants, conditions and restrictions herein contained, nor the enforcement of any lien provisions herein, shall render invalid the lien of any First Mortgage on any Unit made in good faith and for value, but all of said covenants, conditions and restrictions shall be binding upon and effective against any Owner whose title is derived through foreclosure or trustee's sale, or otherwise.

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

11.3 Unpaid Dues or Charges. Where the Lender of a first Mortgage of record or other purchaser of a Unit obtains title to

the same pursuant to the remedies in the Mortgage or as a result of foreclosure, such acquirer of title, his successors and assigns, shall not be liable for the share of the common expenses or assessments made by the Association chargeable to such Unit which became due prior to the acquisition of title to such Unit by such acquirer. Such unpaid share of common expenses or assessments shall be deemed to be common expenses collectible from all of the Units including such acquirer, his successors and assigns.

11.4 Action Requiring Lender Approval. Except as provided by statute in case of condemnation or substantial loss to the Condominiums and Common Area, unless at least two-thirds (2/3) of the First Lenders (based upon one (1) vote for each mortgage owned), or two-thirds (2/3) of the Owners have given their prior written approval, the Association and/or the Owners shall not be entitled to:

- 11.4.1 By act or omission seek to abandon, or terminate the Project as a condominium project (except for abandonment or termination provided by law in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain).
- 11.4.2 Change the pro rata interest or obligations of any individual Condominium for the purpose of (i) levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards, or (ii) determining the pro rata share of ownership of each Condominium in the Common Area, provided that no Owner's undivided interest in the Common Area may be changed without the consent of that Owner.
- 11.4.3 Partition or subdivide any Condominium.
- 11.4.4 By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Area, or any property owned, directly or indirectly, by the Association (the granting of easements for public utilities or other public purposes consistent with the intended use of the Common Area by the Association is not a transfer in the meaning of this clause).
- 11.4.5 Use hazard insurance proceeds for losses to any of the Project (whether to Condominiums or to Common Area) for other than the repair, replacement or reconstruction of such property.

11.5 Payment of Taxes and Insurance. First Lenders may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Area

property and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for such Common Area property. First Lenders making such payments shall be owed immediate reimbursement from the Association.

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

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

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

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

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

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

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

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

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

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

11.12 *Lenders Furnishing Information.* Any Lender can furnish information to the Board concerning the status of any Mortgage.

11.13 *Financial Statement.* Any First Lender shall be entitled, on written request therefor, to have the Association provide a financial statement for the immediately preceding fiscal year, prepared in accordance with generally accepted accounting principals, which statement shall be furnished within a reasonable time following such request.

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

ARTICLE 12 - ENFORCEMENT

12.1 *Right to Enforce.* The Association or any Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the Governing Documents. Each Owner of a Condominium shall have a right of action against the Association or any Owner for failure to comply with the provisions of the Governing Documents.

12.2 *Nuisance.* The result of every act or omission, whereby any provision, condition, restriction, covenants, easement, or reservation contained in the Governing Documents is violated in whole or in part, is declared to be and constitute a nuisance, and every remedy allowed by law or equity against a nuisance, either public or private, shall be applicable against every such result and may be exercised by any Owner and the Association. Each remedy provided herein shall be cumulative and not exclusive.

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

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

12.5 *Compliance with Statute.* All activities to enforce the provisions of the governing documents shall be conducted in accordance with all applicable laws, statutes and ordinances. This Section shall apply to both the Association and to all Owners.

ARTICLE 13 - AMENDMENTS

13.1 *Owner Approval of Amendments.* This Restated Declaration may be amended by the vote or written consent of Owners representing not less than sixty-seven percent (67%) of the voting power of the Association. Notwithstanding any contrary provision in this Section, the percentage of the voting power necessary to amend a specific clause or provision of this Restated Declaration shall not be less than the percentage of affirmative votes prescribed for action to be taken under that clause or provision.

An amendment becomes effective after (a) the approval of the required percentage of Owners has been given, (b) that fact has been certified in the form of a written document executed and acknowledged by an officer designated by the Association for that purpose or, if no such designation is made, by the President of the Association and (c) the document has been recorded in San Diego County.

13.2 *Approval of Specified Amendments.* Notwithstanding Section 13.1 above, and except as provided by statute or by other provision of the Governing Documents in case of substantial destruction or condemnation of the Project, the consent of sixty-seven percent (67%) of the voting power of the Association and the approval of fifty-one percent (51%) of Eligible Lenders shall be required to add or amend (i) any provision of this Restated Declaration which is for the express benefit of holders or insurers of First Mortgages and (ii) any material provisions of this Restated Declaration which establish, provide for, govern or regulate:

13.2.1 Voting rights.

13.2.2 Assessments, assessment liens or subordination of such liens.

- 13.2.3 Reserves for maintenance, repair and replacement of the Common Area.
- 13.2.4 Insurance or fidelity bonds.
- 13.2.5 Rights to use the Common Area.
- 13.2.6 Responsibility for maintenance and repair of the several portions of the Project.
- 13.2.7 Expansion or contraction of the Project, or the addition, annexation or withdrawal of property to or from the Project.
- 13.2.8 Boundaries of any Unit.
- 13.2.9 An Owners' interest in the Common Area.
- 13.2.10 Convertibility of Units into Common Area, or Common Area into Units.
- 13.2.11 Leasing of Units.
- 13.2.12 Imposition of any rights of first refusal or similar restriction on the right of an Owner to sell, transfer or otherwise convey his or her Condominium.
- 13.2.13 Establishment of self-management by the Association when professional management has been required by an Eligible Lender.

13.3 *Eligible Lender Approval Response Time.* An Eligible Lender who receives a written request to approve additions or amendments by certified or registered mail, return receipt requested, addressed to the address provided by such Eligible Lender, who does not deliver or post to the requesting party a negative response within thirty (30) days after the notice of the proposed addition or amendment, shall be deemed to have approved such request.

ARTICLE 14 - GENERAL PROVISIONS

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

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

14.3 *Severability.* The provisions of this Restated Declaration shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one (1) provision shall not affect the validity or enforceability of any other provision.

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

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

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

14.7 *Fair Housing.* Neither Association nor any Owner shall, either directly or indirectly, forbid the conveyance, encumbrance, renting, leasing, or occupancy of the Owner's Lot to any person on the basis of race, color, sex, sexual orientation, religion, ancestry, national origin, age, marital status or physical handicap.

14.8 *Number and Headings.* As used in this Restated Declaration, the singular shall include the plural, unless the context requires the contrary. The headings are not a part of this Restated Declaration, and shall not affect the interpretation of any provision.

14.9 *Attorneys' Fees.* In the event an attorney is engaged by the Board to enforce the Governing Documents, the Association shall be entitled to recover from the adverse party to the controversy its actual attorneys' fees and costs so incurred. In the event litigation is commenced to enforce the Governing Documents, the prevailing party shall be entitled to its attorneys' fees and costs. Said costs and attorneys' fees shall constitute a lien on the Unit which is enforceable pursuant to Article 4 herein. This Section shall also apply to actual attorneys' fees incurred to collect any post-judgment costs.

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

- 14.10.1 Variances may be granted, without limitation, to restrictions upon use contained in Article 5, restrictions on repair and maintenance in Article 6, and architectural restrictions in Article 7, when circumstances such as topography, location, engineering, economy, hardship, aesthetic or environmental considerations warrant.
- 14.10.2 Variances shall be in writing and shall become effective upon final approval by the Board or an authorized committee.
- 14.10.3 When a variance is granted, no violation of the Restated Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of a variance shall not operate to waive any of the terms and provisions of this Restated Declaration for any purpose except as to the particular property and particular provision covered by the variance, nor shall it affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting the use of the premises, including, but not limited to, zoning ordinances and lot setback lines or requirements imposed by the County of San Diego or any other governmental authority.
- 14.10.4 The Association may charge a reasonable fee to cover any costs associated with the variance approval process, or for issuance of a variance.
- 14.10.5 The Board may enact additional rules and regulations regarding the variance approval process, the circumstances under which a variance may be granted, and the execution of indemnity or other agreements by the Owner as a condition to issuance of a variance.

14.11 *Governing Document Priorities.* In the event of a conflict between the Governing Documents, or any provision thereof, the following documents shall take precedence in the order given: (1) the Articles, (2) the Condominium Plan, (3) this Restated Declaration, (4) the Bylaws, (5) the Rules and Regulations, and (6) the Manual of Architectural Guidelines.

IN WITNESS WHEREOF, the undersigned has executed this Amended and Restated Declaration of CC&Rs this 17th day of SEPTEMBER, 1996.

ASSOCIATION:

LSFV HOMEOWNERS ASSOCIATION,
a California nonprofit corporation

By: _____

President

By: _____

Secretary

STATE OF CALIFORNIA)

COUNTY OF SAN DIEGO)

On 9-17-96, before me, *Karen Mausteller*,
Notary Public, personally appeared *AIKEO Kamei*
and _____,

☒ personally known to me
- OR -

[] proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.



Notary Public

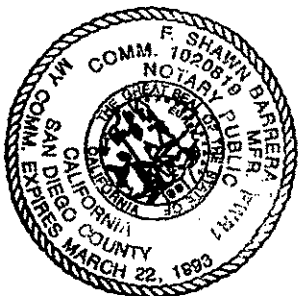
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

No. 1

State of CALIFORNIA
County of SAN DIEGO

On 9/20/96 before me, F. SHAWN BARRERA
DATE NAME, TITLE OF OFFICER - E.G., "JANE DOE, NOTARY PUBLIC"
personally appeared S. H. HALVORSON
NAME(S) OF SIGNER(S)

☐ personally known to me - OR - ☒ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

[Signature]
SIGNATURE OF NOTARY

OPTIONAL SECTION

CAPACITY CLAIMED BY SIGNER

Though statute does not require the Notary to fill in the data below, doing so may prove invaluable to persons relying on the document.

☐ INDIVIDUAL
☐ CORPORATE OFFICER(S)

TITLE(S)
☐ PARTNER(S) ☐ LIMITED
☐ GENERAL
☐ ATTORNEY-IN-FACT
☐ TRUSTEE(S)
☐ GUARDIAN/CONSERVATOR
☐ OTHER: _____

SIGNER IS REPRESENTING:

NAME OF PERSON(S) OR ENTITY(IES)

OPTIONAL SECTION

THIS CERTIFICATE MUST BE ATTACHED TO THE DOCUMENT DESCRIBED AT RIGHT:

TITLE OR TYPE OF DOCUMENT _____

NUMBER OF PAGES _____ DATE OF DOCUMENT _____

Though the data requested here is not required by law, it could prevent fraudulent reattachment of this form.

SIGNER(S) OTHER THAN NAMED ABOVE _____

EXHIBIT "A" - MAINTENANCE LIST

The following is a listing of the items within the Project, the maintenance, repair and replacement duty for which Owners and the Association are responsible in accordance with Section 6.3 of the Declaration.

COMPONENT(S)		OWNER	ASSOC
1.	Appliances - Built-in	✓	
2.	Appliances - Free Standing	✓	
3.	Bearing Walls, Non-bearing Walls, Studs, Frames, Tie-Downs, other structural items		✓
4.	Carpeting - in Units	✓	
5.	Caulking - Exterior		✓
6.	Caulking - Interior	✓	
7.	Common Area Improvements		✓
8.	Deck/Patio, Railings - Paint		✓
9.	Deck/Patio, Railings - Replace		✓
10.	Decks, Surface - Paint	✓	
11.	Decks, Underlayment - Replace		✓
12.	Doorbell - Exterior Components, Button Switch	✓	
13.	Doorbell - Interior Components	✓	
14.	Doors - Entry - Frame & Door		✓
15.	Doors - Entry - Locks and Hardware	✓	
16.	Doors - Entry - Painting - Exterior Surface		✓
17.	Doors - Entry - Painting - Interior Surface	✓	
18.	Doors - Entry - Weather Stripping, Waterproofing	✓	
19.	Doors - Interior	✓	
20.	Doors, Screen, Security	✓	
21.	Doors, Sliding Glass	✓	
22.	Doors, Sliding Glass - Screen	✓	

EXHIBIT "A" - MAINTENANCE LIST

COMPONENT(S)		OWNER	ASSOC
23.	Drainage Systems (e.g. ditches, catch basins)		✓
24.	Drains - Bathtubs, Showers, Sinks	✓	
25.	Dryer Vents - Cleaning (Personal)	✓	
26.	Dryer Vents - Repair (Personal)	✓	
27.	Drywall - Damage Repairs (e.g. cracks, inside minor localized water damage, dents, holes, etc.)	✓	
28.	Electrical Panel, Circuit Breakers, Interior	✓	
29.	Electrical Switches, Sockets, Wall Plates - Interior	✓	
30.	Electrical Wiring - Interior	✓	
31.	Exhaust Fans	✓	
32.	Exterior Building Surfaces		✓
33.	Exterior Faucets, Handles, Washers		✓
34.	Exterior Lighting Fixtures (Common Area)		✓
35.	Fences - Common Area		✓
36.	Fences - Private Patio	✓	
37.	Fireplace - Chimney - Exterior and Spark Arrestor		✓
38.	Fireplace - Chimney - Interior - Cleaning	✓	
39.	Fireplace - Fire Brick (fire box) ^{1/}	✓	
40.	Fireplace - Mantlepiece, Trim and Facing	✓	
41.	Floor Coverings - Carpet, Linoleum, Tile and Vinyl	✓	
42.	Front Entry Landings - Surface - Paint	✓	
43.	Front Entry Landings - Underlayment - Replace		✓
44.	Furnace - Unit Systems - Electric Wall Heaters	✓	
45.	Garage Door Openers	✓	

^{1/}Ceramic brick walls of fireplace.

COMPONENT(S)		OWNER	ASSOC
46.	Garage Doors - Replacement		✓
47.	Garbage Disposal	✓	
48.	Gas Lines - Below Ground		✓
49.	Gates - Private Deck	✓	
50.	Glass	✓	
51.	Gutters & Downspouts		✓
52.	Hose Bibs		✓
53.	Insulation		✓
54.	Landscaping		✓
55.	Lighting Fixtures - Common Areas		✓
56.	Lighting Fixtures - Inside Units	✓	
57.	Owner Installed Improvement	✓	
58.	Parking; Reserved Spaces - Surface Cleaning	✓	
59.	Parking; Reserved Spaces - Surface Repair		✓
60.	Plumbing Fixtures - Interior (Toilets, Tubs, Sinks, Faucets, etc.)	✓	
61.	Plumbing Lines - Inside Unit, if not located behind or within walls, floors or ceilings	✓	
62.	Plumbing Lines - Located within floors, behind or within walls or ceilings, and in Common Area		✓
63.	Roof Flashing & Other Roofing Components		✓
64.	Roof - Owner Installed Laundry Vent	✓	
65.	Roof Shingles, Tiles		✓
66.	Roof Underlayment		✓
67.	Roof Vents		✓
68.	Sewer Backups		✓
69.	Sidewalks - Common Areas		✓
70.	Sidewalks - Entry		✓
71.	Slab (Excluding Patio Slabs)		✓

COMPONENT(S)		OWNER	ASSOC
72.	Spraying for Household Pests (Ants, Fleas, etc.)	✓	
73.	Spraying for Landscaping Pests		✓
74.	Streets		✓
75.	Stucco Painting, Coloring		✓
76.	Stucco Repair & Replacement		✓
77.	Toilet - Wax Ring	✓	
78.	Toilets - Fixture & Components	✓	
79.	Trim - Wood - Exterior - Maintenance & Replacement		✓
80.	Trim - Wood - Exterior - Painting		✓
81.	Wallpaper, Paneling	✓	
82.	Water Heater - Individual	✓	
83.	Water Heater - Laundry Room		✓
84.	Water Lines - Inside Unit, if not located behind or within walls, floors or ceilings	✓	
85.	Water Lines - Located within floors, behind or within walls or ceilings, and in Common Area		✓
86.	Water Softeners - Laundry Rooms		✓
87.	Window and Door Glass	✓	
88.	Window and Slider Screens	✓	
89.	Window Flashing, Waterproofing		✓
90.	Window Frames		✓
91.	Window Hardware	✓	
92.	Wiring - Cable TV		✓
93.	Wiring - Electrical - From Breaker into Unit Interior	✓	
94.	Wiring - Electrical - From Outside To Breaker in Unit		✓
95.	Wiring - Telephone - Common Use		✓
96.	Wiring - Telephone - Exclusive Use	✓	

EXHIBIT "A" - MAINTENANCE LIST

**Amendment
To
Amended and Restated
Declaration of
Covenants, Conditions and Restrictions**

for

**Lomas Santa Fe Villas
Homeowners Association**

If this document contains any restriction based on race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, familial status, marital status, disability, genetic information, national origin, source of income as defined in subdivision (p) of Section 12955, or ancestry, that restriction violates state and federal fair housing laws and is void, and may be removed pursuant to Section 12956.2 of the Government Code. 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.

4932

DOC # 2000-0335468

JUN 26, 2000 2:55 PM

Recording Requested By:

Lomas Santa Fe Villas Homeowners
AssociationOFFICIAL RECORDS
SAN DIEGO COUNTY RECORDER'S OFFICE
GREGORY J. SMITH, COUNTY RECORDER
FEES: 20.00

2000-0335468

When Recorded, Return To:

Susan M. Hawks McClintic, Esq.
EPSTEN DANOW HOWELL &
GATLIN, APC
555 West Beech St., Suite 500
San Diego, CA 92101-2995

For Recorder's Use

**AMENDMENT TO AMENDED AND RESTATED DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR
LOMAS SANTA FE VILLAS CONDOMINIUMS**

THIS AMENDMENT is made on the day and year hereinafter written by **Lomas Santa Fe Villas Homeowners Association aka LSFV Homeowners Association**, a nonprofit mutual benefit corporation hereinafter referred to as "**Association**," and its membership with reference to the following:

RECITALS

A. The Association is the management body for the common interest subdivision located in the County of San Diego, State of California, more particularly described below, hereinafter referred to as "**Property**;"

LEGAL DESCRIPTION

Lot 1 of COUNTY OF SAN DIEGO TRACT NO. 3789, in the County of San Diego, State of California, according to Map thereof No. 9585 filed with the Office of the County Recorder of San Diego County, California, on February 27, 1980;

B. The Property is subject to the covenants, conditions and restrictions contained in the following:

1. The Declaration of Restrictions recorded June 3, 1980 as File/Page No. 80-178347;

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2. The Restated Declaration of Restrictions recorded December 11, 1984 as File/Page No. 84-461438;

3. The First Amendment to Restated Declaration of Restrictions for Lomas Santa Fe Villas Condominiums recorded April 9, 1985 as File/Page No. 85-120958

4. The Amended and Restated Declaration of Covenants, Conditions and Restrictions for Lomas Santa Fe Villas Condominiums recorded October 10, 1996 as Document No. 1996-0514597.

All of the above are recorded in the official records of the County Recorder of San Diego County, California and are hereinafter referred to together as "Declaration" unless the context clearly indicates otherwise.

C. Article 13, Section 13.1 of the Declaration provides that the Declaration may be amended with the approval of 67% of the Association voting power. The undersigned President and Secretary of the Association certify that, to the best of their knowledge, the affirmative vote or written consent of at least the required percentage of Association Members has been obtained and that there are no Eligible Lenders.

D. The Association and its members now wish to amend the Declaration as set forth herein.

DECLARATION

NOW THEREFORE, the Declaration is hereby amended as follows:

1. Article 5, Section 5.3.11 shall be deleted in its entirety and replaced with the following:

5.3 General Restrictions on Use. In exercising the right to occupy or use a Unit or the Common Area and its improvements, the Owner and the Owner's family, guests, employees, tenants and invitees shall not do any of the following:

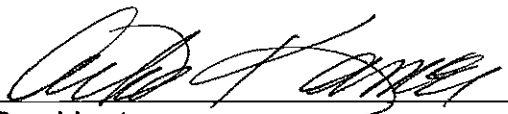
5.3.11 Raise or keep more than two (2) common household pets weighing no more than 25 pounds each in any Unit or on the Project. The weight limitation contained in the preceding sentence shall not apply to those specific and identifiable pets which were, as of the date of recordation of this amendment, kept or otherwise maintained within the Project in compliance with the then existing restrictions ("Exempt Pets"). This provision regarding Exempt Pets is intended to allow each Exempt Pet to remain within the Project until its death or removal from the Project. Upon the death of an Exempt Pet, the Owner or occupant of the Unit who kept the Exempt Pet may replace the Exempt Pet with a pet of substantially similar size as the deceased Exempt Pet but may not replace the deceased Exempt Pet with a larger pet. The replacement pet shall then be considered an Exempt Pet. New Owners or occupants of a Unit and Owners or occupants who do not have an Exempt Pet must comply with the weight limitations and all other restrictions herein.

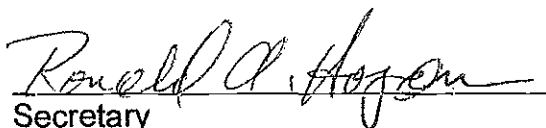
Notwithstanding the foregoing, no Owner or other occupant of a Unit may raise or keep pets or Exempt Pets which interfere with, or have a reasonable likelihood of interfering with, the rights of any Owner or other occupant of a Unit to the peaceful and quiet enjoyment of a Unit. In the event the Board determines that any such pet(s), Exempt Pets or other animal(s) create an unreasonable annoyance or nuisance to any Owner or other occupant of a Unit, the raising or keeping thereof shall be discontinued within a reasonable time after such determination. No pets or Exempt Pets or other animals shall be permitted in the Common Area except as specifically permitted by regulations adopted by the Board. No Owners may raise or keep animals for commercial purposes. The Association, its Board, officers, employees and agents shall have no liability to any Owner, their family members, guests, invitees, tenants and contract purchasers, or any other person on the Project, for any damage or injury to persons or property caused by any pet or Exempt Pet absent any willful or wanton negligence on the part of the Association, or its Board, officers, employees and agents.

5. Except as expressly amended herein, the remaining portions of the Declaration shall remain in full force and effect.

IN WITNESS WHEREOF, this Amendment is executed on this 20th day of JUNE, 2000, by the undersigned Directors.

LOMAS SANTA FE VILLAS HOMEOWNERS ASSOCIATION
aka LSFV HOMEOWNERS ASSOCIATION
 a California nonprofit mutual benefit corporation

By: 
 President

By: 
 Secretary

[Attach Proper Notary Certificate(s) of Acknowledgment]

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

4935

STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

On June 20, 2000 before me, _____

Patricia A. Gauthreaux, Notary Public,

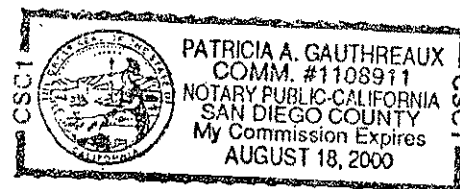
personally appeared Aiko Kamei

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature

Patricia A. Gauthreaux



(Seal)

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

4936

STATE OF CALIFORNIA

COUNTY OF San Diego

On June 21, 2000 before me, Jacklynn Havighurst, Notary Public,

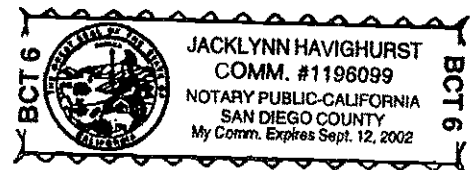
personally appeared Ronald A. Hogan

~~personally known to me~~ (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she~~/they executed the same in his/~~her~~/their authorized capacity(ies), and that by his/~~her~~/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature

[Handwritten Signature]



(Seal)

October 15, 2019

CONFIDENTIAL ATTORNEY-CLIENT PRIVILEGED COMMUNICATION
FOR BOARD MEMBERS AND THE COMMUNITY ASSOCIATION MANAGER ONLY

LSFV Homeowners Association
C/O Allegis She Property Management
9340 Hazard Way
Suite B2
San Diego, CA 92123

RE: **IMPORTANT INFORMATION REGARDING ASSESSMENT COLLECTION**
Our File No. 2590.2000

Dear Board Members and Community Association Manager:

We are writing to advise you about how a recently published decision by the Bankruptcy Appellate Panel for the Ninth Circuit Court of Appeals, *Highland Greens Homeowners Association of Buena Park v. De Guillen*, Bk. No. 8:18-bk-10693-CB ("*Highland Greens*"), affects assessment recovery for residential community associations for the foreseeable future. At this time, it is uncertain how courts may interpret and apply the *Highland Greens* case going forward. However, in an abundance of caution, we are treating this decision as applicable to the assessment collection work our firm is performing.

In summary, the *Highland Greens* bankruptcy case held that community association assessment liens only secure the amounts actually itemized on the recorded lien. Under this holding, liens may no longer secure amounts which accrue after the lien is recorded and liens may be limited to their face value. This may affect how a residential association seeks to recover delinquent assessments from homeowners going forward. We discuss some of those implications and different options below.

1. Question: Our association has a lien recorded against an owner which secures assessments under \$1,800 or less than 12 months' worth of assessments. What does this mean for that recorded lien?

Answer: The good news is that the lien is still valid (assuming you followed all legal requirements in recording the lien) and it secures the debt up to the amount specified in the lien. The bad news is that the association cannot foreclose on that lien according to *Highland Greens*. Civil Code §5720 provides an association may not foreclose on a lien through nonjudicial foreclosure or judicial foreclosure if the delinquent assessments secured by the lien do not meet the threshold of \$1,800 or more than 12 months delinquent (the "Foreclosure Threshold"). Thus, the association will need to record a new lien at or above the Foreclosure Threshold if it wants to proceed with nonjudicial foreclosure or judicial foreclosure. To foreclose on a lien where the initial stated amount on the lien is less than \$1,800 or less than 12 months delinquent, the association will need to record a new lien by following all Civil Code requirements, including sending a new warning of lien letter and approving the recording of a new lien in an open session board meeting.

2. Question: What are the advantages and disadvantages of proceeding with nonjudicial foreclosure?

Advantages: It is still typically the quickest, least expensive way to foreclose, provided the lien meets the Foreclosure Threshold and the association acts quickly to approve foreclosure.

Disadvantages: Under the *Highland Greens* case, there will be months of assessments which accrue after the lien recording date up through the foreclosure sale date and certain costs to enforce the lien, which will not be secured by the lien. A small claims action would have to be filed to recover the unsecured amounts, or that portion of debt could be assigned to a collection agency for further handling if the homeowner loses the home in foreclosure.

3. Question: What additional assessment recovery options are available aside from nonjudicial foreclosure?

Answer: Filing a lawsuit in small claims or superior court for money judgments, or lawsuits for judicial foreclosures. A lawsuit for judicial foreclosure will be limited to the amount of the lien for foreclosure purposes, but may include a separate cause of action for the money portion of the debt that is not secured by the lien.

4. Question: What are the advantages and disadvantages of pursuing judicial foreclosure when a lien has already been recorded?

Advantages:

1. Efficient: A judicial foreclosure includes a claim for foreclosure on the lien and may also include an additional claim for the money owed that is not secured by the lien. Compare that to nonjudicial foreclosure in which the association would need to file a separate lawsuit (e.g., small claims action) for the amounts not secured by the lien.
2. Resolves title issues: If an association takes title to a property through nonjudicial foreclosure, there may be an issue with obtaining title insurance and selling the property at a later date. Title problems should be less of an issue when obtaining a judgment of judicial foreclosure.
3. Earns interest: An unpaid judgment accrues interest at 10% per annum and may be renewed every ten (10) years if not paid.
4. Collection Agency: An unpaid judgment can be assigned to a collection agency once foreclosure is complete.

Disadvantages:

1. Expensive:
 - a. Costs include court filing fees and Sheriff's fees for conducting the foreclosure sale. For example, in San Diego County, court filing fees can be up to \$435 per party, and the Sheriff's fee deposit for levying on a property is a minimum of \$1,500. Subsequent Sheriff's fees vary depending on the cost to publish the Notice of Sale. Some of these costs may be recovered through the foreclosure sale if there is sufficient equity in the property and a third party purchases the property at the sale.

- b. Attorney fees for uncontested actions are approximately \$3,500 and the court may only award attorney fees pursuant to the court's default attorney fee schedule (which may limit the amount of attorney fees awarded and be less than the actual fees incurred).
- c. Attorney fees for a contested action can exceed \$10,000.
- d. Money judgment claims may not be collectible if the debtor has insufficient assets.

2. Time:

- a. If the lawsuit is uncontested, it will take approximately 6 months to obtain a default judgment.
- b. If the lawsuit is contested, it will take at least one (1) year to conclude the case.

Note: Judicial foreclosure entails filing a lawsuit in which one of the causes of action is foreclosure. The lien in a judicial foreclosure would still be limited to the face amount of the lien.

5. Question: What are the advantages and disadvantages to only filing a lawsuit to collect the delinquent assessments without filing a lien?

Advantages:

- 1. Procedures and results are not affected by the *Highland Greens* case. Upon obtaining a judgment, the options for collection can include garnishing wages, placing a cloud on title to real property, and levying bank accounts or other assets to satisfy the debt.
- 2. If there is no equity in the owner's property and the association does not want to risk owning a property with no equity, a money judgment may be the better option. Also, a judgment may be renewed every ten (10) years and accrues interest at 10% per annum.

Disadvantages:

- 1. Often times, debtors do not pay their assessments because they do not have the financial means to do so. Therefore, collecting on a money judgment can be difficult.
- 2. A homeowner may file bankruptcy and could discharge the personal obligation to pay the debt and/or judgment.

6. Question: Going forward, should our association still record liens? Why bother if the delinquent assessments are less than \$1,800 or less than 12 months delinquent (the Foreclosure Threshold)?

Answer: Each association will need to make this determination on a case by case basis. Even if the lien does not meet the Foreclosure Threshold, liens secure the debt in the event the owner files bankruptcy or attempts to transfer title.

7. Question: Are initial contact demand letters and pre-lien letters still required?

Answer: Yes. Regardless of the circumstance, if our firm is making initial contact with a debtor, we are required to send an initial contact demand letter. If the association

elects to record a lien, the association must comply with the provisions of the Civil Code, which include sending the warning of lien letter and approving the recording of the lien in an open board meeting.

8. Question: Are the costs incurred to enforce the lien also secured by the lien?

Answer: Yes, in part. The Civil Code provides that most of the foreclosure trustee's fees and costs for conducting the foreclosure are secured by the lien and can be recovered even if those costs are not stated in the lien. However, attorney fees incurred after recording the lien are not secured by the lien.

9. Question: Once we have recorded a lien, how should we apply payments now that there are two different classes of debt: unsecured and secured?

Answer: The Civil Code requires that the association first apply payments to assessments. There is no requirement that the association apply it to the oldest debt. Thus, unless otherwise instructed by the debtor or otherwise noted in the association's collection policy, our firm will first apply payments to the unsecured assessments (assessments not secured by the recorded lien) and then, once all unsecured assessments are paid, apply payments to the secured assessments (assessments secured by the recorded lien), unless the debtor specifically demands that the payment be applied to the secured assessment to reduce the amount of the lien.

10. Question: Will escrow demands and requests for payoff balances look different?

Answer: Yes. The response to escrow demands and payoff balances will list the amount secured by the lien (which must be paid to obtain a lien release), and will also inform the homeowner of the unsecured debt for which the owner is personally liable.

11. Question: Our association has recorded a Notice of Default which includes amounts incurred after the lien was recorded. Can we proceed with setting a foreclosure sale?

Answer: No. The recorded Notice of Default must be amended. If the amount secured by the lien is less than the Foreclosure Threshold, a new lien will need to be recorded and a new foreclosure process initiated.

12. Question: What is being done to fix this in the long run?

Answer: The *Highland Greens* decision holds that the Civil Code does not explicitly provide for continuing liens. The *Highland Greens* decision also states that the California Legislature needs to clarify its intent in order to allow for continuing liens. Our firm is actively working with industry advocates to encourage the California Legislature to amend the Civil Code to clarify this intent.

We hope that this information is helpful for you. While recording a lien and proceeding with nonjudicial foreclosure may have been the preferred method of assessment collection prior to *Highland Greens*, each association will now need to evaluate the most effective assessment collection options for each matter on a case by case basis. Associations still have many options for assessment recovery.

LSFV Homeowners Association

RE: IMPORTANT INFORMATION REGARDING ASSESSMENT COLLECTION

October 15, 2019

Page 5

This may not be an exhaustive list of the implications of *Highland Greens*. If you have any questions regarding this matter, or any outstanding collection concerns, please feel free to contact our assessment recovery attorneys Debora Zumwalt at dzumwalt@epsten.com, Elisa Perez at eperez@epsten.com or Jillian Wright at jwright@epsten.com.

Our team stands ready to assist you.

Sincerely,

Epsten Grinnell & Howell, APC

A handwritten signature in black ink, appearing to read "Jon H. Epsten", with a long horizontal flourish extending to the right.

Jon H. Epsten, Esq.