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Mission Ridge Condominium Association  
c/o 3131 4<sup>th</sup> Avenue  
San Diego, CA 92103

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**2018 AMENDED AND RESTATED  
DECLARATION OF  
COVENANTS, CONDITIONS AND  
RESTRICTIONS FOR  
MISSION RIDGE CONDOMINIUM  
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.

**TABLE OF CONTENTS**

**Description**

**PREAMBLE ..... 1**

**RECITALS .....1**

**ARTICLE 1 DEFINITIONS..... 3**

    1.1 ARTICLES .....3

    1.2 ASSESSMENT .....3

    1.3 ASSOCIATION .....3

    1.4 ASSOCIATION RULES .....3

    1.5 BOARD OF DIRECTORS OR BOARD .....3

    1.6 BYLAWS .....3

    1.7 COMMON AREA.....3

    1.8 CONDOMINIUM .....3

    1.9 CONDOMINIUM PLAN OR PLAN .....4

    1.10 DECLARANT .....4

    1.11 DECLARATION.....4

    1.12 DECLARATION OF ANNEXATION.....4

    1.13 EXCLUSIVE USE COMMON AREA AND EXCLUSIVE USE AREA .....5

    1.14 GOVERNING DOCUMENTS.....5

    1.15 IMPROVEMENT .....5

    1.16 MAJORITY .....5

    1.17 MAINTENANCE RESPONSIBILITY CHECKLIST OR CHECKLIST .....5

    1.18 MEMBER.....5

    1.19 MORTGAGE .....6

    1.20 ORIGINAL DECLARATION.....6

    1.21 OWNER .....6

    1.22 PROJECT OR PROPERTIES.....6

    1.23 RECREATIONAL FACILITIES .....6

    1.24 UNIT, LIVING UNIT, OR SEPARATE INTEREST .....6

**ARTICLE 2 PROPERTY RIGHTS ..... 7**

    2.1 PROPERTY SUBJECT TO DECLARATION .....7

    2.2 ELEMENTS OF CONDOMINIUM .....7

    2.3 NONEXCLUSIVE EASEMENTS OVER COMMON AREA .....7

    2.4 No SEPARATE CONVEYANCE.....7

    2.5 RIGHT OF ENTRY BY ASSOCIATION .....7

    2.6 PARTITION PROHIBITED. .... **8**

    2.7 ENCROACHMENTS EASEMENTS. .... **8**

    2.8 RESTRICTIONS ON LEASING AND RENTING HOMES. .... **8**

    2.9 DAMAGE TO COMMON AREA AND UNITS; LIABILITY; INSURANCE CLAIMS .....9

**ARTICLE3 ASSOCIATION, ADMINISTRATION, MEMBERSHIP AND VOTING RIGHTS.....9**

    3.1 ASSOCIATION TO MANAGE COMMON AREAS .....9

    3.2 MEMBERSHIP .....10

    3.3 TRANSFER .....10

    3.4 VOTING RIGHTS.....10

    3.5 JOINT OWNER DISPUTES .....10

**ARTICLE 4 ASSESSMENTS .....11**

    4.1 ASSESSMENTS GENERALLY ..... 11

4.1.1	<i>Covenant to Pay Assessments</i> .....	11
4.1.2	<i>Personal and Property Obligation for Assessments</i> .....	11
4.1.3	<i>Creation of Assessment Lien</i> .....	11
4.1.4	<i>No Avoidance of Assessment Obligations</i> .....	12
4.1.5	<i>Limitation of Amount of Assessments</i> .....	12
4.2	PURPOSE OF ASSESSMENTS .....	12
4.3	REGULAR ASSESSMENT.....	12
4.3.1	<i>Preparation of Annual Budget</i> .....	12
4.3.2	<i>Reserve Contributions and Accounts</i> .....	12
4.4	SPECIAL ASSESSMENTS FOR CAPITAL IMPROVEMENTS OR EXTRAORDINARY EXPENSES; RESERVES FOR REPLACEMENT.....	13
4.5	LIMITS FOR INCREASES OF REGULAR AND SPECIAL ASSESSMENTS .....	13
4.6	REQUIRED NOTICE OF ASSESSMENT INCREASES.....	13
4.7	DIVISION OF ASSESSMENTS; PAYMENT OF ASSESSMENTS .....	13
4.8	EFFECT OF NONPAYMENT OF ASSESSMENTS .....	14
4.9	TRANSFER OF UNIT BY SALE OR FORECLOSURE.....	14
4.10	NOTICE OF DELINQUENT ASSESSMENT .....	14
4.10.1	<i>Assessment Lien</i> .....	14
4.10.2	<i>Requirements Before Recording liens</i> .....	14
4.10.3	<i>Secondary Address</i> .....	15
4.10.4	<i>Contents of Lien</i> .....	16
4.10.5	<i>Requirements after Lien is Recorded</i> .....	16
4.10.6	<i>Erroneous Recording of Lien</i> .....	16
4.10.7	<i>Release of Liens</i> .....	16
4.10.8	<i>Nonexclusive Remedy</i> .....	16
4.11	COLLECTION OF DELINQUENT ASSESSMENTS .....	17
4.11.1	<i>Delinquencies Less than \$1,800 or One Year</i> .....	17
4.11.2	<i>Delinquencies Greater than \$1,800 or One Year</i> .....	17
4.11.3	<i>Foreclosure of Lien</i> .....	19
4.12	INDIVIDUAL ASSESSMENTS.....	19
4.12.1	<i>Damage to Common Area</i> .....	19
4.12.2	<i>Expenses Incurred in Gaining Member Compliance</i> .....	20
4.12.3	<i>Transfer Fees</i> .....	20
4.13	LEVY OF INDIVIDUAL ASSESSMENT AND PAYMENT .....	20
4.14	FORECLOSABLE LIEN FOR DAMAGE TO COMMON AREA .....	20
4.15	ASSIGNMENT OF RENTS.....	20
4.16	FOLLOWING CHANGES IN CURRENT LAW .....	21
<b>ARTICLES</b>	<b>DUTIES AND POWERS OF THE ASSOCIATION</b> .....	<b>21</b>
5.1	GENERAL POWERS AND AUTHORITY .....	21
5.1.1	<i>Assessments</i> .....	21
5.1.2	<i>Adoption of Rules</i> .....	21
5.1.3	<i>Enforcement of Governing Documents</i> .....	21
5.1.4	<i>4</i> .....	<i>Right of</i>
	<i>Entry</i> .....	21
5.1.5	<i>Easements</i> .....	22
5.1.6	<i>Dedication</i> .....	22
5.1.7	<i>Cable or Satellite Television</i> .....	22
5.2	DUTIES OF THE ASSOCIATION .....	22
5.2.1	<i>Maintenance and Operation of Common Areas</i> .....	22
5.2.2	<i>Financial Statements</i> .....	22
5.2.3	<i>Insurance</i> .....	23
5.2.4	<i>Discharge of Liens</i> .....	23
5.2.5	<i>Assessments</i> .....	23
5.2.6	<i>Payment of Expenses</i> .....	23
5.2.7	<i>Conduct Reserve Studies</i> .....	23

5.3 LIMITATION ON BOARD AUTHORITY.....23

5.3.1	<i>Incur Expenditures</i> .....	24
5.3.2	<i>Sale of Association Property</i> .....	24
5.3.3	<i>Compensation to Board Members</i> .....	24
5.3.4	<i>Contracts in Excess of One Year</i> .....	24
5.4	LIMITATION ON LIABILITY OF OFFICERS AND DIRECTORS .....	24
5.5	ADOPTION OF RULES .....	25
5.5.1	<i>Review and Comment Period</i> .....	25
5.5.2	<i>Rule Classes Subject to Review and Comment - Class 1 Rules</i> .....	25
5.5.3	<i>Rule Classes Not Subject to Review and Comment- Class 2 Rules</i> .....	25
5.5.4	<i>Owner Veto Rights of Class 1 Rules</i> .....	26
5.5.5	<i>Emergency Rules</i> .....	26
<b>ARTICLE 6 MAINTENANCE RESPONSIBILITIES .....</b>		<b>27</b>
6.1	GENERAL.....	27
6.2	COMMON AREA.....	27
6.2.1	<i>Wood-Destroying Pests or Organisms</i> .....	27
6.2.2	<i>Temporary Relocation; Costs</i> .....	27
6.3	OWNER MAINTENANCE RESPONSIBILITIES .....	28
6.4	MAINTENANCE RESPONSIBILITY CHECKLIST .....	28
6.5	COOPERATIVE MAINTENANCE OBLIGATIONS .....	28
6.6	RECOVERY OF COSTS OF CERTAIN REPAIRS AND MAINTENANCE.....	28
6.7	REPAIRS OF UTILITY LINES .....	29
6.7.1	<i>Easement for Repairs and Access</i> .....	29
6.7.2	<i>Utility Connection Serving More Than One Unit</i> .....	29
6.7.3	<i>Dispute Between Owners Over Repairs</i> .....	29
<b>ARTICLE 7 PLUMBING LEAKS AND OTHER WATER DAMAGE.....</b>		<b>29</b>
7.1	PLUMBING LEAKS AND WATER DAMAGE GENERALLY.....	29
7.2	OWNERS ARE RESPONSIBLE TO NOTIFY ASSOCIATION OF WATER INTRUSION.....	30
7.3	OWNER INSPECTION AND MAINTENANCE RESPONSIBILITIES .....	30
7.4	PREVENTATIVE MAINTENANCE REQUIREMENTS.....	30
7.5	OWNER RESPONSIBILITIES FOR PLUMBING AND SEWER LINES.....	31
7.6	RESPONSIBILITY FOR REPAIR AND REMEDIATION.....	31
7.6.1	<i>Swift Response Encouraged</i> .....	31
7.6.2	<i>Water Intrusion from a Source that is Initially Uncertain</i> .....	31
7.6.3	<i>Water Intrusion, From a Common Area Source that is the Association's Responsibility to Maintain and Repair</i> .....	32
7.6.4	<i>Water Intrusion, From Adjacent Unit or Component for Which Another Owner is Responsible</i> .....	33
7.6.5	<i>When the Affected Unit Owner is Responsible for the source of the Leak, Backup or Water Intrusion</i> .....	34
7.6.6	<i>When the Association and One or More Owners Share Responsibility for the Damage</i> .....	35
7.6.7	<i>Mold Remediation</i> .....	36
7.6.8	<i>Asbestos</i> .....	36
7.6.9	<i>Relocation During Remediation and Restoration</i> .....	36
7.7	RESPONSIBILITY FOR PERSONAL PROPERTY .....	37
<b>ARTICLE 8 USE RESTRICTIONS .....</b>		<b>38</b>
8.1	RESTRICTIONS APPLICABLE TO ALL RESIDENTS; OWNERS RESPONSIBLE FOR RESIDENTS AND GUESTS .....	38
8.2	SINGLE FAMILY RESIDENTIAL USE; OCCUPANCY RESTRICTION.....	38
8.3	LIMITED BUSINESS ACTIVITIES ALLOWED .....	38
8.4	RIGHT TO DISPLAY AMERICAN FLAG.....	39
8.5	PROHIBITION OF NOXIOUS ACTIVITIES; RESTRICTIONS ON EXCESSIVE NOISE .....	39
8.6	No SMOKING .....	39
8.7	HOUSEHOLD ANIMALS.....	39
8.7.1	<i>Maximum Number of Animals</i> .....	40
8.7.2	<i>Leash Requirements/or Dogs; No Outdoor Cats</i> .....	40

8.7.3	3.....	<i>Animals and Common Areas</i>	40
8.7.4	4.....	<i>Owner Responsibility for Conduct of Animal</i>	40
8.7.5	5.....	<i>Association Not Responsible for Conduct of Animals</i>	40
8.7.6	<i>Animal Rules</i> .....		40
8.7.7	7.....	<i>Animals Constituting a Nuisance</i>	41
<b>8.8</b>	<b>SIGNS</b> .....		41
8.9	INSURANCE, COMPLIANCE WITH LAW AND OWNER PERSONAL PROPERTY.....		41
8.10	ABANDONED PERSONAL PROPERTY .....		41
8.11	ANTENNAS AND SATELLITE DISHES .....		42
8.12	SOLARPANELS.....		43
8.13	RESTRICTIONS ON EXTERIOR INSTALLATIONS.....		43
8.14	VEHICLE AND PARKING RESTRICTIONS .....		43
8.14.1	<i>Parking in Project</i> .....		43
8.14.2	<i>Authorized Vehicles</i> .....		44
8.14.3	<i>Prohibited Vehicles</i> .....		44
8.14.4	<i>Restricted Vehicles</i> .....		44
8.14.5	<i>Towing of Vehicles</i> .....		44
8.14.6	<i>Non-Responsibility/or Damage or Loss</i> .....		45
8.15	GARBAGE AND REFUSE DISPOSAL .....		45
8.16	CLOTHES LINES .....		45
8.17	POWER EQUIPMENT AND CAR MAINTENANCE.....		45
8.18	COMMON AREAS .....		45
8.19	USE OF EXCLUSIVE USE COMMON AREAS .....		46
8.20	RIGHT TO DECORATE UNIT INTERIOR; PRIOR APPROVAL REQUIRED FOR CERTAIN CHANGES .....		46
<b>ARTICLE 9 ARCHITECTURAL CONTROL .....</b>			<b>47</b>
9.1	APPROVAL OF IMPROVEMENTS BY BOARD OR ARCHITECTURAL COMMITTEE; CONSTRUCTION BY LICENSED CONTRACTORS.....		47
9.1.1	<i>Approval Generally</i> .....		47
9.1.2	<i>Modifications to Approved Plans Must Also Be Approved</i> .....		48
9.1.3	<i>Approval Needed for Maintenance and Repairs affecting Common Area</i> .....		48
9.1.4	<i>Licensed Contractors</i> .....		48
9.2	COMPOSITION OF THE ARCHITECTURAL COMMITTEE .....		48
9.3	DUTIES .....		49
9.4	MEETINGS.....		49
9.5	ARCHITECTURAL RULES .....		49
9.6	BASIS FOR APPROVAL OF IMPROVEMENTS.....		50
9.7	TIME LIMITS FOR APPROVAL OR REJECTION .....		51
9.7.1	<i>Deadlines for Association Action, Generally</i> .....		51
9.7.2	<i>Appeals to the Board</i> .....		51
9.8	PROCEEDING WITH WORK .....		51
9.9	FAILURE TO COMPLETE WORK .....		52
9.10	INSPECTION OF WORK BY THE BOARD.....		52
9.11	ENFORCEMENT OF ARCHITECTURAL REVIEW AND APPROVAL REQUIREMENTS .....		53
9.12	<b>No WAIVER</b> .....		53
9.13	VARIANCES.....		53
9.14	LIMITATION ON LIABILITY.....		54
9.15	COMPLIANCE WITH GOVERNMENTAL REGULATIONS .....		54
<b>ARTICLE 10 INSURANCE .....</b>			<b>55</b>
10.1	INSURANCE COVERAGE GENERALLY.....		55
10.2	ASSOCIATION COVERAGE.....		55
10.2.1	<i>Fire and Casualty</i> .....		55
10.2.2	<i>Liability</i> .....		55
10.2.3	<i>Workers Compensation</i> .....		55
10.2.4	<i>Directors Liability</i> .....		55

10.2.5	Fidelity Bond .....	56
10.2.6	Other Insurance .....	56
10.3	SCOPE OF COVERAGE .....	56
10.4	INSURANCE TRUSTEE .....	56
10.5	WAIVER OF SUBROGATION .....	56
10.6	No DUPLICATE INSURANCE COVERAGE .....	57
10.7	UNIT OWNER INSURANCE REQUIRED .....	57
10.8	INSURANCE DEDUCTIBLE .....	57
10.8.1	Damage due to Act or Omission .....	57
10.8.2	Damage From Owner-Maintained Item .....	57
10.8.3	Damage from Association-Maintained Item .....	57
10.8.4	Damage from Multiple Sources .....	58
10.9	ANNUAL INSURANCE REVIEW .....	58
10.10	FAILURE TO ACQUIRE INSURANCE .....	58
10.11	INSURANCE CLAIMS INITIATED BY ASSOCIATION ONLY .....	58
<b>ARTICLE 11</b>	<b>DAMAGE OR DESTRUCTION .....</b>	<b>58</b>
11.1	DESTRUCTION; PROCEEDS EXCEED 85 PERCENT OF RECONSTRUCTION COSTS .....	58
11.2	DESTRUCTION; PROCEEDS LESS THAN 85 PERCENT OF RECONSTRUCTION COSTS .....	59
11.3	APPORTIONMENT OF ASSESSMENTS .....	59
11.4	REBUILDING CONTRACT .....	59
11.5	REBUILDING NOT AUTHORIZED .....	60
11.6	MINOR REPAIR AND RECONSTRUCTION .....	60
11.7	REVIVAL OF RIGHT TO PARTITION .....	60
<b>ARTICLE 12</b>	<b>CONDEMNATION .....</b>	<b>61</b>
12.1	SALE BY UNANIMOUS CONSENT .....	61
12.2	DISTRIBUTION OF PROCEEDS OF SALE .....	61
12.3	DISTRIBUTION OF CONDEMNATION AWARD .....	61
12.4	APPRAISAL IF CONDEMNATION AWARD NOT APPORTIONED .....	61
<b>ARTICLE 13</b>	<b>DISPUTE RESOLUTION AND ENFORCEMENT .....</b>	<b>61</b>
13.1	INTRODUCTION .....	61
13.2	INFORMAL NOTICE OF VIOLATION .....	62
13.3	DISCIPLINARY PROCEEDINGS .....	62
13.4	INTERNAL DISPUTE RESOLUTION PROCEDURE .....	62
13.4.1	Meet and Confer .....	62
13.4.2	Rights to Meet and Confer .....	62
13.4.3	Designation of Representative .....	63
13.4.4	Timeliness of Meeting .....	63
13.4.5	Agreement in Writing .....	63
13.4.6	Agreement Judicially Enforceable .....	63
13.4.7	7 .....	No Fee for Participation
13.5	ALTERNATIVE DISPUTE RESOLUTION .....	63
13.6	LITIGATION .....	63
13.7	IMMEDIATE, TEMPORARY RELIEF .....	64
<b>ARTICLE 14</b>	<b>RIGHTS OF LENDERS .....</b>	<b>64</b>
14.1	RIGHTS OF LENDERS GENERALLY .....	64
<b>ARTICLE 15</b>	<b>GENERAL PROVISIONS .....</b>	<b>66</b>
15.1	SEVERABILITY .....	66
15.2	TERM .....	66
15.3	CONSTRUCTION .....	66
15.4	AMENDMENTS .....	66
15.5	SINGULAR INCLUDES PLURAL .....	67

15.6 NUISANCE ..... 67

15.7 WAIVER ..... 67

15.8 CONFLICT OF GOVERNING DOCUMENTS ..... 67

15.9 JOINT AND SEVERALLIABILITY ..... 67

15.10 STATUTORY CHANGES; CONFLICTS; No LIABILITY FOR FOLLOWING LAW ..... 67

*Section 15.10.1 Changed law Supersedes this Declaration.* ..... 67

*Section 15.10.2 Changed lmv Allows Declaration to Prevail.*..... 68

*Section 15.10.3 Changed l ml Deletes Provisions Repeated in this Declaration* ..... 68

*Section 15.10.4 No liability for Following Changed lmv.*..... 68

**EXHIBIT A - MAINTENANCE CHECKLIST**



**2018 AMENDED AND RESTATED DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS FOR  
MISSION RIDGE CONDOMINIUM ASSOCIATION**

**PREAMBLE**

The Project is subject to the Original Declaration and all subsequent amendments thereto through the date of recordation of this 2018 Amended and Restated Declaration of Covenants, Conditions and Restrictions for Mission Ridge Condominium Association, listed as follows (provided for historical purposes only):

1. Declaration of Restrictions, originally executed by Shapell Industries of San Diego, Inc., a California corporation ("Declarant"), recorded on March 2, 1976, as File/Page No. 76-061841 ("Original Declaration"),
2. Mission Ridge Amendment to Declaration of Restrictions recorded on April 13, 1976 as File/Page No. 76-109440,
3. Certificate of Amendment of Declaration of Restrictions, recorded on \_\_ \_\_ \_\_ \_\_, 1979 as File/Page No. 79-152524,
4. Restatement of Amended Declaration of Covenants Conditions and Restrictions, recorded on February 3, 1993, as Document No. 1993-0070566,
4. First Amendment to the Restatement of Amended Declaration of Covenants, Conditions and Restrictions recorded on August 6, 1997 as Document No. 1997-0376289,
5. Second Amendment to the Restatement of Amended Declaration of Covenants, Conditions and Restrictions recorded on October 7, 2015, as Document No. 2015-0528373,

all of Official Records of San Diego Recorder's Office. All the above documents affect all of the Properties described and commonly known as Mission Ridge Condominiums, and are all hereby amended, restated and superseded in their entirety to read as follows:

**RECITALS**

A. Declarant was the Owner of that certain real property ("Properties") located in the City of San Diego, County of San Diego, State of California, which is more particularly described as follows:

Lots I through I 0, inclusive, of Mission Ridge Resubdivision, according to Map thereof No. 8234, in the City of San Diego, County of San Diego, State of

California, recorded in the Office of the County Recorder of San Diego County on January 6, 1976 as File No. 76-003409.

B. Declarant conveyed the Properties, subject to certain easements, protective covenants, conditions, restrictions, reservations, liens and charges as set forth in the Original Declaration referred to above, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of Properties and all of which ran with the Properties and are binding on all parties having or acquiring any right, title or interest in the Properties, or any part thereof, their heirs, successors and assigns, and inured to the benefit of each Owner thereof.

C. It was the further intention of the Declarant to sell and convey residential Condominiums, subject to the protective covenants, conditions, restrictions, limitations, reservations, grants of easements, rights, rights-of-way, liens, charges and equitable servitudes between Declarant and such Owners which were set forth in the Original Declaration and which were intended to be in furtherance of a general plan for the subdivision, development, sale and use of the Properties in furtherance of a plan of Condominium ownership as described in Section 4125 of the California Civil Code.

D. There currently exists upon the above-described real property a Common Interest Subdivision consisting of two hundred and seventy-seven (277) individually owned Condominiums and related Common Areas, all subject to the provisions of the Davis-Stirling Common Interest Development Act (California Civil Code Section 4000, et seq.). The Project was developed in seven (7) developmental phases, with Owners in each phase owning an undivided fractional interest in the Common Area of that phase, and cross-easements of use and enjoyment over the Common Areas in other phases.

E. Prior to the date shown hereunder, at least two hundred and eight (208) Owners of Condominiums within the Properties voted by written ballot to amend and restate the Restatement of Amended Declaration, all in accordance with the procedures for amendment set forth in the Restatement of Amended Declaration. It was the intention of said Owners to replace the Restatement of Amended Declaration, in its entirety, with the recordation of this Declaration. The Owners' action to amend and restate the Restatement of Amended Declaration as set forth herein, and the fact that the requisite percentage of affirmative votes required in the Original Declaration was achieved, is attested by the execution of this 2018 Amended and Restated Declaration by duly authorized officers of the Association, as required by California Civil Code Section 4270. As so amended, restated and superseded in its entirety, the easements, covenants, restrictions and conditions set forth herein shall run with the Properties and shall be binding upon

all parties having or acquiring any right, title or interest in the Properties or any portion thereof, and shall inure to the benefit of each Owner thereof.

## **ARTICLE 1 DEFINITIONS**

**Section 1.1 "Articles"** means the Articles of Incorporation of Mission Ridge Condominium Association, filed in the Office of the California Secretary of State on December 8, 1975, as Entity No. C0759625, as such Articles may be amended from time-to-time.

**Section 1.2 "Assessment"** means any Regular, Special or Individual Assessment made or assessed by the Association against an Owner and his or her Condominium in accordance with the provisions of Article 4 of this Declaration.

**Section 1.3 "Association"** means the Mission Ridge Condominium Association, a California nonprofit corporation (formed pursuant to the Nonprofit Mutual Benefit Corporation Law of the State of California), its successors and assigns. The Association is an "Association" as defined in California Civil Code Section 4080.

**Section 1.4 "Association Rules"** means the rules, regulations and policies adopted by the Board of Directors of the Association, as the same may be in effect from time-to-time.

**Section 1.5 "Board of Directors" or "Board"** means the Board of Directors of the Association.

**Section 1.6 "Bylaws"** means the 2018 Amended and Restated Bylaws of the Association, as such Bylaws may be amended from time-to-time.

**Section 1.7 "Common Area"** means all portions of the Properties not located within any Living Unit, except as provided herein and in the Plan. The Common Areas in each phase are owned by the Owners of Units in each respective phase as tenants-in-common in undivided interests as described in the Original Declaration and the Declarations of Annexation for each phase.

**Section 1.8 "Condominium"** means an estate in real property as described in the California Civil Code Sections 783 and 4125 consisting of an undivided interest as a tenant in common in all or any portion of the Common Area, together with a separate fee interest in a Unit

and any other separate interests in the real property as are described in this Declaration, in the Condominium Plan, or in the deed conveying the Condominium.

**Section 1.9 "Condominium Plan" or "Plan"** means those certain Certificates Under California Civil Code Section 4120, recorded for each phase of the Project with the San Diego County Recorder as follows:

- Phase 1 - March 2, 1976, as File/Page No. 76-061840,
- Phase 2-April 26, 1976 as File/Page No. 76-124183,
- Phase 3 -April 26, 1976, as File/Page No. 76-124182, and amended on August 12, 1976 as File/Page No. 76-260346,
- Phase 4- September 15, 1976, as File/Page No. 76-302143,
- Phase5-February 10, 1977,asFile/PageNo. 77-051419,
- Phase 6 - April 12, 1977, as File/Page No. 77-133224,
- Phase 7 - April 12, 1977, as File/Page No. 77-133226.

**Section 1.10 "Declarant"** means the original developer of the Properties, namely Shapell Industries of San Diego, Inc., a California corporation. This information is included for historical purposes only. Control of the Association has been transferred to the Members.

**Section 1.11 "Declaration"** means this 2018Amended and Restated Declaration of Covenants, Conditions and Restrictions for Mission Ridge Condominium Association, as the same may be amended, supplemented, modified or changed from time-to-time.

**Section 1.12 "Declaration of Annexation"** means those certain Notice and Declaration of Annexation of Territory recorded with the San Diego County Recorder adding phases and Recreational Facilities to the Original Declaration, describing the property annexed and the percentage of ownership of the Common Area in that phase. The recording information for the Declarations of Annexation for phases 2 through 7 are as follows,:

- Phase 2, covering Lots 2 and 10, recorded April 26, 1976, as File/Page No. 76-124183,
- Phase 3, covering Lot 3, recorded April 26, 1976, as File/Page No. 76-124182,
- Phase 4, covering Lot 4, recorded September 15, 1976, as File/Page No. 76-302144,
- Phase 5, covering Lot 5, recorded February 10, 1977, as File/Page No. 77-051420,
- Phase 6, covering Lot 6, recorded April 12, 1977, as File/Page No. 77-133225, and re-recorded June 9, 1977, as File/Page No. 77-226821,
- Phase 7, covering Lot 7, recorded April 12, 1977, as File/Page No. 77-133227, and re-recorded June 9, 1977, as File/Page No. 77-226820.

**Section 1.13 "Exclusive Use Common Area" and "Exclusive Use Area" and "Restricted Common Area"** are synonymous terms and shall mean and refer to those portions of the Common Area designated by the Declaration and Condominium Plan for the exclusive use of one or more, but fewer than all, of the Owners of the separate Units and which are or become appurtenant to the separate Units. Exclusive Use Common Areas are shown and described on the Condominium Plan. For this Project, parking stalls are Exclusive Use Common Areas appurtenant to the Unit bearing the same identification number on the Plan. In addition, any shutters, awnings, window boxes, doorsteps, stoops, exterior doors, doorframes, and hardware incident thereto, screens and windows or other fixtures, and internal and external telephone wiring, designed to serve a single separate interest, but located outside the boundaries of the separate interest, are exclusive use common area allocated exclusively to that separate interest. All these areas and items referenced in this Section shall constitute Exclusive Use Common Area within the meaning of California Civil Code Section 4145.

**Section 1.14 "Governing Documents"** is a collective term that means and refers to this Declaration and the Articles, the Bylaws, and the Association Rules.

**Section 1.15 "Improvement"** includes, without limitation, the construction, installation, alteration, or remodeling of any buildings, walls, Unit interiors, decks, fences, swimming pools, landscaping, landscape structures, skylights, solar equipment, spas, antennas (except as specified in Section 8.11, herein), utility lines (electric, plumbing, gas, cable, internet, etc.), or any structure of any kind. Provided that the term "Improvement" does not include projects which are restricted to the Unit interior and which do not involve changes to Common Areas, including utility lines, acoustical changes, the roof or any load bearing wall thereof.

**Section 1.16 "Majority"** means fifty percent plus one unless otherwise stated herein or required by law.

**Section 1.17 "Maintenance Responsibility Checklist" or "Checklist"** means Exhibit "A," attached hereto and incorporated herein by reference, which is a list allocating responsibility between the Association and Owners for maintenance of building elements.

**Section 1.18 "Member"** means every person or entity who is an Owner of Record as shown in the Official Records of the San Diego County Recorder.

**Section 1.19 "Mortgage"** means any security device encumbering all or any portion of the Properties, including any deed of trust. "Mortgagee" shall refer to a beneficiary under a deed of trust as well as to a Mortgagee in the conventional sense.

**Section 1.20 "Original Declaration"** means and refers to the document referenced in the Preamble to this Declaration, covering the phase I Lots I, 8 and 9, together with all amendments and annexations thereto, adopted prior to recordation of this Declaration.

**Section 1.21 "Owner"** means any person, firm, corporation or other entity which owns a fee simple interest in any Condominium, as shown by the official records of the County recorder.

**Section 1.22 "Project" or "Properties"** means all parcels or real property described in Recital "A" hereof, together with all building structures, utilities, and facilities, and other improvements.

**Section 1.23 "Recreational Facilities"** means all parcels or real property conveyed by the Declarant to the Association, consisting of Lots 8, 9 and IO of Map No. 8234, including all structure and appurtenances therein.

**Section 1.24 "Unit," "Living Unit," or "Separate Interest"** means the elements of a Condominium that are not owned in common with the Owners of Condominiums in the Project, such Units and their respective boundaries being shown and particularly described in the Condominium Plan, deeds conveying Condominiums, and this Declaration. The boundaries of each Unit are the interior surfaces of the perimeter walls, floors, ceilings, windows and doors thereof and its patio or balcony, if any, and as designated in the Condominium Plan, and each Unit includes both the portions of the building so described and the air space so encompassed. All appliances, fixtures, and utility installations located within the Unit are a part of that Unit. The following are not part of the Units: bearing walls, columns, floors, roofs, foundations, central services, pipes, ducts, flues, chutes, conduits, wires and other utility installation, wherever located, except their outlets when located within the Units. In interpreting deeds and the Condominium Plan, the physical boundaries of the Units as constructed, or of any Unit re constructed in substantial accordance with the original plan, shall be conclusively presumed to be the boundaries rather than any metes and bounds description expressed in any deed or plan, regardless of settling or lateral movement of the building and regardless of any minor variances between boundaries shown in any deed or plan and those of the building.

**ARTICLE2**  
**PROPERTY RIGHTS**

**Section 2.1 Property Subject to Declaration.**

All the real property previously described in the Preamble, and the improvements thereon, shall be subject to this Declaration.

**Section 2.2 Elements of Condominium.**

Subject to the terms of the Governing Documents, ownership of each Condominium within the Project shall include a Unit; an undivided interest in the Common Area of the phase in which such Owners' interest is located, the nonexclusive right to the use and enjoyment of the Common Area in all other phases, a nonexclusive right to the use and enjoyment of the Recreation Facilities, all as specified in the Governing Documents and the deed to each Owner; the exclusive right to use any Exclusive Use Common Area as designated in the Condominium Plan; a membership in the Association; and any exclusive or nonexclusive easement or easements appurtenant to such Condominium over the Common Area as described in this Declaration, the Condominium Plan and the deed to the Condominium.

**Section 2.3 Nonexclusive Easements Over Common Area.**

Each Member shall have a nonexclusive easement for use and enjoyment of the Common Area and for ingress, egress, and support over and through the Common Area, subject to the Governing Documents. These easements shall be appurtenant to, and shall pass with the title to, each Unit and shall be subordinate to the exclusive easements granted elsewhere in this Declaration, as well as to the right of the Association to regulate time and manner of use, and to perform its obligations under this Declaration.

**Section 2.4 No Separate Conveyance.**

No Owner may sell, assign, lease or convey (i) his or her interest in the Common Area separate and apart from his or her Living Unit, (ii) nor his or her interest in any Exclusive Use Area separate and apart from his or her interest in the Common Area and his or her Living Unit, (iii) nor his or her Living Unit separate and apart from his or her Exclusive Use Areas.

**Section 2.5 Right of Entry by Association.**

For the purpose of performing the maintenance of the Common Area or for any other purpose reasonably related to the performance by the Board of its responsibilities under the Governing Documents, the Association's agents or employees shall have the right to enter any Unit or upon any portion of the Common Area to affect emergency repairs. For other than

emergency repairs, the Association's agents or employees shall have the right to enter any Unit or any portion of the Common Area to effect repairs, improvements, replacements or maintenance which the Association, after approval by a majority vote of the Board, reasonably deems necessary. Such entry shall be made with as little inconvenience to the Owner or resident as possible, and any damage caused thereby shall be repaired by the Association. Further, such entry for other than emergency repairs shall be made only after not less than three (3) days' notice has been given to the Owner and resident, if different from the Owner. Such notice to non-Owner residents may be made by posting on the door, slipping under the door or any other method reasonably calculated to provide notice to the resident.

**Section 2.6 Partition Prohibited.**

The Common Areas shall remain undivided as set forth above. Except as provided by California Civil Code Section 4610 or authorized under this Declaration, no Owner shall bring any action for partition of the Common Areas, it being agreed that this restriction is necessary in order to preserve the rights of the Owners with respect to the operation and management of the Project. Judicial partition by sale of a single Condominium owned by two (2) or more persons and division of the sale proceeds is not prohibited hereby, but partition of title to a single Condominium is prohibited.

**Section 2.7 Encroachments Easements.**

Each Owner is hereby declared to have an easement over all adjoining Units and the Common Area for the purpose of accommodating any encroachment due to engineering errors, errors in original construction, reconstruction, repair, settlement or shifting of the building, or any other similar cause. There shall be easements for the maintenance of said encroachments as long as they shall exist, and the rights and obligations of Owners shall not be altered in any way by said encroachments, settlement or shifting; provided, however, that in no event shall an easement for encroachment be created in favor of an Owner or Owners if said encroachment occurred due to the willful misconduct of said Owner or Owners.

**Section 2.8 Restrictions on Leasing and Renting Homes.**

Unit Owners have the right to lease or rent their Condominium. All lease and rental agreements entered into after recordation of this Declaration shall not be for transient or hotel purposes, which shall include a rental for any period less than thirty (30) days (except a preclosing rental to the purchaser of such Unit). Subject to the foregoing restrictions, the Owners of the respective Condominiums shall have the right to lease same, and in connection therewith to delegate use and enjoyment of the Common Area, provided (a) that the lease is in writing, (b) is made subject to the covenants, conditions, restrictions, limitations and uses contained in this



Declaration and the other Governing Documents, and any Rules established by the Board of Directors regarding occupancy or use of the Units and Common Area, and (c) that any Owner who rents or leases his Unit shall promptly notify the Association in writing of the names of all tenants and members of their family occupying such Unit and the address and telephone number where such Owner can be reached. Owners who do not reside within the Project and who have rented or leased their Unit are not permitted to use any Common Area facilities of the Project during the term of such rental or lease. The Board may enforce any breach of this Declaration, the other Governing Documents, and the Rules, by a legal proceeding brought directly against such non-Owner occupant without the necessity of joining the Owner as a party to such proceeding.

**Section 2.9 Damage to Common Area and Units; Liability; Insurance Claims.**

Each Owner shall be liable to the Association and the remaining Owners for the cost of repair of (a) any damage to the Common Area, the Units, and any personal property that may be sustained by reason of the negligent act or omission of that Owner, that Owner's family members, contract purchasers, tenants, guests, or invitees, and (b) any damage that results from an item which an Owner is responsible to maintain, repair or replace, regardless of whether such Owner or the occupant of his or her Unit acted, did not act, was negligent, was not negligent, or was or was not otherwise culpable.

The Board shall be solely responsible for determining whether or not a claim shall be submitted to an insurer for damage to Common Area. In the event a claim is submitted, and repair funds collected, such Owner shall only be responsible for the costs over and above the amount recovered. If the Owner refuses or fails to reimburse the Association for the demanded funds, the amount may be added to the Owner's assessment account in accordance with Section 4.12.1 and 4.13 herein.

**ARTICLE 3  
ASSOCIATION, ADMINISTRATION,  
MEMBERSHIP AND VOTING RIGHTS**

**Section 3.1 Association to Manage Common Areas.**

The management of the Common Area shall be vested in the Association in accordance with its Governing Documents. The Members covenant and agree that the administration of the Project shall be in accordance with the provisions of this Declaration, the Articles, Bylaws and Rules of the Association.

**Section 3.2 Membership.**

The Owner of a Condominium shall automatically, upon becoming the Owner of same, be a Member of the Association, and shall remain a Member thereof until such time as the ownership ceases for any reason, at which time the membership in the Association shall automatically cease. Membership shall be held in accordance with this Declaration, the Articles, and Bylaws of the Association.

**Section 3.3 Transfer.**

The Association membership held by any Owner in the property shall not be transferred, pledged or alienated in any way except upon the sale of an ownership interest and then only to the purchaser. Any attempt to make a prohibited transfer is void and will not be reflected upon the books and records of the Association. In the event the Owner should fail or refuse to transfer the membership registered in his or her name to the purchaser of such Unit, the Association shall have the right to record the transfer upon the books of the Association.

**Section 3.4 Voting Rights.**

The Association shall have one class of membership. When more than one person holds an interest in any Condominium, all such persons shall be Members, but there shall be only one voting right attributable to the Condominium. Each Condominium in the property is entitled to one vote, subject to the terms of the Governing Documents, including suspension, on each matter submitted to the owners for voting. The vote for such Condominium shall be exercised as the Owners of interest therein decide, but in no event shall more than one vote per matter be cast with respect to any Condominium.

**Section 3.5 Joint Owner Disputes.**

The vote for each such Condominium may be cast only as a unit, and fractional votes shall not be allowed. In the event that joint Owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. If any Owner or Owners cast a vote representing a certain Condominium, it will thereafter be conclusively presumed for all purposes that he, she or they were acting with the authority and consent of all other Owners of the same Condominium. In the event more than one vote is cast for a particular Condominium, none of said votes shall be counted and all of said votes shall be deemed void.

**ARTICLE4**  
**ASSESSMENTS**

**Section 4.1 Assessments Generally.**

**Section 4.1.1 Covenant to Pay Assessments.**

Each Owner of any Unit by acceptance of a deed for such Unit, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) Regular Assessments or charges, (2) Special Assessments for purposes permitted herein, and (3) Individual Assessments (as more fully described herein); such Assessments to be established and collected as hereinafter provided.

**Section 4.1.2 Personal and Property Obligation for Assessments.**

All Assessments, together with late charges, interest, and reasonable costs (including reasonable attorney fees) for the collection thereof, shall be a debt of the property and a personal obligation of the person who is the Owner of the Unit at the time the Assessment is levied. Each Owner who acquires title to a Unit (whether by conventional conveyance, at judicial sale, trustee's sale, or otherwise) shall be jointly and severally personally liable only for Assessments attributable to the Unit which become due and payable after the date that the person acquires title. Accordingly, when a person acquires title to a Unit, he or she shall not be personally liable for delinquent Assessments of prior Owners unless the new Owner expressly assumes the personal liability. However, if the acquired Unit is conveyed subject to a valid lien for delinquent Assessments and related costs of collection, the Association may continue to exercise its foreclosure remedies against the Unit, regardless of the change of ownership, and/or the Association may pursue its collection remedies against the prior Owner individually.

**Section 4.1.3 Creation of Assessment Lien.**

All Assessments, together with late charges, interest, and reasonable costs (including reasonable attorney fees) for the collection thereof, shall be a charge on the Unit and shall be a continuing lien on the Unit against which such Assessment is made from and after the time that the Association records a Notice of Delinquent Assessment in accordance with Civil Code Sec. 5675 and this Declaration. Any lien for unpaid Assessments created under the provisions of this Article may be subject to foreclosure as provided herein.

**Section 4.1.4 No Avoidance of Assessment Obligations.**

No Owner may exempt himself or herself from personal liability for Assessments duly levied by the Association, nor release the Unit or other property owned by him or her from the liens and charges hereof, by waiver of the use and enjoyment of the Common Area or any facilities thereon or by abandonment or nonuse of his or her Unit or any other portion of the Properties.

**Section 4.1.5 Limitation of Amount of Assessments.**

The Association shall not impose or collect an Assessment or fee that exceeds the amount necessary to defray the costs for which the Assessment or fee is levied.

**Section 4.2 Purpose of Assessments.**

The Assessments levied by the Association shall be used exclusively to promote the economic interest, recreation, and welfare of all the residents in the entire Project and for the improvement and maintenance of the Common Area and those other portions of the property for which the Association is responsible and for the common good of the Project.

**Section 4.3 Regular Assessment.**

The Board of Directors shall determine and fix the amount of the Regular Assessment against each Unit in accordance with the procedures described below.

**Section 4.3.1 Preparation of Annual Budget.**

Each year, the Board shall prepare a budget for the anticipated common expenses for the next succeeding fiscal year (including additions to any reserve fund established to defray the costs of future repairs, replacement or additions to the common facilities). This budget shall be prepared and distributed to Owners in accordance with applicable law not less than thirty (30) nor more than ninety (90) days prior to the beginning of the Association's fiscal year. If the Board fails to distribute the budget for any fiscal year within the time period provided for in this Section, the Board shall not be permitted to increase regular assessments for that fiscal year unless the Board first obtains the approval of Owners, constituting a quorum, casting a majority of the votes at a meeting of the Association.

**Section 4.3.2 Reserve Contributions and Accounts.**

As part of the Regular Assessments for maintenance authorized above, the Board of Directors shall annually fix the amount to be contributed to reserve funds for the purpose of defraying, in whole or in part, the cost or estimated cost of any reconstruction,

repair or replacement of improvements, including fixtures and personal property related thereto. Separate records shall be maintained for all funds deposited to the said account, which shall be designated as a reserve account.

**Section 4.4 Special Assessments for Capital Improvements or Extraordinary Expenses; Reserves for Replacement.**

The Board of Directors may levy, in any Assessment year, a Special Assessment applicable to that year only, for the purpose of defraying in whole or in part the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, or for extraordinary expenses incurred by the Association.

**Section 4.5 Limits for Increases of Regular and Special Assessments.**

The Board of Directors of the Association may not impose an Regular Assessment that is more than twenty percent (20%) greater than the Regular Assessment for the Association's preceding fiscal year or impose Special Assessments which in aggregate exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year without the approval of Owners casting a majority of the votes at a meeting of the Association at which a quorum is present. Pursuant to Civil Code Sec. 5605(c), a quorum for this vote means more than fifty percent (50%) of Members.

This Section does not limit Assessment increases necessary for emergency situations. For purposes of this Section, an emergency situation is any one of the following: (i) An extraordinary expense required by an order of a court; (ii) An extraordinary expense necessary to repair or maintain the Common Area for which the Association is responsible where a threat to personal safety is discovered; and (iii) An extraordinary expense necessary to repair or maintain the Common Area that could have not been reasonably foreseen by the Board in preparing and distributing the current year's operating budget.

**Section 4.6 Required Notices of Assessment Increases.**

Whenever there is an increase in Regular Assessments or Special Assessments, all Members shall be notified by first class mail, not less than thirty (30) nor more than sixty (60) days prior to the Assessment due date.

**Section 4.7 Division of Assessments; Payment of Assessments.**

Regular and Special Assessments shall be charged to and divided among the Units equally. Regular Assessments levied against each Owner and his or her Condominium shall be

due and payable in advance to the Association in equal monthly installments on the first day of each month or on such other date or dates as may be established from time-to-time by the Board of Directors. Special Assessments shall be due and payable in advance of such date or dates as established by the Board of Directors.

**Section 4.8 Effect of Nonpayment of Assessments.**

Assessments are delinquent fifteen (15) days after they become due. A late charge not exceeding ten percent (10%) of the delinquent Assessment or Ten Dollars (\$10), whichever is greater shall be imposed upon any delinquent payment. Interest on delinquent Assessments and late charges may be imposed at an annual percentage rate of twelve percent (12%) interest commencing thirty (30) days after the Assessments become due. Late charges and interest on past due amounts may be modified by the Board in accordance with any changes permitted by state law.

**Section 4.9 Transfer of Unit by Sale or Foreclosure.**

Sale or transfer of any Unit shall not affect the Assessment lien. However, the sale of any Unit pursuant to foreclosure of a first Mortgage shall extinguish the lien of such Assessments as to payments which became due prior to such sale or transfer (except for Assessment liens recorded prior to the Mortgage). No sale or transfer shall relieve such Unit from liability for any Assessments thereafter becoming due or from the lien thereof.

**Section 4.10 Notice of Delinquent Assessment.**

**Section 4.10.1 Assessment Lien.**

If any Regular or Special Assessment is delinquent, the Association may record an Assessment Lien against the Condominium of the delinquent Owner. Notwithstanding any provision of this Declaration to the contrary, the Assessment lien provided for herein shall be subordinate to the lien of any first mortgage or first deed of trust upon any Condominium. The lien shall be signed by any officer of the Association or any agent designated by the Association.

**Section 4.10.2 Requirements before Recording Liens.**

The recordation of liens shall be done in accordance with Civil Code requirements. However, at least 30 days prior to recording a lien against the separate interest of any Owner of record, the Association shall notify the Owner of record, in writing, by certified mail of the following: (I) A general description of the collection and lien enforcement procedures of the Association and the method of calculation of the

amount, a statement that the Owner of the Condominium has the right to inspect the Association records, pursuant to Section 8333 of the Corporations Code, and the following statement in 14-point boldface type, if printed, or in capital letters, if typed: "IMPORTANT NOTICE: IF YOUR SEPARATE INTEREST IS PLACED IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR ASSESSMENTS, IT MAY BE SOLD WITHOUT COURT ACTION;" (2) An itemized statement of the charges owed by the Owner, including items on the statement which indicate the amount of any delinquent Assessments, the fees and reasonable costs of collection, reasonable attorney's fees, any late charges, and interest, if any; (3) A statement that the Owner shall not be liable to pay the charges, interest, and costs of collection, if it is determined the assessment was paid on time to the Association; (4) The right to request a meeting with the Board; (5) The right to dispute the Assessment debt by submitting a written request for dispute resolution pursuant to Civil Code Sections 5900, et. seq.; and (6) The right to request alternative dispute resolution with a neutral third party pursuant to Civil Code Sections 5925, et. seq. before the Association may initiate foreclosure against the Owner's Condominium, except that binding arbitration shall not be available if the Association intends to initiate a judicial foreclosure.

Prior to recording a lien for delinquent assessments, the Association shall offer the Owner and, if so requested by the Owner, participate in dispute resolution pursuant to Civil Code Sections 5900, et. seq.

The decision to record a lien for delinquent assessments shall be made only by the Board and may not be delegated to an agent of the Association. The Board shall approve the decision by a majority vote of the directors in an open meeting. The Board shall maintain the confidentiality of the Owner or Owners of the Condominium at the open meeting. The Board shall record the vote in the minutes of that meeting.

#### **Section 4.10.3 Secondary Address.**

Upon receipt of a written request by an Owner identifying a secondary address for purposes of collection notices, the Association shall send additional copies of any notices required by this Section to the secondary address provided. The Association shall notify Owners of their right to submit secondary addresses to the Association pursuant to Civil Code Section 5310. The Owner's request shall be in writing and shall be mailed to the Association in a manner that shall indicate the Association has received it. The Owner may identify or change a secondary address at any time, provided that, if a secondary address is identified or changed during the collection process, the Association shall only

be required to send notices to the indicated secondary address from the point the Association receives the request.

**Section 4.10.4 Contents of Lien.**

Any notice of delinquent assessment shall state the amount of the Assessment and other sums imposed, a legal description of the Owner's Condominium, and the name of the record Owner of the Condominium. The itemized statement of the charges owed by the owner shall be recorded together with the notice of delinquent assessment. In order for the lien to be enforced by non-judicial foreclosure, the notice of delinquent assessment shall state the name and address of the trustee authorized by the Association to enforce the lien by sale. The notice of delinquent assessment shall be signed by the person designated in the Declaration or by the Association for that purpose, or if no one is designated, by the president of the Association.

**Section 4.10.5 Requirements after Lien is Recorded.**

A copy of the recorded notice of delinquent assessment shall be mailed by certified mail to every person whose name is shown as an Owner of the Condominium in the Association's records, and the notice shall be mailed no later than 10 calendar days after recordation.

**Section 4.10.6 Erroneous Recording of Lien.**

If it is determined that the Association has recorded a lien for delinquent assessments in error, the Association shall promptly reverse all late charges, fees, interest, attorney's fees, costs of collection, and costs of recordation and release of the lien, and record or cause to be recorded a release of lien, and shall provide a copy of the lien release with a declaration that the lien filing was in error.

**Section 4.10.7 Release of Liens.**

Within 21 days of the payment of the sums specified in the notice of delinquent assessments, the Association shall record a lien release and provide the Owner a copy of same.

**Section 4.10.8 Nonexclusive Remedy.**

Nothing in this Section or in subdivision (a) of Section 726 of the Code of Civil Procedure prohibits court actions against the Owner of a Condominium to recover sums for which a lien is created pursuant to this Section or prohibits the Association from taking a deed in lieu of foreclosure.



## **Section 4.11 Collection of Delinquent Assessments.**

### **Section 4.11.1 Delinquencies Less than \$1,800 or One Year.**

If the Association seeks to collect delinquent Assessments of an amount less than One Thousand Eight Hundred Dollars (\$1,800), not including any accelerated assessments, late charges, fees and costs of collection, attorney's fees, or interest, it may not collect that debt through judicial or non-judicial foreclosure, but may attempt to collect or secure that debt in any of the following three ways:

- (1) By a civil action in small claims court. If the Association chooses to proceed by an action in small claims court, and prevails, may enforce the judgment as permitted under the Code of Civil Procedure. The amount that may be recovered in small claims court to collect upon a debt for delinquent Assessments may not exceed the jurisdictional limits of the small claims court and shall be the sum of the following: (A) The amount owed as of the date of filing the complaint in the small claims court proceeding; and (B) In the discretion of the court, an additional amount to that described in subparagraph (A) equal to the amount owed for the period from the date the complaint is filed until satisfaction of the judgment, which total amount may include accruing unpaid Assessments and any reasonable late charges, fees and costs of collection, attorney's fees, and interest, up to the jurisdictional limits of the small claims court.
- (2) By recording a lien on the Owner's Condominium as provided in Section 4.10 upon which the Association may not foreclose until the amount of the delinquent assessments secured by the lien, exclusive of any accelerated assessments, late charges, fees and costs of collection, attorney's fees, or interest, equals or exceeds One Thousand Eight Hundred Dollars(\$ 1,800) or the assessments are more than 12 months delinquent.
- (3) Any other manner provided by law, except for judicial or non-judicial foreclosure.

### **Section 4.11.2 Delinquencies Greater than \$1,800 or One Year.**

If the Association seeks to collect delinquent Assessments of an amount of One Thousand Eight Hundred Dollars (\$1,800) or more, not including any accelerated assessments, late charges, fees and co'sts of collection, attorney's fees, or interest, or any

Assessments that are more than 12 months delinquent, it may institute litigation in a court of proper jurisdiction, or may use judicial or non-judicial foreclosure subject to the following conditions:

- (1) Prior to initiating a foreclosure on an Owner's Condominium, the Association shall offer the Owner and, if so requested by the Owner, participate in dispute resolution pursuant to Civil Code Section 5900 et. seq., or alternative dispute resolution as set forth in Civil Code Section 5925 et. seq. The decision to pursue dispute resolution or a particular type of alternative dispute resolution shall be the choice of the Owner, except that binding arbitration shall not be available if the Association intends to initiate a judicial foreclosure.
- (2) The decision to initiate foreclosure of a lien for delinquent Assessments that has been validly recorded shall be made only by the Board and may not be delegated to an agent of the Association. The Board shall approve the decision by a majority vote in an executive session. The Board shall record the vote in the minutes of the next meeting of the Board open to all Members. The Board shall maintain the confidentiality of the Owner or Owners of the Condominium by identifying the matter in the minutes by the parcel number of the property, rather than the name of the Owner or Owners. A Board vote to approve foreclosure of a lien shall take place at least 30 days prior to any public sale.
- (3) The Board shall provide notice by personal service to an Owner of a Condominium who occupies the Condominium or to the Owner's legal representative, if the Board votes to foreclose upon the Condominium. The Board shall provide written notice to an Owner of a Condominium who does not occupy the Condominium by first-class mail, postage prepaid, at the most current address shown on the books of the Association. In the absence of written notification by the Owner to the Association, the address of the Owner's Unit may be treated as the Owner's mailing address.
- (4) A non-judicial foreclosure by the Association to collect upon a debt for delinquent assessments shall be subject to a right of redemption. The

redemption period within which the Condominium may be redeemed from a foreclosure sale under this Paragraph ends 90 days after the sale.

**Section 4.11.3 Foreclosure of Lien.**

Once the requirements of this Section are followed, the lien may be enforced in any manner permitted by law, including sale by the court, sale by the trustee designated in the notice of delinquent Assessment, or sale by a trustee substituted pursuant to California Civil Code Section 2934(a). Any sale shall be conducted in accordance with the provisions of Sections 2924, 2924(b), 2924(c), 2924(f), 2924(g) and 2924(h) of the California Civil Code, or any successor statutes thereto, applicable to the exercise of powers of sale in mortgages and deeds of trust, or in any other manner permitted by law. The Association, acting on behalf of the Condominium Owners, shall have the power to bid for the Condominium at foreclosure sale, and to acquire and hold, lease, mortgage, and convey the same.

**Section 4.12 Individual Assessments.**

In addition to the Regular and Special Assessments levied against all Owners, the Board of Directors may impose Individual Assessments against an Owner in any of the circumstances described below, provided that no Individual Assessments may be imposed against an Owner pursuant to this Section until the Owner has been afforded notice and the opportunity for a hearing, and, if appropriate, has been given a reasonable opportunity to comply voluntarily with the Association's Governing Documents. Subject to the foregoing, the acts and circumstances giving rise to liability for Individual Assessments include the following:

**Section 4.12.1 Damage to Common Area.**

In the event that any damage to, or destruction of, any portion of the Common Area, including any portion of the Unit which the Association is obligated to repair and maintain is caused by the willful misconduct or negligent act or omission of any Owner, any member of his or her family, or any of his or her tenants, guests, servants, employees, licensees or invitees, the Board shall cause the same to be repaired or replaced, and all costs and expenses incurred in connection therewith (to the extent not compensated by insurance proceeds) shall be assessed and charged solely to and against such Owner as a Individual Assessment. Prior to considering imposing such an Individual Assessment, the Association shall provide the Owner with notice and a hearing pursuant to the requirements of Civil Code Section 5855.

**Section 4.12.2 Expenses Incurred in Gaining Member Compliance.**

In the event that the Association incurs any costs or expenses to bring the Owner and/or his or her Condominium into compliance with any provision of the Governing Documents, the amount incurred by the Association (including reasonable fines and penalties duly imposed hereunder, title company fees, accounting fees, and reasonable attorneys' fees) shall be assessed and charged solely to and against such Owner as an Individual Assessment.

**Section 4.12.3 Transfer Fees.**

A transfer fee may be assessed against each Unit at the time escrow closes on the conveyance of title to such Unit, if title is transferred, or as of the date a new tenant takes possession of the Unit, if the Unit is leased. The charge shall be an amount not to exceed the Association's actual costs to change its records in connection with said change of ownership or possession of the Unit.

**Section 4.13 Levy of Individual Assessment and Payment.**

Once an Individual Assessment has been levied against an Owner for any reason described, and subject to the conditions imposed in this Section 4.13, such Individual Assessment shall be recorded on the Owner's account, notice thereof shall be mailed to the affected Owner and the Individual Assessment shall thereafter be due as a separate debt of the Owner payable in full to the Association within 30 days after the mailing of notice of the Assessment.

**Section 4.14 Foreclosable Lien for Damage to Common Area.**

Once an Individual Assessment has been imposed by the Association's Board of Directors pursuant to Section 4.12.1 with regard to damage to Common Area, such charge may be collected as provided in Section 4.11.

**Section 4.15 Assignment of Rents.**

Each Owner does hereby presently assign to the Association, absolutely and regardless of possession of the property, all rents and other monies now due or hereafter to become due under any lease or agreement or otherwise for the use or occupancy of any or all parts of any Unit owned by the Owner, now existing or hereafter made for the purpose of collecting all Assessments due the Association under this Declaration which are in default. The Association hereby confers on each Owner the authority to collect and retain the rents and other monies derived from any such lease or agreement as they become due and payable, provided, however, that the Association at its sole discretion, may revoke such authority at any time, on written

notice to the Owner of a default in the payment of any Assessment due hereunder. On revocation of such authority the Association may, under court order or by appointed receiver, collect and retain such monies, whether past due and unpaid or current.

**Section 4.16 Following Changes in Current Law.**

The provisions of this Article 4 were specifically designed to comply with California law in effect at the time of preparing and voting on this Declaration. The laws applicable to assessment collection frequently change. The provisions of Section 15.10 regarding the Association following changes in law, while applicable to this full Declaration, also specifically apply to the provisions of this Article 4.

**ARTICLE 5  
DUTIES AND POWERS OF THE ASSOCIATION**

**Section 5.1 General Powers and Authority.**

The Association shall have all the powers of a nonprofit corporation under California law, subject only to the limitations in the Governing Documents of the Association. It may perform all acts which may be necessary for or incidental to the performance of the obligations and duties imposed upon it by this Declaration or the other Governing Documents. Its powers shall include those granted in its Bylaws and the following:

**Section 5.1.1 Assessments.**

The Association shall have the power to establish, fix, and levy Assessments against the Members in accordance with the procedures set out in this Declaration and subject to the limitations therein.

**Section 5.1.2 Adoption of Rules.**

The Association shall have the power to adopt reasonable operating rules as more fully set forth in Section 5.5 herein.

**Section 5.1.3 Enforcement of Governing Documents.**

The Association shall have the power and duty to enforce the Governing Documents as more fully provided in Article 12 herein.

**Section 5.1.4 Right of Entry.**

The Association's agents or employees shall have the right to enter upon any Unit when necessary in connection with any maintenance, landscaping, or construction for

which the Association is responsible. Such entry shall be made with as little inconvenience to the Member as is practicable, and in accordance with Section 2.5 of this Declaration.

**Section 5.1.5 Easements.**

The Association shall have the authority, by document signed or approved by at least two thirds (2/3) of the Board of Directors, to grant easements in addition to those shown on the map, where necessary for utilities, cable television, and sewer facilities over the Common Area to serve the Common Areas and the Units. All other easements, such as those to accommodate adjoining property owners, require approval of a majority of the total voting power of the Association.

**Section 5.1.6 Dedication.**

The Association shall have the power to dedicate all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication shall be effective unless approved by a majority of the total voting power of the Association.

**Section 5.1.7 Cable or Satellite Television.**

The Board has the authority, if it deems it in the best interests of the Association, to contract and pay for bulk rate cable or satellite television services to be provided to the individual Members on such terms and conditions as the Board deems proper. The cost of said bulk rate cable or satellite television services may be paid for out of the general operating funds of the Association and included in the Association's operating budget.

**Section 5.2 Duties of the Association.**

In addition to the duties delegated to the Association or its agents and employees elsewhere in the Governing Documents, the Association shall be responsible for the following:

**Section 5.2.1 Maintenance and Operation of Common Areas.**

The Association, acting through the Board, shall operate and maintain the Common Areas and the facilities located thereon; such duty shall include providing maintenance of the Common Areas as provided in Article 6.

**Section 5.2.2 Financial Statements.**

The Association shall regularly prepare, review and distribute financial statements to the Members as required by law in accordance with the Bylaws.

**Section 5.2.3 Insurance.**

The Association shall maintain such policy or policies of insurance as are required by this Declaration.

**Section 5.2.4 Discharge of Liens.**

The Association shall discharge by payment, if necessary, any lien against the Common Area, and charge the cost thereof to the Member or Members responsible for the existence of the lien (after notice and a hearing, as provided in the Bylaws).

**Section 5.2.5 Assessments.**

The Association shall fix, levy, collect, and enforce Assessments.

**Section 5.2.6 Payment of Expenses.**

The Association shall pay all expenses and obligations incurred by the Association in the conduct of its business, including, without limitation, all licenses, taxes, or governmental charges levied or imposed against the property of the Association. This shall also include water, sewer, garbage, electrical, telephone, gas and other necessary utilities services for the Project, except to the extent that such services are separately metered or charged to the Units, in which event each Unit Owner shall pay the amount charged to him or her.

**Section 5.2.7 Conduct Reserve Studies.**

At least once every three years the Board of Directors shall cause a study of the reserve account requirements of the Project to be conducted if the current replacement value of the major components which the Association is obligated to repair, replace, restore, or maintain is equal to or greater than one half (1/2) of the gross budget of the Association for any fiscal year, excluding the Association reserve account. The reserve study shall consist, in part, of a reasonably competent diligent inspection of the assessable area of the Association-maintained major components (see Civil Code §5550).

**Section 5.3 Limitation on Board Authority.**

The Board shall not take any of the following actions without the consent of a simple majority of the Members constituting a quorum of more than fifty percent (50%) of the voting power of the Members:

**Section 5.3.1 Incur Expenditures.**

Incur aggregate expenditures for capital improvements to the Common Areas in any fiscal year in excess of five percent (5%) of the budgeted gross expenses of the Association for that year. For purposes of this restriction, the term "capital improvement" does not refer to ordinary maintenance and repair, whether funded through operating accounts or reserves, but instead shall mean and refer to significant discretionary additions to, or upgrades of, the common areas or materials, or a material alteration to the appearance of the Project.

**Section 5.3.2 Sale of Association Property.**

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

**Section 5.3.3 Compensation to Board Members.**

Pay compensation to Members of the Board or to officers of the Association, provided, however, that directors and officers can be reimbursed for reasonable out-of-pocket expenses, verified in writing, incurred in carrying on the business of the Association.

**Section 5.3.4 Contracts in Excess of One Year.**

Enter into a contract with a third person to furnish goods or services for the Common Area or the Association for a term longer than one year, with the following exceptions: (i) A contract with a public utility company if the rates charged for the materials or services are regulated by the Public Utilities Commission, provided the term does not exceed the shortest term for which the supplier will contract at the regulated rate; (ii) Prepaid casualty or liability insurance policies not to exceed three years' duration provided the policy permits short rate cancellation by the insured; (iii) Agreements for sale or lease of burglar alarm and fire alarm equipment, installation and services of not to exceed five years duration; (iv) Agreements for lease of laundry equipment shall not exceed five (5) years; and (v) Contracts for cable television and other telecommunications wiring to be negotiated for such terms as the Board deems proper.

**Section 5.4 Limitation on Liability of Officers and Directors.**

No director, officer, committee member, employee, or other agent of the Association, shall be liable to any Owner or any other party, including the Association, for any damage, loss, or prejudice suffered or claimed on account of any act, omission, error, or negligence of any such



person if such person has acted in good faith and in a manner such person reasonably believed to be in the best interests of the Association.

**Section 5.5 Adoption of Rules.**

The Association shall have the power to adopt reasonable operating rules governing the Project, use of the Units, use of the Common Area and any facilities located thereon, and use of any other Association property. Such rules may include, but are not limited to, reasonable restrictions on use by the Members and their guests, rules of conduct, and the setting of reasonable fees for the use of recreational facilities. Rules must be in writing and must be consistent with applicable law and the Governing Documents. A copy of the current Rules shall be given to each Member.

**Section 5.5.1 Review and Comment Period.**

Prior to enacting certain classes or types of rules, the Association shall provide Owners with a 30 day advance notice of a rule adoption or change, which shall include a copy of the proposed rule and a description of the purpose and effect of the proposed rule, and allow Owners to provide comments to the Board regarding the proposed rule. After the 30 day comment period has expired, the Board shall meet to discuss any comments received, and decide whether to proceed with adoption of the proposed rule. If the rule is adopted, the Board shall provide notice to the Owners of the rule adoption within fifteen (15) days of adopting the rule.

**Section 5.5.2 Rule Classes Subject to Review and Comment - "Class 1 Rules"**

The following classes or types of rules (Class 1 Rules) shall be subject to the rights of Owners to review and comment: Common Area use rules; Exclusive Use Common Area rules (for example, balcony storage); home use rules (for example, noise regulations); architectural rules, including procedures for review, approval and disapproval of applications; discipline rules, including any fine schedule, payment plans for delinquent assessments; dispute resolution procedures; and procedures for elections.

**Section 5.5.3 Rule Classes Not Subject to Review and Comment - "Class 2 Rules."**

Except as otherwise required by law, the following classes or types of rules (Class 2 Rules) shall not be subject to the rights of Owners to review and comment: common area maintenance, a decision on a specific matter that is not intended to apply generally,

regular or special assessment amounts, any rule required by law, and any repeating of existing law or governing document provision.

**Section 5.5.4 Owner Veto Rights of Class 1 Rules.**

Members owning 5 percent or more of the separate interests may call a special vote of the Members to reverse a Class 1 Rule change. A special vote of the Members may be called by delivering a written request to the Association. Not less than 35 days nor more than 90 days after receipt of a proper request, the Association shall hold a vote of the members on whether to reverse the rule change. The written request may not be delivered more than 30 days after the Association gives general notice of the rule change. Collection of signatures to call a special vote under this Section is a purpose reasonably related to the interests of the Members of the Association. A Member request to copy or inspect the membership list solely for that purpose may not be denied on the grounds that the purpose is not reasonably related to the Member's interests as a Member. The rule change may be reversed by the affirmative vote of a majority of the votes represented and voting in a duly held election in which a quorum is present. For the purposes of this Section, a member may cast one vote per separate interest owned. A rule change reversed under this Section may not be readopted for one year after the date of the vote reversing the rule change. Nothing in this Section precludes the Board from adopting a different rule on the same subject as the rule change that has been reversed. As soon as possible after the close of voting, but not more than 15 days after the close of voting, the board shall provide general notice of the results of the member vote. This Section does not apply to an emergency rule change.

**Section 5.5.5 Emergency Rules.**

The Board may enact a temporary emergency rule dealing with any class or type of rule if the Board determines that an immediate rule change is necessary to address an imminent threat to public health or safety or imminent risk of substantial economic loss to the Association. The Board shall provide notice to the Owners of adoption of the emergency rule within fifteen (15) days of its adoption, which shall include the text of the rule change, a description of the purpose and effect of the rule change, and the date that the rule change expires. Such an emergency rule may be effective for up to 120 days, and may not be re-adopted as an emergency rule under this Section but may be re-adopted pursuant to Section 5.5.1 above.

**ARTICLE6**  
**MAINTENANCE RESPONSIBILITIES**

**Section 6.1 General.**

For purposes of this Declaration and the responsibilities herein, the term "maintenance" generally means those things that can be done by unskilled individuals with household tools, for example, sweeping a balcony and keeping the balcony drain clean. The term "repairs" and "replacement" generally mean and refer to activities typically accomplished by licensed individuals requiring specific tools, materials, or training, for example sealing a balcony surface to extend the useful life of that surface.

**Section 6.2 Common Area.**

Generally, the Association shall be solely responsible to (a) maintain, repair and replace the Common Area, and (b) repair and replace the Exclusive Use Common Areas. No person other than the Association or its duly authorized agents shall construct, reconstruct, refinish, alter or maintain any improvement upon, or shall create any excavation or fill or change the natural or existing drainage of any portion of the Common Area (for example, resurfacing or tiling a balcony or patio floor) without prior Association approval. In addition, no person shall remove any tree, shrub or other vegetation from, or plant any tree, shrub, or other vegetation upon the Common Area without express approval of the Association. This Declaration attempts to identify such responsibilities in the Maintenance Responsibility Checklist attached hereto and marked Exhibit "A."

**Section 6.2.1 Wood-Destroying Pests or Organisms.**

The Association is responsible for the repair and maintenance of the Common Area occasioned by the presence of wood-destroying pest or organisms. The Association shall give notice of the need to temporarily vacate a Unit to the occupants and to the Owners 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 temporary 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 their own accommodations during the temporary relocation.

**Section 6.2.2 Temporary Relocation; Costs.**

Owners and residents are required to cooperate with the maintenance, repair and replacement work performed by the Association, including temporarily vacating their

Unit or Exclusive Use Common Area as reasonably necessary for work to be performed. Provided they do not voluntarily vacate, the Association shall have the power to cause the temporary removal of any Unit resident or their personal property for such periods and at such times as may be necessary in connection with any maintenance, repair or replacement work performed by the Association. The costs of temporary relocation during the performance of such work shall be borne by the Owner of the Unit affected.

**Section 6.3 Owner Maintenance Responsibilities.**

Each Condominium Owner shall, at his or her sole cost and expense, (a) maintain, repair and replace his or her Unit, and (b) maintain the interior areas of the Exclusive Use Common Areas appurtenant to such Owners' Unit, keeping the same in good condition. Generally, this responsibility includes without limitation the glass surfaces, glass doors, windows, screens and screen doors, other exterior doors, window fixtures, any hardware thereon, the interior of the Unit, appliances, including any dryer or other vent lines, and the plumbing, electrical, heating, and air conditioning systems servicing the Unit. This Declaration attempts to identify such responsibilities in the Maintenance Responsibility Checklist attached hereto and marked Exhibit "A."

**Section 6.4 Maintenance Responsibility Checklist.**

A Maintenance Responsibility Checklist is attached hereto and marked as Exhibit "A." The Checklist sets forth specifically those components of the Project that are the respective responsibility of the Owners and Association to maintain. In the event of a conflict between the division of maintenance responsibility set forth in the Governing Documents and the Checklist, the Checklist shall be followed.

**Section 6.5 Cooperative Maintenance Obligations.**

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

**Section 6.6 Recovery of Costs of Certain Repairs and Maintenance.**

In the event that an Owner fails to perform maintenance functions for which he or she is responsible under this Article, the Association may give written notice to the offending Owner with a request to correct the failure within 15 days after receipt thereof. If the Owner refuses or fails to perform any necessary repair or maintenance, the Association may exercise its rights under Section 2.5, to enter the Owner's Unit and perform the repair or maintenance so long as the

Owner has been given notice and the opportunity for a hearing. The cost of the repairs may be billed to the owner as an Individual Assessment in accordance with Section 4.12.

**Section 6.7 Repairs of Utility Lines.**

The rights and duties of the Owners of Condominiums within the Project with respect to sanitary sewer, water, electricity, gas and telephone lines and facilities shall be as follows:

**Section 6.7.1 Easement for Repairs and Access.**

Whenever sanitary sewer, water, electricity, gas, television receiving, telephone lines or connections, are installed within the Property, which connections or any portion thereof lie in or upon Condominiums owned by other than the Owner of a Condominium served by such connections, the Owners of any Condominium served by such connections shall have the right, and are hereby granted an easement to the full extent necessary therefore, to enter upon the Condominiums or to have the utility company enter upon the Condominiums in or upon which such connections or any portion thereof lie, to repair, replace and generally maintain such connections, as and when necessary.

**Section 6.7.2 Utility Connection Serving More Than One Unit.**

Whenever sanitary sewer, water, electricity, gas or telephone lines or connections, are installed within the Property which connections serve more than one Condominium, the Owner of each Condominium served by such connection shall be entitled to the full use and enjoyment of such portions of such connections as service his or her Condominium.

**Section 6.7.3 Dispute Between Owners Over Repairs.**

In the event of a dispute between Owners with respect to the repair or rebuilding of such connections, or with respect to the sharing of the cost thereof, then, upon written request of one or such Owners addressed to the Association, the matter shall be submitted to the Board of Directors who shall decide the dispute and the decision of the Board shall be final and conclusive on the parties.

**ARTICLE 7**

**PLUMBING LEAKS AND OTHER WATER DAMAGE.**

**Section 7.1 Plumbing Leaks and Water Damage Generally.**

Plumbing leaks and other water intrusion problems, plus any resulting damage, present complicated issues in multi-family dwelling unit buildings like Mission Ridge because of the

multiple residencies, ownership interests, different occupancy and use interests, restricted inspection abilities, and shared involvement of multiple parties. This Article is drafted in an attempt to address the recurring issues and questions with regard to such leaks and damage, and to provide a framework, guidance and certainty in responses. Notwithstanding other provisions in this Declaration to the contrary, the provisions of this Article shall control in the event of a conflict.

**Section 7.2 Owners are Responsible to Notify Association of Water Intrusion.**

As a result of their occupancy and use interests, Owners and their tenants shall cause notice to be given to the Association of any water leak within, or water intrusion into, their Unit immediately upon discovery of such leak or water intrusion. The Owner and his or her tenants, guests, invitees, agents, or employees shall be solely responsible for any claim of property damage or personal injury alleged which arises from such water leak or intrusion, and the presence of any resulting mold or fungi, into the property when said Owner, tenants, guests, invitees, agents or employees failed to notify the Association immediately of discovery of said water intrusion. The Association shall not be liable for any property damage or personal injury alleged to arise from such water leak or intrusion, or the presence of mold or fungi, in any property unless the damages or injuries were caused by the gross negligence of the Association, its Board, officers, agents or employees.

**Section 7.3 Owner Inspection and Maintenance Responsibilities.**

Owners are required to proactively perform regular inspections and maintenance on their plumbing lines, plumbing fixtures and appliances so that they minimize the possibility of long term, undetected leaks or a sudden failure becoming a flood. Owners and tenants are required to repair all leaks in their Units.

**Section 7.4 Preventative Maintenance Requirements.**

All Owners and residents are expected to proactively perform regular inspections, maintenance, repairs and replacements of their plumbing lines, fixtures and appliances, including, but not limited to, all of the following: (a) Plumbing supply lines to toilets, sinks and other appliances; (b) Sewer lines (including the proper use of drain cleaning products and efforts to prevent back-ups); (c) Shut-off valves to ensure proper operation; and (d) All appliances and fixtures that use or hold water, including but not limited to toilets, washing machines and dishwashers, and their supply lines. All such inspections, maintenance and repairs should be performed as needed, but at least annually, by someone qualified to recognize and perform these needed repairs. The Association strongly encourages Owners to keep documentary evidence of all such inspections, maintenance and repairs so that the Owner can demonstrate to the

Association that he or she acted reasonably and responsibly in fulfilling his or her responsibilities. An Owner's failure to inspect, maintain and repair the plumbing lines, fixtures and appliances in his or her Unit as stated in this Section shall constitute negligence by that Unit Owner, and shall make that Unit Owner financially liable for any and all damage to the Common Areas and other Units caused by that negligence.

**Section 7.5 Owner Responsibilities for Plumbing and Sewer Lines.**

By virtue of the occupancy and use interests, Owners and their residents are responsible for what is disposed down the drain/sewer lines, as well as the regular maintenance of those lines. As such, Owners are responsible for all sewer back-ups that occur in a pipe that services only their Unit, no matter where that pipe is located. Additionally, Owners are responsible for the plumbing lines located within their Unit's airspace and those lines that exclusively service their Unit, no matter where the pipe is located.

**Section 7.6 Responsibility for Repair and Remediation.**

Generally, the party or parties responsible for repairing a water leak and/or remediating mold caused by any leak or other water intrusion and for restoring the affected Unit(s) and Common Area depends on the source of the water or moisture in accordance with the following provisions:

**Section 7.6.1 Swift Response Encouraged.**

Mold and mildew can grow within forty-eight (48) hours of water damage. To minimize the additional damages presented by such growth, the Association encourages a goal that all water is to be extracted from the Unit within twenty-four (24) hours of discovery, whether or not performed by the Owner, the Association or its contractors. Generally the goal is to mitigate further damages quickly rather than wait on a responsibility determination before the extraction is commenced.

**Section 7.6.2 Water Intrusion from a Source that is Initially Uncertain.**

It is frequently impossible to determine who is ultimately responsible for a leak or water intrusion problem before work begins. Therefore, when responsibility is uncertain, the Association shall begin the work and advise the impacted Owner(s) within a reasonable time if and when the Association believes one or more of these Owners may have full or partial financial responsibility for the damage. Owners are expected to sign an acknowledgment of the possibility of financial responsibility once they have been advised that they are or may be financially responsible if it is provided by the Association.

**Section 7.6.3 Water Intrusion from a Common Area Source that is the Association's Responsibility to Maintain and Repair.**

The Association shall pay to repair the water leak, dry out the affected Common Area and any Units, and remediate any mold in the Common Area and Units when the mold can be attributed to a Common Area source that is the Association's responsibility to maintain and repair. The Association shall remediate the mold to the extent necessary to obtain clearance by a qualified industrial hygienist when the remediation is completed. The Association will provide a mold clearance certificate for any Unit for which it has performed mold remediation.

Notwithstanding any other provision of this Declaration, the Association shall pay to replace any drywall that must be removed, and will texture and paint (with one coat of a standard color) the replaced walls. If the Unit Owner prefers to have a non-standard color of paint applied to the replaced wall(s), the Owner shall be responsible for providing the Association with the color and manufacturer of the paint to be applied. If the Owner fails to provide this information, the Association shall not be responsible for a mismatched paint color. The Association shall not be responsible for repainting any undamaged walls or for any wallpaper or other wall coverings on damaged walls.

If possible, the Association shall clean any cabinets that have mold, and will reinstall the cleaned cabinets, as well as any counter tops removed to gain access to the cabinets or Common Area. Cabinets and counter tops that cannot be cleaned or salvaged shall be replaced by the Association with standard construction quality cabinets (i.e., not Owner-upgraded) cabinets. However, the Association cannot guarantee that newly installed cabinets and counter tops will match existing cabinets and counter tops that are not removed. (The Association will not replace all cabinets and counter tops solely to have them match.)

If possible, the Association shall clean and reinstall any carpet and/or other flooring materials that are damaged or removed to gain access to the Common Areas. Floor coverings and carpet pads that cannot be cleaned will be replaced by the Association with standard construction quality (i.e., not Owner-upgraded floor coverings). The Association shall cover the cost of cleaning the affected carpet and/or other floor covering. Note that the Association will not reinstall or pay for tile or wood floors as these were not original materials installed by the developer. For the purpose of this provision, "standard construction quality" shall mean materials contemporarily viewed as construction or mid-grade quality.



The Association shall clean and reinstall appliances, toilets, sinks (if not part of a lavatory/cabinet combination that cannot be salvaged) and other fixtures removed in order to gain access to the Common Area. The Association will not replace used appliances that do not work when reinstalled because of their age or lack of maintenance; Owners shall be responsible for such replacement. The Association shall pay the cost of cleaning and reinstalling the appliances, toilets, sinks and other fixtures under this Section.

The Owner shall be responsible for any additional costs over and above the Association's costs outlined herein. For example, if a partial cabinet and/or countertop replacement is planned by the Association under this Section and the Owner wants matching cabinets and/or countertops or wishes to install upgraded cabinets or countertops, Owner shall be responsible for the additional costs. Or, if Owner has upgraded carpeting, tile or wood floors, the Owner shall be responsible for any costs in excess of the cost of original construction quality carpet. Owners should purchase insurance to address their costs for damages to fixtures or appliances that are not the Association's responsibility pursuant to this Section and replacing any fixtures or appliances to match those that may be damaged. Having such a policy will enable Owners to submit a claim to their carrier in the event of such a loss.

An Owner may elect to receive payment equivalent to the actual cost the Association would incur to perform all or any part of its obligations pursuant to this Section in lieu of having the Association fulfill its obligations. In the event an Owner exercises this right, the Association shall have no further obligations with regard to the damage or the repair of the same except the payment set forth above.

**Section 7.6.4 Water Intrusion from Adjacent Unit or Component for Which Another Owner is Responsible.**

When a leak originates in an adjoining Unit, the Association is not legally responsible to repair the leak, dry out affected Units, or repair the damage to the affected Units. Each Unit Owner affected by a leak in an adjoining Unit must act to protect and restore his or her own Unit. However, because of the potential for excessive damage if the situation is not immediately addressed by all affected Unit Owners, the Association may take the actions outlined herein.

If a Unit Owner or his or her insurance carrier does not immediately accept responsibility for a water leak or water intrusion, in order to mitigate damages, the

Association has the right to enter the affected Unit(s), extract any water; dry out the Units; remove drywall as necessary; and remove cabinets, floor coverings, baseboards, appliances and other fixtures, and drywall as necessary to access any water and/or mold in the Common Area wall cavities. The Association does not guarantee or warranty the condition of the removed items or whether these items can be reinstalled or reused or whether they will have to be replaced nor shall the Association be responsible for any damage to these items. The risk of loss or damage to these items shall remain with the Owner. (As stated above, Owners are encouraged to purchase their own insurance coverage to protect themselves against damage to these items.)

The Association shall pay to remediate any mold in the Common Area wall and ceiling cavities and within any affected Unit as necessary to obtain mold clearance. The Association shall pay to replace, tape and mud any removed drywall. The Unit Owner must pay to texture and paint his/her affected walls and ceilings. The Unit Owner must pay to reinstall or replace any removed cabinets, floor or wall coverings, appliances, fixtures or other items.

If requested, the Association shall have its contractor complete, replace or reinstall the items the Owner is responsible for, provided the Owner has pre-paid the Association for doing so. If no arrangement is made in advance, the Association shall have no further obligations to restore the Unit after it has reinstalled the removed drywall.

The Association may recover its costs from the responsible Unit Owner. Other affected Unit Owners must seek their own recovery from the responsible Unit Owner. The Association will not act as the representative for any Owner/resident on the issue of cost recovery.

**Section 7.6.5 When the Affected Unit Owner is Responsible for the Source of the Leak, Backup or Water Intrusion.**

If it appears that a water leak, back-up waste water, and/or mold growth is only in, or has only affected the Unit that is the source of the leak, backup or other water intrusion, and is not in the Common Area walls, ceilings or floors, the Association will do nothing beyond ensuring that water will not spread to Common Areas or other Units. The Owner of the affected Unit shall be responsible for repairing the source of the leak, backup or other water intrusion, and the drying out, repair and restoration of the Unit.

If it appears that the water leak, back-up waste water, and/or mold growth is not just in the affected Unit, but is or may be in the Common Area walls, ceilings and/or floors as well, the responsible Owner shall be liable for all repair and restoration costs. However, if the responsible Owner does not immediately accept responsibility for such damage, the Association shall initially pay to repair the water leak; dry out the Common Areas and affected Unit(s); and may remove cabinets, floor coverings, baseboards, appliances and other fixtures and drywall as necessary to access the water and/or mold in the Common Area wall cavities. The Association does not guarantee or warranty the condition of these items, or whether these items can be reinstalled or reused or whether they will have to be replaced. The Association shall not be responsible for any damage to any of these items. The risk of loss or damage to any of these items remains with the Owner. (Owners are encouraged to purchase their own insurance coverage to protect themselves against damage to these items.)

When the responsible Unit Owner does not immediately accept responsibility, in order to mitigate damages, the Association has the right to initially pay to repair the water leak, dry out the Common Area and any Units and remediate any mold in the Common Area and within any Units as necessary to obtain mold clearance. The Association shall also initially pay to replace, tape and mud any removed drywall. However, the Association shall require the responsible Unit Owner to reimburse it for all of the out-of-pocket costs it occurs in doing this work.

The Unit Owner must pay to texture and paint the walls and ceilings. The Unit Owner must pay to reinstall or replace any removed cabinets, floor or wall coverings, appliances, fixtures or other materials.

If requested, the Association shall have its contractor complete, replace and/or reinstall the items the Owner is responsible for, but will only do so if the Owner has pre-paid the Association for doing this work. If no arrangement is made in advance, the Association shall have no further obligations to restore the Unit after it has reinstalled the removed drywall.

**Section 7.6.6 When the Association and One or More Owners Share Responsibility for the Damage.**

The Association shall repair the water leak, dry out the affected Unit(s) and Common Area, and/or perform the mold remediation and Unit restoration as described above, including the replacement of cabinets, floor coverings, appliances and fixtures to

the extent described herein. However, the Association shall require the co-responsible party(ies) to contribute their percentage share of the cost of such work based on their percentage share of the responsibility. When it appears that the responsibility is, or may be, a shared responsibility, the Association shall notify the impacted Owner(s) as soon as reasonably possible of the possibility of future required financial contribution from the Owner(s). Failure of the Association to notify the Owner(s) shall not affect the Owner(s) responsibility to pay their proportionate share of the total costs incurred provided reasonable efforts have been made to provide the notice set forth above. Reasonable efforts shall be to attempt to contact the Owner(s) by First Class U.S. Mail, email and a telephone call to the Owner's(s)' telephone number on record with the Association. Owner(s) are expected to sign an acknowledgment of the possibility of financial responsibility prior to the beginning of any work in the Unit if it is provided by the Association.

#### **Section 7.6.7 Mold Remediation.**

In cases where mold is present and mold remediation occurs, any Unit where mold is found must be "cleared" at the completion of the remediation process. This clearance will be performed by a qualified industrial hygienist who must certify that any remaining mold levels are within acceptable levels. Restoration of the Unit can only begin once this clearance has occurred.

#### **Section 7.6.8 Asbestos.**

It is possible, but presently unknown, whether any Units have building components that contain asbestos. If any asbestos-containing material ("ACM") is found in a Unit, the Association shall only contain or remove the ACM the Association must damage to access and/or remediate the Common Areas. A licensed asbestos abatement contractor shall remove and dispose of this material. The Association shall not remove any ACM in any areas of the Unit other than where it is necessary to do so for the work being performed by the Association. The affected Unit Owner shall be responsible for any additional removal of any ACM in the Unit and for any Unit restoration thereafter.

#### **Section 7.6.9 Relocation During Remediation and Restoration.**

Every Owner and resident must make his or her individual decision whether to remain in the Unit during the remediation and restoration work. The Association recommends that all residents relocate during the remediation and reconstruction process. Anyone contemplating remaining in the Unit during this time period should consult with their personal physician before making a final decision. Any resident choosing to remain

in the Unit does so at his or her own risk. The resident, not the Association, shall be responsible for all relocation costs during the remediation and/or restoration period. If the Unit is occupied by a tenant, the landlord and tenant must resolve any issues associated with relocation between themselves.

**Section 7.7 Responsibility for Personal Property.**

The Association shall have no responsibility for cleaning or replacing any of the Owner or resident's personal property, excluding furnishings, fixtures and flooring as outlined above, or the cost thereof, even if the Association is responsible for the source of the water intrusion. The Owner or resident is solely responsible for cleaning or replacing any damaged furniture, clothing or other personal property within his or her Unit regardless of the person or entity responsible for the initial water intrusion. In the event the Association is responsible for cleaning furnishings, fixtures and/or flooring as provided herein, the Association shall only be responsible for cleaning such furnishings, fixtures and/or flooring to the extent the cost of the same is reasonably deemed to be less than the current value of the same. The Association shall not be responsible for damage caused during the cleaning process unless that damage was caused by the willful misconduct or gross negligence of the Association, its Board, officers or employees. Nothing in this Section is intended to absolve the Association's agents and contractors from any liability they would otherwise have under California law or contract for such damage.

In cases where the Association is responsible for the initial water intrusion, and when necessary, the Association may arrange for storage of an Owner or resident's personal property. The Association shall pay for this storage for a thirty (30) day period (or longer if the Association determines that the work for which the Association is responsible will require a longer period of time), as well as pick-up and return of the stored property. The Owner shall be responsible for all storage fees beyond this time period. The Association shall move the Owner's or resident's belongings to the storage facility and return the items to the Unit (if the return occurs within the initial thirty day time period), but the Association will not be responsible for any loss or damage to that personal property while in storage.

Except as set forth above, the Owner shall be responsible for cleaning any personal property stored outside of his or her Unit before it is returned to the Unit. Personal property that has not been properly cleaned may contain mold spores that will reintroduce mold back into the Unit. If such reintroduction occurs, the Owner shall be solely responsible for any and all additional remediation and restoration costs.

**ARTICLE 8**  
**USE RESTRICTIONS**

**Section 8.1 Restrictions Applicable to all Residents; Owners Responsible for Residents and Guests .**

Each Owner of a Condominium shall be responsible for ensuring that the Owner's family, guests, tenants, invitees, and all occupants of the Owner's Condominium comply with all provisions of this Declaration, the Bylaws and the rules and regulations of the Association. In addition to any rights the Association may have against the Owner's family, guests, tenants, invitees, or occupants, the Association may take action under this Declaration against the Owner as if the Owner committed the violation in conjunction with the Owner's family, guests, tenants, invitees, or occupants.

**Section 8.2 Single Family Residential Use; Occupancy Restriction.**

The use of the individual Units in the properties is restricted to single family residential use. In no event shall a Unit be occupied by more individuals than permitted by applicable zoning laws or governmental regulations. Currently, the federal Department of Housing and Urban Development and the California Department of Fair Employment and Housing allow restrictions of two (2) persons per bedroom, plus one (1). The restrictions on occupancy imposed herein are intended to protect, enhance, and maintain the single-family residential atmosphere that exists within the community and to avoid an overburdening of the Common Areas and common facilities.

**Section 8.3 Limited Business Activities Allowed.**

Except as allowed under this Section, no business or commercial activities of any kind whatsoever shall be conducted on any Unit without the prior written approval of the Board, provided that the foregoing restriction shall not apply to the activities, signs or actions of the Association in the discharge of its responsibilities under the Governing Documents. No use restrictions contained in this Section shall be construed in such a manner so as to prohibit any Owner from (a) maintaining his or her personal library in his or her residence, (b) keeping his or her personal business records or accounts therein, (c) handling his or her personal or professional telephone calls or correspondence therefrom, (d) leasing or renting his or her residence in accordance with Article 2 herein, or (e) conducting any other activities otherwise compatible with residential use and the provisions of this Declaration which are permitted under applicable zoning laws or regulations without the necessity of first obtaining a special use permit or specific governmental authorization (see San Diego Municipal Code §141.0308, Home Occupations), provided that such use does not adversely affect the Common Areas or commonly metered

utilities. The uses described in (a) through (e), above, are expressly declared to be customarily incidental to the principal residential use of the Unit and not in violation of this Section.

**Section 8.4 Right to Display American Flag.**

This Declaration shall not be interpreted to limit or prohibit the display of the flag of the United States by an Owner on or in the Owner's separate interest or within the Owner's Exclusive Use Common Area. For purposes of this section "Display of the flag of the United States" means a flag of the United States made of fabric, cloth or paper displayed from a staff or pole or in a window, and does not mean a depiction or emblem of the flag of the United States made of lights, paint, roofing, siding, paving materials, flora or balloons, or any other similar building, landscaping, or decorative component.

**Section 8.5 Prohibition of Noxious Activities; Restrictions on Excessive Noise.**

No noxious or offensive activities shall be conducted within or upon any portion of the Property nor shall anything be done or permitted within any Unit which is or could become an unreasonable annoyance or nuisance to the neighborhood. Without limiting any of the foregoing, no Owner shall permit noise of any sort (including, but not limited to, barking dogs, the operation of air conditioners, stereo amplifier systems, television sets, motor vehicles and power tools) to emanate from an Owner's Unit or any portion of the Common Area which would unreasonably disturb other Owners' enjoyment of their Units or the Common Area. Excessive noise levels may be determined in the sole discretion of the Board which may, but shall not be obligated to, rely on the County Code or other applicable governmental regulation dealing with such matters.

**Section 8.6 No Smoking.**

No Owner, tenant, guest, family member, invitee, vendor, or other person on the Premises may smoke in the Common Areas. As stated herein, and explicitly referenced here for purposes of this Section, all Exclusive Use Common Areas (decks, patios, entries, and parking spaces) are considered "Common Area" subject to the smoking ban. No person may smoke on any deck, patio or entry area, nor in any parking space. For purposes hereof, "smoking" shall include, but not be limited to, tobacco, marijuana, medical marijuana, and e-cigarettes.

**Section 8.7 Household Animals.**

The following restrictions regarding the care and maintenance of animals within the Project shall be observed by each Owner and resident:

**Section 8.7.1 Maximum Number of Animals.**

No more than two (2) common household animals may be kept in each Unit so long as the same are not kept, bred or maintained for commercial purposes, and further provided that such animal(s) do not present a threat or nuisance to other residents in the community. Notwithstanding the foregoing, caged birds or fish in an aquarium may be kept and maintained in reasonable numbers or as otherwise established by the Board. No other animals of any kind shall be kept, bred or raised in any Unit.

**Section 8.7.2 Leash Requirements for Dogs; No Outdoor Cats.**

Dogs shall only be allowed on the Common Area when they are leashed and otherwise under the supervision and restraint of their Owners. Cats are not allowed to roam the Common Areas unsupervised.

**Section 8.7.3 Animals and Common Areas.**

No household animals shall be left chained or otherwise tethered in the Common Area. Pet owners shall be responsible for the prompt removal and disposal of pet wastes deposited by their animals within the Project. Animals that are unable to control their bodily functions must be carried through the hallways and in the elevator. The persons in control of the pet must immediately address and remove any pet waste in any hallway or elevator, and disinfect the soiled areas without damaging such area.

**Section 8.7.4 Owner Responsibility for Conduct of Animal.**

Each person bringing or keeping an animal on the Property shall be solely responsible for the conduct of such animals.

**Section 8.7.5 Association Not Responsible for Conduct of Animals.**

The Association, its Board, officers, employees and agents shall have no liability (whether by virtue of this Declaration or otherwise) to any Owners, their family members, guests, invitees, tenants and contract purchasers for any damage or injury to persons or property caused by any animal.

**Section 8.7.6 Animal Rules.**

The Board of Directors shall have the right to establish and enforce additional regulations imposing standards for the reasonable control and keeping of household animals in, upon and around the Property to ensure that the same do not interfere with the quiet and peaceful enjoyment of the Property by the other Owners. The regulations adopted by the Board may, in the Board's sole discretion, limit the right to maintain dogs,



cats and other animals that are likely to be within the Common Areas from time-to-time, to Owners; provided, however, that any such rule shall not affect the rights of any lessee under a lease agreement in effect at the time the rule is adopted ("grandfather" clause).

**Section 8.7.7 Animals Constituting a Nuisance.**

The Board may, in its sole discretion, require the removal from the Property of any animal that constitutes a nuisance (whether due to its size, viciousness, unreasonable noise or otherwise) with respect to any other residents.

**Section 8.8 Signs.**

No commercial advertising signs or billboards shall be displayed on any Unit or posted within or on any portion of the Common Area except that Owners may post on their Units any signs required by legal proceedings and a single "For Rent," "For Lease" or "For Sale" sign of reasonable dimensions as allowed by Civil Code Section 713. Also, Owners may place noncommercial signs or posters which do not exceed nine (9) square feet, or flags or banners which do not exceed fifteen (15) square feet, in their yard or windows, on their door or outside wall, and on their balcony. These items may be made of paper, cardboard, cloth, plastic or fabric. They may not be made from lights, building or paving materials, plants, or balloons. Also, Owners may not paint the messages on architectural surfaces. Notwithstanding the foregoing, the Board may prohibit and order the immediate removal of any sign which poses a threat to health or safety, or which is in violation of law.

**Section 8.9 Insurance, Compliance with Law and Owner Personal Property.**

Nothing shall be done or kept in any Unit or in the Project that might increase the rate of, or cause the cancellation of, insurance on the Project, or any portion of the Project, without the prior written consent of the Board. No Owner shall permit anything to be done or kept in his or her Unit that violates any permit, law, ordinance, statute, rule or regulation of any local, county, state or federal body. No Owner shall allow furniture, furnishings, or other personal property belonging to such Owner to remain within any portion of the Project except in such Owner's Unit or Exclusive Use Common Area and except as may otherwise be permitted by the Board.

**Section 8.10 Abandoned Personal Property.**

Personal property, (other than vehicles which are not subject to this Section), is prohibited from being stored, kept, or allowed to remain for a period of more than twenty four (24) hours upon any portion of the Common Areas. If the Board or its designate, in its sole discretion, determines that the property has been abandoned or is being kept, stored, or allowed to remain on the Common Areas in violation of this subparagraph, the Board may place a notice

on the personal property and/or on the front door of the Owner's Unit (if known) specifying the nature of the violation and stating that after two (2) days the property may be removed or either discarded or stored by the Board in a location which the Board may determine, at the Owner's or user's sole cost and expense. The notice shall include the name and telephone number of the person or entity which will remove the property and the name in telephone number of a person to contact regarding the alleged violation.

If two (2) days after such notice is placed on the personal property and/or the front door of the Unit, the violation continues or thereafter occurs within six (6) months of such notice, the personal property may be removed in accordance with the notice, without further notice to the Owner or user of that personal property.

In addition to the provisions above, the Board, in its discretion, may determine that an emergency situation exists, and the personal property abandoned or stored in violation of this Section may, without prior notice to the Owner or user of the personal property, be removed or either discarded or stored by the Board in a location which the Board may determine at the Owner's or user's sole cost and expense; provided, however, the Board shall give to the Owner notice of the removal of the property and the location of the personal property within three (3) days after the personal property is removed.

If personal property is removed in accordance with this Section, neither the Association nor any officer or agent of the Association shall be liable to any person for any claim of damage resulting from the removal activity. Notwithstanding anything to the contrary herein, the Board may elect to impose fines or use other available sanctions, rather than exercise its authority to remove abandoned or improperly stored personal property, as set forth herein.

#### **Section 8.11 Antennas and Satellite Dishes.**

Owners may install satellite dishes not in excess of one (1) meter in diameter on Exclusive Use Common Areas appurtenant to their unit, such as balconies, terraces, decks or patios. Owners may not install satellite dishes or antennas on any Common Areas such as roofs, hallways, walkways or exterior walls of the buildings. The Association may adopt rules permitting installation of satellite dishes or antennas in Common Areas, but adoption of said rules are solely within the discretion of the Board of Directors. The Board may adopt rules regulating the installation of antennas or satellite dishes on Exclusive Use Common Areas so long as the rules do not unreasonably delay or prevent installation, maintenance or use, unusually increase the cost of installation, maintenance or use, or preclude reception of an acceptable quality signal. Any rules implemented for legitimate safety restrictions are permitted, even if

they impair installation, maintenance or use of the satellite dish or antenna. Other than as set forth above, no Owner shall place or maintain any outside television, radio or other antenna within the Project except upon written authorization by the Board of Directors or Architectural Review Committee.

**Section 8.12 Solar Panels.**

Solar panels may be installed in Common Areas within the community upon written authorization from the Board of Directors through the Architectural approval process. This includes any replacement of already existing solar panels. Installations must be performed by a licensed contractor and will be considered pursuant to current California and Federal law. Specifically, the applicant homeowner must comply with all sections of Civil Code Section 4746, both sections 4746(a) and 4746(b), under this Code, or any successor statute or law. The Board of Directors may adopt rules to further clarify these requirements.

**Section 8.13 Restrictions on Exterior Installations.**

No owner of a Unit, resident or lessee thereof shall install wiring or conduit for electrical or telephone installation, internet access, television antennae, machines or air conditioning units on the exterior of the buildings of the project or that protrude through the walls or the roof of the buildings except as authorized by the Association.

**Section 8.14 Vehicle and Parking Restrictions.**

Parking in condominium communities like Mission Ridge can present challenges in many ways, including availability, access, appearance, and effect on adjacent spaces. Accordingly, the following provisions govern vehicles in the community.

**Section 8.14.1 Parking in Project.**

Owners and residents shall use their respective parking spaces and carports for parking of their Authorized Vehicles. Prohibited Vehicles are not allowed on the Properties, except for temporarily for loading and unloading purposes, deliveries, or service vehicles for purposes related to the furnishing of services to the Association and Owner or a Resident. Restricted Vehicles are allowed on the Properties, but only with prior approval of the Association, and subject to any conditions placed thereon by the Board. There shall be no parking of vehicles on unpaved surfaces, such as lawns or dirt surfaces. No Owner or resident shall block or impede access to or from the Project, parking space, garage, driveway, or of firefighting equipment to or through the Project. An Owner or resident shall park no more Authorized Vehicles in the Project at any one time than the number of Parking Spaces appurtenant to the Unit such Owner or Resident occupies, or for which such Owner or resident may have a license therefor.

#### **Section 8.14.2 Authorized Vehicles.**

Subject to Section 8.14.3 below, the following vehicles are "Authorized Vehicles:" (a) standard passenger vehicles, including without limitation automobiles, (b) passenger vans designed to accommodate ten (10) or fewer people, (c) motorcycles, provided they are operated at noise levels not exceeding 45 decibels; and (d) pick-up trucks having a manufacturer's rating or payload capacity of one (1) ton or less. Authorized Vehicles shall also include those automobiles, passenger vans and pick-up trucks which are used both for business and personal use and have signs or makings of a commercial nature on such vehicles, provided that such signs or makings are unobtrusive and inoffensive as determined by the Board.

#### **Section 8.14.3 Prohibited Vehicles.**

The following are "Prohibited Vehicles:" (a) commercial vehicles, including but not limited to, stakebed trucks, tank trucks, dump trucks, step vans, concrete trucks, but excluding those commercial vehicles described in Section 8.14.2 above, (b) buses or vans designed to accommodate more than ten (10) people, (c) vehicles having more than two (2) axles, (d) trailers (including horse trailers), trailer coaches, (e) recreational vehicles, campers, or pickup trucks with a camper shell that is higher than the cab or longer than the factory bed (f) noisy (in excess of 45 decibels) or smoky vehicles, (g) parts of vehicles, (h) aircraft, or (i) such other vehicles and/or any vehicle or vehicular equipment deemed a nuisance by the Board.

#### **Section 8.14.4 Restricted Vehicles.**

The following vehicles are "Restricted Vehicles:" all-terrain vehicles (e.g. ATV), boats, personal water-craft (e.g. Sea Doo), boat trailers, golf carts, inoperable vehicles, vehicles from which an essential or legally required operating part is removed, unlicensed vehicles, and unregistered vehicles.

#### **Section 8.14.5 Towing of Vehicles.**

Any vehicle within the Properties parked in violation of this Declaration or the other Governing Documents, may be removed as provided for in accordance with the provisions of California Vehicle Code §22658.2 and any amendments thereto, or in accordance with City ordinances. Notwithstanding the foregoing, the Association may cause the removal, without notice, of any vehicle parked in a marked fire lane, within fifteen (15) feet of a fire hydrant, or in a manner which interferes with any entrance to or exit from the Project or any Condominium Unit, parking space or driveway located thereon. The Association shall not be liable for any damages incurred by the vehicle

owner because of the removal in compliance with this Section or for any damage to the vehicle caused by the removal, unless such damage resulted from the intentional or negligent act of the Association or any person causing the removal of or removing the vehicle. If requested by the owner of the vehicle, the Association shall state the grounds for the removal of the vehicle.

**Section 8.14.6 Non-Responsibility for Damage or Loss.**

Neither the Association nor any Board member shall be liable for any damage to or loss of any vehicle parked in the Project absent gross negligence on the part of the Association or its agents.

**Section 8.15 Garbage and Refuse Disposal.**

All rubbish, trash and garbage shall be regularly removed from the Project, and shall not be allowed to accumulate thereon. Trash, garbage and other waste shall not be kept except in sanitary containers. Any equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition. All equipment, garbage cans, woodpiles, or storage piles shall be kept screened and concealed from view of other Units, streets and Common Areas.

**Section 8.16 Clothes Lines.**

Except as allowed under the Rules, no exterior clothes lines shall be erected or maintained and there shall be no outside laundering or drying of clothes. The Association may adopt Rules regarding the temporary use of clotheslines and drying racks.

**Section 8.17 Power Equipment and Car Maintenance.**

No power equipment, hobby shops, or car maintenance (other than emergency work) shall be permitted on the Project except with prior written approval of the Board. Approval shall not be unreasonably withheld and in deciding whether to grant approval, the Board shall consider the effects of noise, air pollution, dirt or grease, fire hazard, ii:interference with radio or television reception, and similar objections.

**Section 8.18 Common Areas.**

Except as otherwise provided herein, the Common Areas shall be improved and used only for (a) affording vehicular passage and pedestrian movement within the Project, including access to the Living Units, (b) recreational use by the Owners and occupants of living Units in the Condominium Property and their guests, subject to the Governing Documents, (c) beautification of the Common Area and providing privacy to the residents of the Project through landscaping and such other means as the Board shall deem appropriate, (d) parking of

automotive passenger vehicles in areas provided therefore as may be designated and approved by the Board by such persons, upon such terms and conditions and for such fees as may from time to time be determined by the Board and/or as allowed by this Declaration, (e) as Exclusive Use Common Areas to be used in the manner described herein (nothing herein contained shall be deemed to allow persons other than the Owner of a Unit to which an Exclusive Use Common Area is appurtenant (or his or her tenants and licensees) to enjoy the use thereof).

No part of the Common Area shall be obstructed so as to interfere with its use for the purposes hereinabove permitted, nor shall any part of the Common Area be used for storage purposes (except as incidental to one of such permitted uses, or for storage of maintenance equipment used exclusively to maintain the Common Area), nor in any manner which shall increase the rate of which insurance against loss by fire, or the perils of the extended coverage endorsement to the California Standard Fire Policy form, or bodily injury, or property damage liability insurance covering the Common Area and improvements situated thereon may be obtained, or cause such policies representing such insurance to be cancelled or suspended or the company issuing the same to refuse renewal thereof.

Except as provided herein, nothing contained herein shall give any Owner the right to paint, decorate, remodel, or alter any part of the Common Area or any Exclusive Use Common Area, without the prior written consent of the Board or Architectural Committee.

#### **Section 8.19 Use of Exclusive Use Common Areas.**

With regard to the deck, patio and entry Exclusive Use Common Areas appurtenant to a Unit, the Owner thereof may place and use furniture designed for patios and potted plants upon said area, provided that steps are taken to protect the surface, including water pans for pots, and provided that ingress and egress through any entry area is not unreasonably impeded. Owners may not store personal property on any Exclusive Use Common Area, and there shall be no woodpiles or storage piles accumulated outside of any enclosed storage area. There shall be no exterior fires whatsoever, except barbecue fires that are located only on the Owners' Exclusive Use Common Area and contained within receptacles designed for such purpose and that comply with California Fire Code regulations.

#### **Section 8.20 Right to Decorate Unit Interior; Prior Approval Required for Certain Changes.**

Each Condominium Owner shall have the exclusive right to paint, tile, carpet, paper or paint or otherwise refinish and decorate the inner surfaces of the walls, ceilings, floors, and doors bounding the Unit, and install window coverings, subject to any Rules adopted by the

Association. Any such paint or finish is at the sole cost and expense of the Unit Owner, and each Owner making such changes is advised that in the event maintenance or repair work is necessary by the Association or any other Owner inside the decorated surface, the Owner thereof is responsible for replacing the surface decoration after such work is completed. The foregoing notwithstanding, architectural approval will be required prior to changes to interior bearing walls, structural components of the building, or plumbing or electrical systems in the walls. Furthermore, any changes which would impact the acoustical aspect of the residence require prior architectural approval (for example, replacing carpeted surfaces with hard-surface flooring, replacing or covering walls with stone, attaching speakers to walls or ceilings, etc.). Failing to obtain the required architectural approval prior to the work being completed may subject the Owner thereof to enforcement action by the Association, including but not limited to removal and inspection of the work, at the Owners' expense.

## **ARTICLE 9 ARCHITECTURAL CONTROL**

### **Section 9.1 Approval of Improvements by Board or Architectural Committee; Construction by Licensed Contractors.**

Owners may make Improvements to their Living Units subject to the requirements of the Governing Documents, including this Article.

#### **Section 9.1.1 Approval Generally.**

Before commencing construction or installation of any Improvement, the Owner planning such Improvement must submit a written request for approval to the Board or its duly appointed Architectural Committee, if such a committee is established hereunder. The Owner's request must include such plans and specifications satisfying the minimum requirements specified in this Declaration and the Architectural Rules. Unless the Board's approval of the proposal is first obtained, no work on the Improvement shall be undertaken. The Board shall base its decision to approve, disapprove, or conditionally approve the proposed Improvement on the criteria described herein. If the Board establishes an Architectural Committee, all references in this Article to the "Board" or the "Board of Directors," other than in Section 9.14 relating to liability limitations, shall be deemed to be references to the Architectural Committee, unless the context shows a contrary intent.

**Section 9.1.2 Modifications to Approved Plans Must Also Be Approved.**

Once a proposed work of Improvement has been duly approved by the Board, no material modifications shall be made in the approved plans and specifications therefor and no subsequent alteration, relocation, addition, or modification shall be made to the work of Improvement, as approved, without a separate submittal to, and review and approval by, the Board. If the proposed modification will have, or is likely to have, a material effect on other aspects or components of the work, the Board, in its discretion, may order the Owner and his or her contractors and agents to cease working not only on the modified component of the Improvement but also on any other affected component. The restrictions of this subparagraph shall also apply to any proposed modification of any Unit, fence, or other structure from its appearance or location as originally constructed by the Declarant.

**Section 9.1.3 Approval Needed for Maintenance and Repairs Affecting Common Area.**

Any maintenance or repair work by an Owner that necessitates access through, demolition of, or otherwise affecting Common Areas must have prior architectural approval.

**Section 9.1.4 Licensed Contractors.**

All work is to be completed by appropriately licensed contractors.

**Section 9.2 Composition of the Architectural Committee.**

If the Board elects to establish an Architectural Committee, the Committee shall be composed of three Members of the Association appointed by the Board. In selecting Members for the Committee, the Board shall endeavor to select individuals whose occupations or education will provide technical knowledge and expertise relevant to matters within the Committee's jurisdiction. Committee members shall serve one-year terms, subject to the Board's power to remove any Committee member and to appoint his or her successor. Neither the members of the Committee nor its designated representatives shall be entitled to any compensation for services performed pursuant hereto. If the Board establishes a Committee, it shall have those powers that are specifically designated by the Board in the resolution establishing the Committee.



**Section 9.3 Duties.**

The Board shall have the duty to consider and act on the proposals and plans for Improvements submitted to it under this Declaration, to adopt Architectural Rules, and to carry out all other architectural review duties imposed on it by this Declaration.

**Section 9.4 Meetings.**

The Board shall meet from time to time as necessary to properly perform the architectural review functions described herein. The vote or written consent of a majority of the Board shall constitute the action of the Association. The Board shall keep and maintain a written record of all actions taken, and actions on architectural matters may be undertaken by the Board at its regular Board meetings. Any decision on a proposed Improvement project shall be made in a fair, reasonable, and expeditious manner; shall be made in good faith; and shall not be unreasonable, arbitrary, or capricious. Decisions shall be consistent with any governing provision of law, including, without limitation, the Fair Employment and Housing Act.

The applicant shall be entitled to appear at any meeting of the Board at which his or her proposal has been scheduled for review and consideration. The applicant shall be entitled to be heard on the matter and may be accompanied by his or her architect, engineer, and/or contractor, if any. Other Owners whose Units may be affected by the proposed Improvement (in terms of the acoustical aspect, structural encroachments, utility disruption, or other considerations) shall also be entitled to attend the meeting at the discretion of the Board.

Reasonable notice of the time, place, and proposed agenda for the review of architectural matters shall be communicated before the date of the meeting to any applicant whose application is scheduled to be heard. Notice may also be given to neighboring Owners if the Board, in the reasonable exercise of its discretion, considers such notice appropriate.

**Section 9.5 Architectural Rules.**

The Board may, from time to time, adopt, amend, and repeal rules and regulations to be known as "Architectural Rules." The Architectural Rules shall interpret and implement the provisions hereof by setting forth (a) the standards and procedures for architectural review, including the required content of Improvement plans and specifications; (b) guidelines for architectural design or placement of any work of Improvement or color schemes, exterior finishes, and materials and similar features recommended or required for use in connection with particular Improvement projects within the Development; and (c) the criteria and procedures for requesting variances from any property use restrictions that would otherwise apply to the proposed Improvement under the Governing Documents. Notwithstanding the foregoing, no

Architectural Rule shall be in derogation of the minimum standards required by this Declaration. In the event of any conflict between the Architectural Rules and this Declaration, the provisions of the Declaration shall prevail. If the right to adopt Architectural Rules is delegated to the Committee, any such rule shall not become effective until it has been approved by the Board. Architectural Rules that relate to procedural requirements for the review and approval of Improvement projects are "Class I Rules" subject to prior notice of adoption.

Among other things, the Architectural Rules shall provide a fair, reasonable, and expeditious procedure for making decisions on submitted Improvement plans and projects. The procedures shall include prompt deadlines for various actions and a maximum time for response to an application.

#### **Section 9.6 Basis for Approval of Improvements.**

When a proposed Improvement is submitted to the Board or its duly appointed Architectural Committee for review, the Board or Committee shall grant the requested approval only if the Board or Committee, in its sole discretion, makes the following findings regarding the proposed project: (a) The Owner's plans and specifications conform to this Declaration and to the Architectural Rules in effect at the time such plans are submitted to the Committee; (b) The Improvement will be in harmony with the external design of other structures and landscaping within the Development; (c) The Improvement, as a result of its appearance, location, or anticipated use, will not interfere with the reasonable enjoyment of any other Owner of his or her property; and (d) The proposed Improvement(s), if approved, will otherwise be consistent with the architectural and aesthetic standards prevailing within the Project and with the overall plan and scheme of development within the Project.

The Board shall be entitled to determine that a proposed Improvement or component thereof is unacceptable when proposed on a particular Unit, even if the same or a similar Improvement or component has previously been approved for use at another location within the Project, if certain factors militate against the Improvement or use of a particular component thereof on the Unit involved in the Owner's submittal. Such factors include, but are not limited to, drainage; topography; visibility from Common Areas, or other Units; adverse acoustical impact on other Units; or prior adverse experience with the product or components used in construction of the Improvement, design of the Improvement, or use at other locations within the Project.

In approving a request for construction of an Improvement, the Board may condition approval on the adoption of modifications in the plans and specifications or observance of restrictions as to location, noise abatement, or similar mitigating conditions.

**Section 9.7 Time Limits for Approval or Rejection.**

**Section 9.7.1 Deadlines for Association Action, Generally.**

Within 30 days after submission of plans and specifications satisfying the requirements of the Architectural Rules, the Board shall return one set of such plans to the applicant, with either written notice of approval or disapproval or with written suggestions of changes required for approval accompanying the returned set of plans. If the Board recommends that the plans and specifications be modified, the applicant should consider the application disapproved, and may implement such changes to the plans and within 30 days resubmit plans incorporating such changes for approval to the Board, which shall not unreasonably withhold its approval as long as the applicant has complied in all material respects with the requested changes. If no written notice of approval or disapproval is received by the applicant within 30 days after the Owner's plans and specifications (or revisions thereto) are submitted to the Board, the plans shall be deemed to have been approved as submitted.

**Section 9.7.2 Appeals to the Board.**

If the Board establishes an Architectural Committee, then in accordance with Civil Code §4765(a)(5), any decision by the Committee other than to approve the Owner applicant's proposal as presented shall be subject to appeal to the Board and shall be placed on the agenda for confirmation, modification, or denial at the next scheduled regular Board meeting, and the 30-day period set forth in this Section for Association action shall be extended to include the days from the committee's action to the meeting at which the appeal is heard. The Architectural Rules shall include fair and expeditious procedures for the hearing of appeals under this subparagraph.

**Section 9.8 Proceeding With Work.**

On receipt of approval of an Improvement project from the Board, the Owner shall, as soon as practicable, satisfy all conditions thereof and diligently proceed with the commencement of construction of the Improvement as approved. In all cases, work on an Improvement project shall commence within 3 months from the date of such approval. If the Owner fails to comply with this Section, any approval given under this Article shall be deemed revoked, unless the Board, on written request of the Owner tendered before the expiration of the initial 3 month period, extends the time for commencement or completion. No such extension shall be granted

except on a finding by the Board that there has been no change in the circumstances on which the original approval was granted and that the Owner has a bona fide intention and ability to complete the Improvement project within the time specified in the extension request.

**Section 9.9 Failure to Complete Work.**

Unless the Board grants the Owner an extension of time to complete the project, the construction, reconstruction, refinishing, or alteration of any such Improvement must be completed within 9 months after construction has commenced, except and for so long as such completion is rendered impossible or would result in great hardship to the Owner because of strikes, fires, national emergencies, natural calamities, or other supervening forces beyond the control of the Owner or his or her agents.

If the Owner fails to comply with this Section, the Board shall proceed, in accordance with the provisions hereof, as though the failure to complete the Improvement was a noncompliance with approved plans.

**Section 9.10 Inspection of Work by the Board.**

Inspection of the work relating to any approved Improvement and correction of defects therein shall proceed as follows: (a) During the course of construction, representatives of the Board shall have the right to inspect the jobsite to confirm that the work of Improvement is proceeding in accordance with the approved plans and specifications; (b) On the completion of any work of Improvement for which architectural approval is required under this Article, the Owner shall give the Board a written notice of completion; (c) Within 30 days thereafter, the Board may inspect the Improvement to determine whether it was constructed, reconstructed, altered, or refinished in substantial compliance with the approved plans. If the Board finds that the Improvement was not erected, constructed, or installed in substantial compliance with the Owner's approved plans, then within the 30-day inspection period the Board shall give the Owner a written notice of noncompliance detailing those aspects of the project that must be modified, completed, or corrected. If the violation or nonconforming work is not corrected, the Board shall have the enforcement rights and remedies set forth herein.

If for any reason the Board fails to notify the Owner of any noncompliance within 30 days after receipt of the Owner's notice of completion, the Improvement shall be deemed to have been constructed in accordance with the approved plans for the project, unless it can be demonstrated that the Owner knew of the noncompliance and intentionally misled the Board with respect thereto.

**Section 9.11 Enforcement of Architectural Review and Approval Requirements.**

If it comes to the knowledge and attention of the Association, the Architectural Committee, or the agents or employees of either, that a work of Improvement, or any modification thereof, is proceeding without proper approval, the Association shall be entitled to exercise the enforcement remedies specified herein, including, without limitation, ordering an immediate cessation and abatement of all aspects of the work of Improvement until such time as proper architectural review and approval is obtained.

In addition to other enforcement remedies set forth in this Declaration, the Board shall have the authority to order an abatement (red tag) of any construction, alteration, or other matter for which approval is required, to the extent that the work has not been approved under this Article or if the work does not conform to the plans and specifications submitted to and approved by the Board. If an Improvement project is red tagged, the Owner and his or her contractor shall cease all construction activity until such time as the issue giving rise to the red tag order is resolved. The red tag notice shall clearly state the reasons why the abatement has been ordered.

If an Owner fails to promptly respond to a red tag order or to remedy any noticed noncompliance within 30 days after receipt of the Association's notice of noncompliance, the Board may schedule an enforcement hearing on the matter or take other reasonably appropriate action, including but not limited to instituting litigation.

**Section 9.12 No Waiver.**

The approval by the Board of any plans, drawings, or specifications for any work of Improvement done or proposed or for any other matter requiring the approval of the Architectural Committee under this Declaration, or any waiver thereof, shall not be deemed to constitute a waiver of any right to withhold approval of any similar plan, drawing, specification, or matter subsequently submitted for approval by the same or some other Owner. Different locations for Improvements, the size of the structure, proximity to other Units or Common Facilities, and other factors may be taken into consideration by the Board in reviewing a particular submittal.

**Section 9.13 Variances.**

The Board of Directors, in its sole discretion, shall be entitled to allow reasonable variances in any procedures specified in this Article V or in any of the minimum improvement standards to overcome practical difficulties, avoid unnecessary expense, or prevent unnecessary hardship to any Owner-applicant, provided all of the following conditions are met:

(a) If the requested variance will necessitate deviation from, or modification of, a property use restriction that would otherwise be applicable under this Declaration, the Board must conduct a hearing on the proposed variance after giving prior written notice to the Board and to all Owners of adjacent Units. The notice shall also be communicated just like a notice and agenda for a Board meeting. The notice shall be mailed to the interested Owners and communicated at least 15 days before the date when the Board is scheduled to act on the requested variance. No decision shall be made with respect to the proposed variance until the 15-day comment period has elapsed.

(b) If the requested variance pertains to any material Improvement or project, the Board must make a good faith written determination that the variance is consistent with one or more of the following criteria:

(i) The requested variance will not constitute a material deviation from any restriction contained herein, or the variance proposal allows the objectives of the violated requirement(s) to be substantially achieved despite noncompliance;

(ii) The variance relates to a use restriction or minimum construction standard otherwise applicable hereunder that is unnecessary or burdensome under the circumstances; or

(iii) The variance, if granted, will not result in a material detriment or create an unreasonable nuisance with respect to any other Unit or Common Area.

#### **Section 9.14 Limitation on Liability.**

Neither the Association, the Board (or Architectural Committee, if any), nor any member thereof shall be liable to any Owner for any damage, loss, or prejudice suffered or claimed on account of any mistakes in judgment, negligence, or nonfeasance arising out of (a) the approval or disapproval of any plans, drawings, and specifications, whether or not defective; (b) the construction or performance of any Improvement project, whether or not under approved plans, drawings, or specifications; (c) the granting of a variance; or (d) the execution and delivery of a notice of noncompliance, 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 he or she possessed at the time the act or omission occurred.

#### **Section 9.15 Compliance with Governmental Regulations.**

Review and approval by the Board of any proposals, plans, or other submittals pertaining to Improvements shall in no way be deemed to constitute satisfaction of, or compliance with, any

building permit process or any other governmental requirements, the responsibility for which shall lie solely with the Owner who desires to construct, install, or modify the Improvement.

## **ARTICLE 10 INSURANCE**

### **Section 10.1 Insurance Coverage Generally.**

Unless specified otherwise, the Association is responsible for insuring the basic building(s) (bare walls, roof, bare floors, elevators). Owners are responsible for insuring appliances, carpeting, cabinets, wall coverings, and other items in the Unit. If the Unit is rented, Owners are also responsible for insuring for loss of rent, and tenants are responsible for obtaining renters insurance.

### **Section 10.2 Association Coverage.**

The Association shall purchase, obtain and maintain the following types of insurance, if and to the extent they are available:

#### **Section 10.2.1 Fire and Casualty.**

The Association shall obtain and maintain a master or blanket policy of fire and casualty insurance, replacement cost basis, on all Common Areas within the Property, including the buildings containing Units except as provided in Section 10.3 and 10.10 below. The insurance shall be kept in full force and effect at all times.

#### **Section 10.2.2 Liability.**

A comprehensive public liability insurance policy insuring the Association, its agents, and the Owners and occupants of the Condominiums and their respective family Members, guests, invitees, and agents against any liability incident to the ownership or use of the Common Area or any other Association owned or maintained real or personal property;

#### **Section 10.2.3 Workers Compensation.**

Worker's compensation insurance to the extent required by law;

#### **Section 10.2.4 Directors Liability.**

Officers and directors liability insurance;

**Section 10.2.5 Fidelity Bond.**

Appropriate fidelity bond coverage to protect against dishonest acts by the Association's officers, directors, employees, trustees, and all others who are responsible for handling funds of the Association if deemed necessary by a majority of the Board; and,

**Section 10.2.6 Other Insurance.**

Such other insurance as the Board in its discretion considers necessary or advisable.

**Section 10.3 Scope of Coverage.**

The Board shall have the sole authority to determine the amount, terms, and coverage of any policy required hereunder. The amount, terms, and coverage of policies other than casualty required hereunder (including the type of endorsements, the amount of the deductible, the named insureds, the loss payees, standard Mortgage clauses, and notices of changes or cancellations) shall be no less than that which is customary for similar policies on similar Projects in the area, except that the Board will make every effort to obtain the minimum coverages set forth in Civil Code Sections 5800 and 5805. With regard to casualty coverage, the coverage may be a "bare-walls" policy, unless the Board, in its sole discretion, determines that it is in the best interests of the Association for the policy to include some or all of the interior building fixtures such as carpet, wall coverings, cabinetry, etc. Unless included under the Association's policy, the Unit Owner shall be responsible for insuring such items as interior building fixtures and personal property within their own policy (commonly referred to as an ISO Form HO-6 Policy).

**Section 10.4 Insurance Trustee.**

Each Owner appoints the Association or any insurance trustee designated by the Association to act on behalf of the Owners in connection with all insurance matters arising from any insurance policy maintained by the Association, including, without limitation, representing the Owners in any proceeding, negotiation, settlement, or agreements.

**Section 10.5 Waiver of Subrogation.**

Any insurance maintained by the Association shall contain a waiver of subrogation as to the Association's officers, directors, and Members, the Owners of the Condominiums and Mortgagees, and, if obtainable, a cross-liability or severability of interest endorsement insuring each insured against liability to each other insured.



**Section 10.6 No Duplicate Insurance Coverage.**

No Condominium Owner shall purchase duplicate insurance coverage on their Condominium Unit when said coverage has already been purchased by the Association. If any Owner violates this provision, any loss in insurance proceeds to the Association will be chargeable to the Owner who acquired the duplicate insurance.

**Section 10.7 Unit Owner Insurance Required.**

Owners are required to insure their personal property against loss and obtain personal liability insurance covering the contents of their individual Units, including loss assessment coverage and loss of use coverage. If the Unit is rented, tenants are encouraged to obtain renters insurance, and Owners are responsible for obtaining loss of rent coverage. In addition, any improvements made by or acquired by an Owner within his or her Unit shall be separately insured by an Owner, but the insurance is to be limited to the type and nature of coverage commonly known as tenant's improvements. Any Owner failing to purchase said insurance waives any claim he or she may have against the Association for damage to the interior of his or her Unit, arising out of negligence, nuisance, or breach of contract on the part of the Association, so long as the damage or loss would have been covered under a standard Condominium Homeowner Policy (HO6) had it been in force at the time of the loss.

**Section 10.8 Insurance Deductible.**

The amount of the deductible portion of any insurance coverage maintained by the Association shall be established in the reasonable discretion of the Board. In the event a claim is made against the insurance policy maintained by the Association, and proceeds from that policy are used to repair damage, the responsibility for the deductible shall be as follows:

**Section 10.8.1 Damage due to Act or Omission.**

Should the damage result from the act or omission of any party, whether such act or omission is negligent or willful, such party shall be responsible for the deductible.

**Section 10.8.2 Damage from Owner-Maintained Item.**

Should the damage result from an item, the maintenance of which is the responsibility of an Owner, the Owner responsible for the maintenance shall be responsible for the deductible.

**Section 10.8.3 Damage from Association-Maintained Item.**

Should the damage result from an item, the maintenance of which is the responsibility of the Association, the Association shall be responsible for the deductible.

**Section 10.8.4 Damage from Multiple Sources.**

Should the damage result from more than one source, the responsibility for the deductible shall follow the percentage of fault.

**Section 10.9 Annual Insurance Review.**

The Board shall review the insurance carried by or on behalf of the Association at least annually, for the purpose of detennining if such insurance is adequate. Such responsibility may be performed and shall be deemed reasonably performed by the Board requesting the Association's insurance agent to verify that the insurance policies in existence meet the needs of the Association.

**Section 10.10 Failure to Acquire Insurance.**

The Association, and its Directors and Officers, shall have no liability to any Owner or Mortgagee if, after a good faith effort, it is unable to obtain any insurance required hereunder, because the insurance is no longer available or, if available, can be obtained only at a cost that the Board, in its sole discretion, determines is unreasonable under the circumstances, or the Members fail to approve any Assessment increase needed to fund the insurance premiums. In such event, the Board promptly shall notify each Member and any Mortgagee entitled to notice that the specific insurance will not be obtained or renewed. In making a determination as to whether to acquire any such insurance, the Board may base its decision upon, among other things, a vote of the Owners.

**Section 10.11 Insurance Claims Initiated by Association Only.**

The Board shall have sole and exclusive ability and responsibility for determining whether or not a claim shall be submitted to an insurer under any policy maintained by the Association.

**ARTICLE 11  
DAMAGE OR DESTRUCTION**

**Section 11.1 Destruction; Proceeds Exceed 85 Percent of Reconstruction Costs.**

If there is a total or partial destruction of the improvements in the Project, and if the available proceeds of the insurance carried plus reserve account funds designated for the repair or replacement of capital improvements which have been damaged are sufficient to cover not less than eighty five percent (85%) of the costs of repair and reconstruction, the improvements shall be promptly rebuilt unless, within ninety (90) days from the date of destruction, Owners

then holding at least seventy five percent (75%) of the total voting power of Owners present and entitled to vote, at a duly constituted meeting or voting by written ballot, determine that repair and reconstruction shall not take place. If such a meeting is called, the Association shall solicit and obtain bids from at least two reputable contractors to repair and reconstruct the improvements in accordance with the original plans and shall present this information to the Owners at the meeting. If repair and reconstruction is to take place the Association shall be required to execute, acknowledge, and record in the office of the County Recorder of the County not later than one hundred twenty (120) days from the date of destruction, a certificate declaring the intention of the Owners to rebuild.

**Section 11.2 Destruction; Proceeds Less Than 85 Percent of Reconstruction Costs.**

If the proceeds of insurance carried plus reserve account funds designated for the repair or replacement of capital improvements which have been damaged are less than eighty five percent (85) of the costs of repair and reconstruction, the improvements shall be promptly rebuilt, unless within ninety (90) days from the date of destruction, Owners then holding at least sixty six and two thirds percent (66 2/3%) of the total voting power of Owners present and entitled to vote, at a duly constituted meeting or by written ballot, determine that repair and reconstruction shall not take place. If such a meeting is called, the Association shall solicit and obtain bids from at least two reputable contractors to repair and reconstruct the improvements in accordance with the original plans and shall present this information to the Owners at the meeting. If repair and reconstruction are to take place, the Association shall execute, acknowledge, and record in the office of the County Recorder of the County not later than one hundred twenty (120) days from the date of destruction a certificate declaring the intention of the Owners to rebuild.

**Section 11.3 Apportionment of Assessments.**

If the Owners determine to rebuild pursuant to Sections I I. I and 11.2, above, each Owner shall be obligated to contribute his or her equal share of the cost of reconstruction or restoration over and above the available insurance proceeds. The Association may levy a Special Assessment for the cost of restoration or reconstruction over and above the insurance proceeds, which may be enforced under the lien provisions contained in Article 4 or in any other manner provided in this Declaration.

**Section 11.4 Rebuilding Contract.**

If the Owners determine to rebuild, the Board or its authorized representative shall, after obtaining bids from at least two reputable contractors as required by the paragraphs above, award the repair and reconstruction work to the lowest bidder that otherwise meets the requirements set

forth by the Board in soliciting bids. The Board shall have the authority to enter into a written contract with the contractor for the repair and reconstruction, and the insurance proceeds held by the trustee shall be disbursed to this contractor according to the terms of the contract. It shall be the obligation of the Association to take all steps necessary to assure the commencement and completion of authorized repair and reconstruction at the earliest possible date.

**Section 11.5 Rebuilding Not Authorized.**

If the Owners determine not to rebuild, then; subject to the rights of Mortgagees, any insurance proceeds then available for such rebuilding shall be distributed to each Owner (of an uninhabitable damaged Unit which is not to be rebuilt) according to the relative fair market values of their Condominiums. The Board shall select an independent appraiser who shall be a Member of the Society of Real Estate Appraisers (SREA) or other nationally recognized appraisers' organization and who shall determine such relative values in accordance with the standards of such organizations as of a date immediately prior to such destruction. The Association shall have the duty, within 120 days from the date of destruction, to execute, acknowledge, and record in the office of the County Recorder of the County, a certificate declaring the intention of the Owners not to rebuild.

**Section 11.6 Minor Repair and Reconstruction.**

The Association shall have the duty to repair and reconstruct improvements, without the consent of Owners and irrespective of the amount of available insurance proceeds, in all instances of partial destruction where the estimated cost of repair and reconstruction does not exceed \$20,000 in the case of Common Area improvements. The Association can levy a special Assessment for the cost of repairing and reconstructing improvements to the extent insurance proceeds are unavailable, such Assessment to be levied as described in Section 11.3, above, (but without the consent or approval of Owners, despite any contrary provisions in this Declaration).

**Section 11.7 Revival of Right to Partition.**

On recordation of a certificate described in Section 11.5, above, the right of any Owner to partition through legal action as described in Section 2.6 shall revive immediately. In addition, each Owner, by accepting a deed to a Condominium, grants to the Association an irrevocable power of attorney to sell the entire Project for the benefit of the Owners, to terminate the Declaration, and to dissolve the Association. The net proceeds following sale of the Project and dissolution of the Association shall be distributed to the Owners in the same manner that insurance proceeds are distributed under Section 11.5, above, with all Owners sharing in said proceeds as set forth therein.

## **ARTICLE 12 CONDEMNATION**

### **Section 12.1 Sale by Unanimous Consent.**

If an action for condemnation of all or a portion of the Properties is proposed or threatened by any governmental agency having the right of eminent domain, then, on unanimous written consent of all the Owners and after notice to all Mortgagees, the Properties, or a portion of it may be sold by the Board acting as irrevocable attorney-in-fact of all of the Owners for a price deemed fair and equitable by the Board, but in no event less than the aggregate unpaid balance of all first Mortgages encumbering Condominiums within the Properties.

### **Section 12.2 Distribution of Proceeds of Sale.**

If a sale occurs under Section 12.1, and the agreement of sale does not by its terms apportion the sale proceeds among the Owners and their respective Mortgagees, the Board shall select an independent SREA appraiser who shall determine the relative fair market values of the Condominiums affected by the sale, in accordance with SREA standards. The sale proceeds shall then be apportioned among the Owners, and their respective Mortgagees according to such relative values.

### **Section 12.3 Distribution of Condemnation Award.**

If the Properties, or a portion of it, are not sold, but is instead taken, the judgment of condemnation shall by its terms apportion the award among the Owners and their respective Mortgagees.

### **Section 12.4 Appraisal if Condemnation Award Not Apportioned.**

If the judgment of condemnation does not by its terms apportion the award among the Owners and their respective Mortgagees, the Board shall select an independent SREA appraiser who shall determine the relative fair market values of the Condominiums affected by the condemnation, in accordance with SREA standards. The award shall then be apportioned among the Owners, and their respective Mortgagees, according to such relative values.

## **ARTICLE 13 DISPUTE RESOLUTION AND ENFORCEMENT**

### **Section 13.1 Introduction.**

This Article sets forth the methods available to the Board of Directors and membership for resolving disputes within the Association along with the Association's powers of enforcement

of the Governing Documents. Sections 13.2 and 13.3 are not mandatory and may be utilized in accordance with the rules and policies of the Association. Section 13.4 providing for Internal Dispute Resolution is mandatory when initiated by a member. Section 13.5 is mandatory in the event that an Owner or the Association anticipates proceeding to litigation. The procedures in this Article specifically do not apply to assessment disputes.

**Section 13.2 Informal Notice of Violation.**

The Board may authorize an informal written notice of violation to any Owner whose Unit or any resident therein is violating a provision of the Governing Documents. Its function is notification to the Owner of the violation and requesting their voluntary cooperation in correcting it.

**Section 13.3 Disciplinary Proceedings.**

The Board of Directors may take the following actions against any person or entity whose act or failure to act violates or threatens to violate any provision of the Governing Documents: (1) impose monetary penalties, including late charges and interests; (2) suspend voting rights in the Association until the violation has been cured; and (3) suspend use privileges for Common Area recreational facilities until the violation has been cured.

The determination of whether to impose any of the foregoing sanctions shall be within the sole discretion of the Board. The Board shall substantially comply with the due process requirements of Section 7.5 of the Bylaws before imposing any of the foregoing penalties.

**Section 13.4 Internal Dispute Resolution Procedure.**

The procedures set forth herein are for the purpose of resolving a dispute between the Association and Member involving their rights, duties or liabilities under the Governing Documents or the California Non-Profit Mutual Benefit Corporation Law. Either party to a dispute within the scope of this Section 13.4 may invoke the following procedure.

**Section 13.4.1 Meet and Confer.**

The party may request the other party to meet and confer in an effort to resolve the dispute. The request shall be in writing.

**Section 13.4.2 Rights to Meet and Confer.**

A member of an Association may refuse a request to meet and confer. The Association shall not refuse a request to meet and confer.

**Section 13.4.3 Designation of Representative.**

The Association's Board of Directors shall designate at least one (1) member of the Board to meet and confer.

**Section 13.4.4 Timeliness of Meeting.**

The parties shall meet promptly at a mutually convenient time and place, explain their positions to each other and confer in good faith and in an effort to resolve the dispute. As provided in Civil Code Sec. 5900 et. seq., an Owner and the Association may be assisted by an attorney or another person in explaining their positions at their own cost. A party intending to bring an attorney or another person must give notice to the other party at least five (5) days before the meeting.

**Section 13.4.5 Agreement in Writing.**

A resolution of the dispute agreed to by the parties shall be memorialized in writing and signed by the parties, including the Board designee on behalf of the Association.

**Section 13.4.6 Agreement Judicially Enforceable.**

An agreement reached under Section 13.4 herein binds the parties and is judicially enforceable when it meets the requirements set forth in Civil Code Section 5915(c).

**Section 13.4.7 No Fee for Participation.**

An Owner may not be charged a fee to participate in the process.

**Section 13.5 Alternative Dispute Resolution Procedure.**

Prior to the commencement of an enforcement action, the party initiating the case shall comply with Civil Code Section 5935 by serving a Request for Resolution on the other party in accordance with the statute.

**Section 13.6 Litigation.**

The Association or any Member shall have the right to enforce by proceedings at law or in equity, all restrictions, conditions, covenants, Association Bylaws and rules and regulations, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration or any amendment hereto, including the right to prevent the violation of any such restrictions, conditions, covenants or reservations, the right to recover damages or other dues for such violation; provided, however, that with respect to Assessment liens, the Association shall have the exclusive right to the enforcement thereof. In any action to enforce the governing

documents, the prevailing party shall be entitled to an award of reasonable attorney fees and court costs.

**Section 13.7 Immediate, Temporary Relief.**

Nothing in this Article shall be construed to prevent the Association or any Member from obtaining immediate, temporary judicial relief by way of temporary restraining order or other means necessary to preserve the status quo, pending compliance with the provisions of this Article or applicable law as circumstances warrant.

**ARTICLE 14  
RIGHTS OF LENDERS**

**Section 14.1 Rights of Lenders Generally.**

Article 11 of the Restatement of Amended Declaration from 1993 contained provisions regarding the rights of lenders. These provisions are being included in this Declaration so that there is no change in a lenders' interest language between the Restated Declaration and this new Declaration:

Any condominium owner may encumber his condominium by deed of trust or mortgage. The beneficiary of the deed of trust or the mortgagee of a mortgage is referred to in this section as a "lender." A breach of any of the provisions of the Restatement of Amended Declaration from 1993 shall not affect or impair the lien or charge of any bona fide deed of trust or mortgage made in good faith and for value encumbering any of the condominiums. A lender who acquires title by foreclosure or deed in lieu of foreclosure shall not be obligated to cure any breach of the Restatement of Amended Declaration from 1993, which is not practical or feasible to cure. It is intended that any loan to facilitate the resale of any condominium after foreclosure or deed in lieu of foreclosure is a loan made in good faith and for value and entitled to all of the rights and protection afforded to other lenders. All liens created by the Restatement of Amended Declaration from 1993, including, but not limited to, any regular or special assessments for the payment of money, shall be subordinate to the lien created by an such bona fide deed of trust or mortgage given to any lender. Any lender who comes into possession of a unit pursuant to the remedies provided in the mortgage or deed of trust, or by way of foreclosure or assignment in lieu of foreclosure, shall take the unit free of any claims for unpaid assessments or charges against such unit which accrue prior to the time such lender comes into possession of the unit. It is specifically understood, however, that a lender is liable for such assessments during the actual period of time the lender holds title to a condominium. This liability for assessments on the part of the lender is on a pro rata basis with the pro rata period commencing on the date the lender



acquires title and ending upon resale of other transfer by the lender whereupon the liability will attach to the transferee. No amendment of the Restatement of Amended Declaration from 1993 shall affect any lender to the extent it defeats the lender's then priority opposition with respect to its lien or which would convert the lender's loan to an illegal status under such governmental regulations then applicable to the lender involved, unless the approval in writing of any such is obtained. Any amendment to the Restatement of Amended Declaration from 1993 adopted in accordance with its Article XII, Section 12.5 shall affect all lenders provided written notice of the proposed amendment is sent to all lenders then of record and the written approval is obtained from the lenders holding the beneficial interest of at least seventy-five percent (75%) of the number of mortgages or trust deeds of record constituting valid first liens against the Project or any portion of it. Provided further that unless one hundred percent (100%) of the lenders holding first deeds of trust or mortgage liens on the units have given their prior written approval, the condominium owners shall not be entitled to:

**Section 14.1.1.** Change the pro rata interest or obligations of any unit for purposes of levying assessments and charges and determining shares of the common elements and proceeds of the Project:

**Section 14.1.2.** Except as provided in Article X, Section 10.2 of the Restatement of Amended Declaration from 1993, partition or subdivide any unit or the Common Area elements of the Project; nor

**Section 14.1.3.** Except as provided in Article X, Section 10.2 the Restatement of Amended Declaration from 1993, by act or omission seek to abandon the condominium status of the Project.

**Section 14.1.4.** Any material amendment to the Restatement of Amended Declaration from 1993 or to the original Bylaws of the Association, including, but not limited to, any amendment which would change the percentage interest of the unit owners in the Project.

Because of its financial interest in the Project, a lender may appear at meetings of the voting owners and of the Board of Directors to present objections if violations of the Restatement of Amended Declaration from 1993 have not been remedied. A lender is authorized to furnish information to the Board of Directors concerning the status of any loan encumbering a condominium. All applicable fire and extended coverage insurance policies shall

contain loss payable clauses naming the lenders who encumber condominiums by deed of trust or mortgage as their interest may appear.

## **ARTICLE 15 GENERAL PROVISIONS**

### **Section 15.1 Severability.**

Invalidation of any one of these covenants, conditions and restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

### **Section 15.2 Term.**

The covenants and conditions of this Declaration shall run with and bind the Project, and inure to the benefit of and shall be enforceable by the Association or the Owner of any Property subject to this Declaration, their respective legal representatives, heirs and successors and assigns for a period of thirty years from the date this Declaration is recorded after which time they shall be automatically extended for successive periods of ten (10) years, unless an instrument in writing, signed by two-thirds (2/3) of the then Owners, is recorded agreeing to terminate the effectiveness of this Declaration.

### **Section 15.3 Construction.**

The provisions of this Declaration shall be liberally construed to effectuate its purposes of creating a uniform plan for the maintenance of a residential community of common recreational facilities and Common Areas. Paragraph headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction.

### **Section 15.4 Amendments.**

Except as elsewhere required, this Declaration may be amended by the affirmative vote or written consent of Members representing a majority of votes at a meeting at which a quorum of the Association is present. However, the percentage of voting power necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. Any amendment must be certified in a writing executed and acknowledged by an authorized officer of the Association and recorded in the County Recorder's Office of the County of San Diego.

**Section 15.5 Singular Includes Plural.**

Whenever the context of this Declaration requires same, the singular shall include the plural and the masculine shall include the feminine.

**Section 15.6 Nuisance.**

The result of every act or omission whereby any covenant contained in this Declaration is violated in whole or in part is hereby declared to be a nuisance, and every remedy against nuisance, either public or private, shall be applicable against every such act or omission.

**Section 15.7 Waiver.**

The failure of any Owner, the Board of Directors, the Association, or its officers or agents to enforce any of the covenants, conditions, restrictions, limitations, reservations, grants or easements, rights, rights-of-way, liens, charges, or equitable servitudes contained in this Declaration shall not constitute a waiver of the right to enforce the same thereafter, nor shall such failure result in or impose any liability upon the Association or the Board, or any of its officers or agents.

**Section 15.8 Conflict of Governing Documents.**

If there is a conflict among or between the Governing Documents, the provisions of this Declaration shall prevail; thereafter, priority shall be given to Governing Documents in the following order: Articles, Bylaws, and Rules and Regulations of the Association.

**Section 15.9 Joint and Several Liability.**

In the case of joint ownership of a Condominium, the liability of each of the Owners thereof in connection with the liabilities and obligations of Owners set forth in or imposed by this Declaration shall be joint and several.

**Section 15.10 Statutory Changes; Conflicts; No Liability for Following Law.**

Many provisions of this Declaration are drafted to comply with current California law applicable to the operation of a common interest subdivision. Provisions of these laws can and likely will change. In the event a law changes, the following shall apply:

**Section 15.10.1 Changed Law Supersedes this Declaration.**

In the event a law change supersedes provisions of this Declaration, such changed law shall prevail over provisions of this Declaration that conflict with the new law.

**Section 15.10.2 Changed Law Allows Declaration to Prevail.**

If the changed law allows this Declaration to prevail, this Declaration shall prevail.

**Section 15.10.3 Changed Law Deletes Provisions Repeated in this Declaration.**

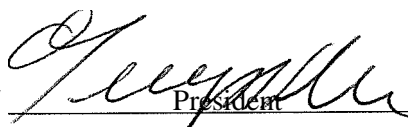
If the changed law deletes any statutory requirement repeated in this Declaration, the Board may, after not less than 30 days notice to the Owners, record an amendment revising the provision of this Declaration affected by the new law to conform with the language of the new law. Such amendment to restate, verbatim, changed laws does not need to comply with the Owner approval requirements of Section 15.4 hereinabove.

**Section 15.10.4 No Liability for Following Changed Law.**

Provided any federal, state or local statute, law or ordinance is inconsistent with any provision(s) of this Declaration, and compliance with that statute, law or ordinance is mandatory, neither the Association, the Corporation, either Board, nor any director thereof, shall have any liability for complying with the federal, state or local statute, law or ordinance rather than with the inconsistent provision(s) of this Declaration.

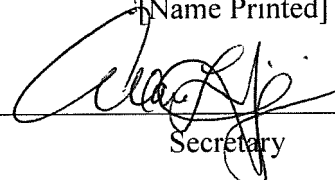
**IN WITNESS WHEREOF**, Mission Ridge Condominium Association, by and through its Board of Directors, hereby certifies that this Declaration was duly adopted as required under law.

Dated: 8/19/19

  
President

Terry A Keller  
[Name Printed]

Dated: g/f J2-0  
1 1

  
Secretary

Allan K Figi  
[Name Printed]

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

ACKNOWLEDGMENT

STATE OF CALIFORNIA )
COUNTY OF SAN DIEGO )

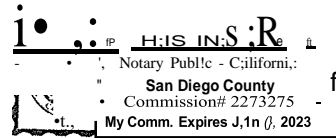
On 1/4/2019, before me, [Signature], Notary Public, personally appeared [Signature] who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity), and that by his/her/their signature on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

[Handwritten Signature]



(Seal)

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

ACKNOWLEDGMENT

STATE OF CALIFORNIA )
COUNTY OF SAN DIEGO )

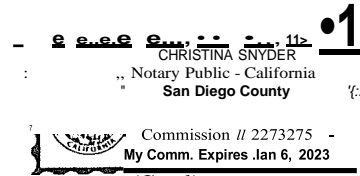
On 1/3/2019, before me, [Signature], Notary Public, personally appeared [Signature] who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity), and that by his/her/their signature on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

[Handwritten Signature]



(Seal)

**EXHIBIT "A"**

**MISSION RIDGE CONDOMINIUM ASSOCIATION  
MAINTENANCE RESPONSIBILITY CHECKLIST**

# of units: 277

<b>MAINTENANCE ITEM</b>	<b>HOA</b>	<b>HO</b>
Address Lights-Garage	X	
Address Numbers	X	
Air Conditioning System - Each Unit		X
Air Conditioning System - Recreation Building	X	
Ants (exterior)	X	
Ants (interior)		X
Appliances - Built-in		X
Appliances - Free Standing		X
Atrium	X	
Bees/Wasps/Hives (exterior)	X	
Balcony Alterations by current or former Owners		X
Carpeting - in Common Areas/Recreation Areas	X	
Carpeting- in Units		X
Carport/Storage Unit		X
Caulking - Exterior	X	
Caulking - Interior		X
Chimney Caps	X	
Chimney Cleaning		X
Circuit Breakers (exterior)	X	
Circuit Breakers (interior)		X
Common Area Improvements	X	
Crawl Spaces in Attic	X	
Decks/Balconies (sweeping/cleaning)		X

<b>MAINTENANCE ITEM</b>	<b>HOA</b>	<b>HO</b>
Deck Coating/Waterproofing	X	
Deck Drains	X	
Deck Railing Painting (Inside/Outside Surfaces)	X	
Deck Structure	X	
Doorbell (Interior and Exterior Components)		X
Doors - Entry - Frame & Door (Unit)		X
Doors - Entry- Locks and Hardware (Unit)		X
Doors - Entry - Exterior Surface (Unit)	X	
Doors - Entry - Interior Surface (Unit)		X
Doors - Entry - Weather Stripping and Waterproofing (Common Area entry)	X	
Doors - Entry - Weather Stripping and Waterproofing (Unit)		X
Doors, Screen/Storm/Security	X	
Drainage Systems (e.g. ditches, catch basins)	X	
Downspouts	X	
Drain Lines Within Wall	X	
Drain Lines Exposed in Unit (bathtubs, showers, sinks)		X
Drains - Exterior (curb, decks, yards, planters)	X	
Driveway	X	
Dryer Vent Cleaning (laundry rooms)	X	
Dryer Vent Cleaning (Unit)		X
Dryer Vent Repair (laundry rooms)	X	
Dryer Vent Repair (Unit)		X
Eaves	X	
Electrical Heating		X
Electrical Outlets & Fixtures (common)	X	
Electrical Outlets & Fixtures - Switches, Sockets, Wall Plates, etc. (individual)		X
Electrical Panel/Circuit Breakers/ Interior		X
Electrical Wiring (interior from circuit breaker)		X
Exterior Building Surfaces	X	
Exterior Faucets, Handles, Washers	X	

<b>MAINTENANCE ITEM</b>	<b>HOA</b>	<b>HO</b>
Fence - Painting, Repair, & Replacement (Inside/Outside Surfaces)	X	
Fireplace - Chimney Sweeping		X
Fireplace - Firebox		X
Fireplace- Gas Burners		X
Fireplace - Repair - Mantle		X
Floor Coverings - Carpet, Vinyl and Tile		X
Front Entry Landings	X	
Furnace - Unit Systems		X
Garage Door (repair/replace)	X	
Garage Door (paint)	X	
Garage Door (hardware/springs)	X	
Garage Door (opener)	X	
Garbage Disposal		X
Gas Pipes (common)	X	
Gas Pipes (interior)		X
Gas Shut Off Valve (common)	X	
Glass		X
Graffiti (in common area)	X	
Graffiti (on individual home)		X
Gutters & Downspouts	X	
Hosebib/Faucet/Spigot	X	
Interior Walls and Ceilings Surface (Drywall and Paint)		X
Landscape - Common Area/Slopes	X	
Landscape (patio area and patio decks)		X
Landscape - Trees Common Area	X	
Landscape Drains (patio area and patio decks)		X
Lights (patio deck area fixture)		X
Lights (common area)	X	
Lights (interior)		X
Light Poles	X	



<b>MAINTENANCE ITEM</b>	<b>HOA</b>	<b>HO</b>
Linoleum & Vinyl Flooring- Inside Units		X
Mailbox (repair/replace)	X	
Mailbox (lock & key)		X
Paint Exterior	X	
Paint Interior		X
Parking Space - Concrete/Asphalt Surfaces	X	
Pigeons/Birds/Etc. - Roof	X	
Pigeons/Birds/Etc. - Patio Deck Area		X
Plumbing (inside unit)		X
Plumbing (stoppage) common lines	X	
Plumbing (stoppage) individual unit		X
Plumbing (common lines)	X	
Plumbing (common valves)	X	
Plumbing (individual unit valves)		X
Plumbing (pressure regulator)	X	
Plumbing (slab leak)	X	
Plumbing (shut off valves)	X	X
Raingutters	X	
Rats/Rodents (interior)		X
Rats/Rodents (exterior)	X	
Roof Repairs (includes decking, flashing, shingles/tiles, underlayment, vents, etc.)	X	
Sewer Lines -Toilet Backups		X
Sewer Pipes (common/below ground)	X	
Sidewalks - Common Area/ Entry	X	
Skylights (if installed by Developer)	X	
Slab Leak	X	
Sliding Patio Door Flashing/Waterproofing		X
Sliding Patio Door Frames & Tracks		X
Sliding Patio Door Hardware		X
Sliding Glass Doors		X
Spark Arrestors	X	

<b>MAINTENANCE ITEM</b>	<b>HOA</b>	<b>HO</b>
Stairs/Stairway (exterior)	X	
Streets	X	
Stucco Painting/Coloring	X	
Stucco Repair & Replacement	X	
Telephone Security Gate	X	
Telephone Wiring		X
Termite Inspection (exterior)	X	
Termite Inspection (interior Unit)		X
Termite Treatment (exterior)	X	
Termite Treatment (interior Unit)		X
Termite Tenting	X	
Termites (carport)	X	
Toilet - Fixture and Components		X
Toilet- Wax Ring		X
Trash Pick Up	X	
Trim - Wood - Exterior - Painting - Maintenance & Replacements	X	
T.V. Reception/Cable Service		X
Utility Doors Common Area	X	
Wallpaper/Paneling		X
Water Heater	X	X
Water Lines - Common - Below Ground	X	
Water Shut Off Valve (common)	X	
Water Shut Off Valve (individual)		X
Water Softeners		X
Weep Screed	X	
Window Flashing/Waterproofing (Unit)		X
Window Frames		X
Window Glass		X
Window Hardware		X
Window Screens		X

<b>MAINTENANCE ITEM</b>	<b>HOA</b>	<b>HO</b>
<b>UTILITIES</b>		
Cable Wiring		X
Cable Wiring (inside walls, inside homes, interior outlets)		X
Electrical Service (common)	X	
Electrical Service (individual)		X
Gas Service (common)	X	
Refuse Collection (common)	X	
Refuse Removal from ,home (individual)		X
Water & Sewer Service (unless submetered)	X	

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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN DIEGO, CENTRAL DIVISION

In the Matter of  
  
MISSION RIDGE CONDOMINIUM  
ASSOCIATION, a California non-profit  
corporation  
  
Plaintiff

CASE NO. 37-2019-00024944-CL-PT-CTL  
  
**IP:RePOSE-81 ORDER GRANTING  
PETITION TO REDUCE PERCENTAGE  
OF AFFIRMATIVE VOTES**  
  
[IMAGED FILE]  
  
Judge: Hon. David M. Rubin  
Dept: 903  
Date: August 1, 2019  
Time: 1:30 p.m.

Petitioner, MISSION RIDGE CONDOMINIUM ASSOCIATION, upon Petition to Reduce Required Voting Percentage to approve amendments to the Association's Bylaws and Declaration of Covenants, Conditions and Restrictions under Civil Code §4275 and Corporations Code §7515 came regularly for hearing on August 1, 2019, in Department 903 of the above-entitled Court at 1:30 p.m. Petitioner appeared by and through its counsel, Kenneth H. Dillingham, Jr., Esq., of Dillingham & Associates.

The Court Having considered the Petition [ROI #1], the Declarations filed herein, the supporting Memorandum of Points and Authorities [ROI #3], the records on file herein, and the oral and documentary evidence adduced at the hearings in this matter, the Court finds:

- 1. The allegations of Petitioner's Petition are true and accurate.
- 2. Petitioner gave at least fifteen (15) days' written notice of the hearing to all



1 Association members, those lenders of members who provided their lenders' names and  
2 addresses, and to all others entitled to such notice.

3 3. Petitioner made a diligent effort to notify its members and lenders of the proposed  
4 amendments, and the balloting on the proposed amendments was conducted in accordance  
5 with all applicable provisions of the governing documents, the Davis-Stirling Common  
6 Interest Development Act (Civil Code §§4000-6150), and other applicable laws.

7 4. Over the course of approximately six months, Petitioner made a reasonably diligent  
8 effort to permit all eligible members to vote on the 2018 Amended and Restated CC&Rs and  
9 2018 Amended and Restated Bylaws.

10 5. Members with more than fifty percent (50%) of the votes voted in favor of  
11 approving the 2018 Amended and Restated CC&Rs and 2018 Amended and Restated Bylaws.  
12 Of Petitioner's total membership of 277 members, 215 ballots were cast, comprising  
13 approximately seventy-seven percent (77%) of Petitioner's total membership. 196 members  
14 voted in favor of adopting the 2018 Amended and Restated CC&Rs and 2018 Amended and  
15 Restated Bylaws (approximately 71% of members), while 13 members voted in opposition. A  
16 total of 139 affirmative votes were required to satisfy the "more than 50 percent" approval  
17 requirement of Civil Code §4275, and Petitioner received more than this amount.

18 6. Petitioner's 2018 Amended and Restated CC&Rs and 2018 Amended and Restated  
19 Bylaws are reasonable.

20 7. The granting of the within petition is not improper for any reason stated in Civil  
21 Code §4275(e).

22 Satisfactory proof having been made, and good cause appearing,

23 IT IS ORDERED that:

24 1. Petitioner's Petition to Reduce the Required Voting Percentage for approval of the  
25 2018 Amended and Restated CC&Rs and 2018 Amended and Restated Bylaws is granted.  
26 Both the 2018 Amended and Restated CC&Rs and 2018 Amended and Restate Bylaws are  
27 hereby approved based on upon the affirmative actually received.

28

1           2. Before recordation, true and correct copies of all exhibits to the 2018 Amended and  
2 Restated CC&Rs shall be attached.

3           3. The 2018 Amended and Restated CC&Rs shall not be effective until recorded in the  
4 Official Records of San Diego County, together with a copy of this order. Within a reasonable  
5 time after its recordation, Petitioner shall deliver a copy of the 2018 Amended and Restated  
6 CC&Rs to each member of the Association by first class mail in accordance with Civil Code  
7 §4040, together with a statement that the 2018 Amended and Restated CC&Rs has been  
8 recorded. On such recordation, the 2018 Amended and Restated CC&Rs shall have the same  
9 force and effect as if it had been adopted in compliance with every requirement for amendment  
10 imposed by the governing documents of the Mission Ridge common interest development.

11           4. The 2018 Amended and Restated Bylaws shall not be effective until they are  
12 executed by Petitioner's secretary and inserted in the books and records of the Association.  
13 On such signature, the 2018 Amended and Restated Bylaws shall have the same force and  
14 effect as if it had been adopted in compliance with every requirement for amendment imposed  
15 by the governing documents of the Mission Ridge common interest development. Within a  
16 reasonable time after signature, Petitioner shall deliver a copy of the 2018 Amended and  
17 Restated Bylaws to each member of the Association by first class mail in accordance with  
18 Civil Code §4040, together with a statement that the 2018 Amended and Restated Bylaws are  
19 effective.

20           5. Within a reasonable time after recordation and signature, Petitioner shall mail a  
21 copy of this Order to those lenders whose names and addresses were provided by the members  
22 which were used for the original approval mailing and for the notice of the hearing.  
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Date: 7/11/18

DAVID M. RUBIN

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JUDGE

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